WHARTON'S LAW LEXICON

FORMING

AN EPITOME OF THE LAWS OF ENGLAND UNDER STATUTE AND CASE LAW,

AND CONTAINING

EXPLANATIONS OF TECHNICAL TERMS AND PHRASES ANCIENT, MODERN, AND COMMERCIAL,

WITH SELECTED TITLES RELATING TO

THE CIVIL, SCOTS, AND INDIAN LAW

FOURTEENTH EDITION

BY

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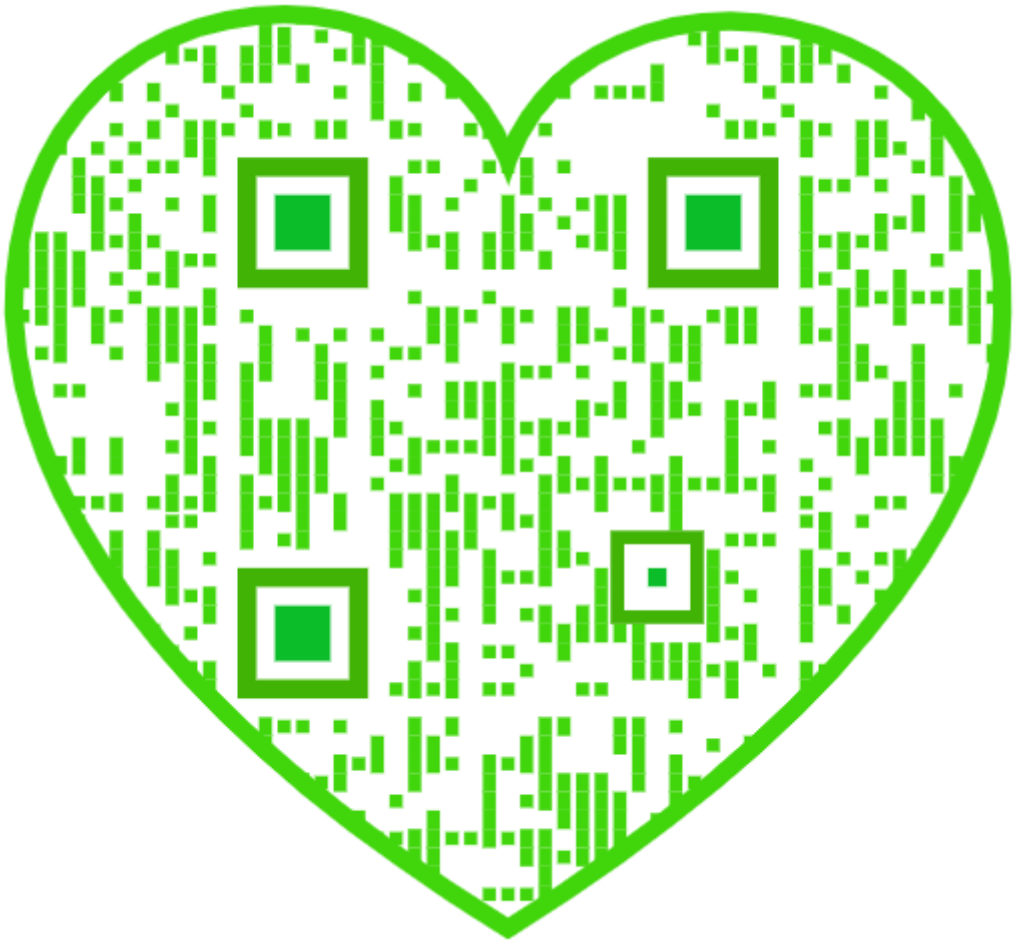

PREFACE

TO THE

FOURTEENTH EDITION.

THE present edition of Wharton's "Law Lexicon" has been prepared in order to include legislation and changes in the law since 1925, when the last edition was published. The changes have been considerable, almost as much shelf-room being taken up by the statute books for the twelve years 1925 to 1936 as by those for the preceding thirty years, while much of the law which has been superseded is of practical as well as historical importance, especially in regard to the law of property in land.

The opportunity has been taken to amplify some of the titles which appeared in previous editions and to add new titles on subjects which have lately become important. A feature of the work consists in its explanation of words and formulæ which were current among lawyers in former days, and of place-names which appear to have been included less with the intention of providing derivations than to identify places which are referred to in ancient documents. These have been retained for the greater part, and the editor hopes that the consequent expansion of the book will not be inconvenient for the reader.

The editor has had the advantage of the assistance of MR. W. L. DALE, of Gray's Inn, in the revision of titles in ecclesiastical law, and the titles relating to the law of Scotland in recent times (including a complete synopsis of the Scots law of prescription in the Addenda) have been carefully revised and supplemented by MR. IAN A. DICKSON, W.S., of Edinburgh. To both these gentlemen I offer my grateful thanks for their co-operation, as well as to MR. D. GWYTHER MOORE, a solicitor of the Supreme Court, for many valuable suggestions and material, and to MR. R. D. H. OSBORNE, of Gray's Inn, for his unremitting assistance in the general preparation of the work. I am also indebted to MR. H. P. LANSDALE-RUTHVEN, of Gray's Inn, now Legal Adviser to the Court of

Sarawak, and MR. F. H. COWPER, of Gray's Inn, for the contribution of material required for the preparation of some titles in common and criminal law. I am also under great obligations to MISS JOAN KAHN for her work in revising the earlier titles in Roman law and verifying references to old authorities in the Lexicon.

A. S. OPPÉ.

7, NEW SQUARE, LINCOLN'S INN,
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ADDENDA

Divorce. Until 1st January, 1938, grantable to a husband proving the adultery of his wife; or to a wife (since the Matrimonial Causes Act, 1923) proving the adultery of her husband, or on proof of an unnatural offence (prior to the Act of 1923 adultery of a husband was not sufficient *per se*, it being necessary to prove also cruelty or desertion). See title DIVORCE.

Firearms. The Firearms Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 12), has consolidated and repealed the Firearms Acts, 1920 to 1936.

Prescription. In Scotland prescription is of various kinds:—

1. *Positive Prescription*, which may be called Acquisitive Prescription, introduced by an Act of 1617. In the Conveyancing Acts of 1874 and 1924 the periods were altered so that by s. 16 of the latter the given period is twenty years, except where the prescription is relied upon to establish a servitude right of way or other public right, in which cases the period is still forty years. To found on Positive Prescription an *ex facie* valid irredeemable title recorded in the Register of Sasines is required.

2. *Negative Prescription*, introduced by Acts of 1469, 1474 and 1617, and altered by the 1924 Conveyancing Act, s. 17 of which makes the period twenty years. The effect is to extinguish rights which have not been enforced.

3. *Triennial Prescription*, introduced by the Act of 1579, deals with rents where the lease is entered into verbally and, broadly speaking, mercantile debts. The effect is not to extinguish the debt or claim but to transfer the onus of proof to the creditor.

4. *Quinquennial Prescription*, introduced by the Act of 1669. This covers arrestments, rents and "obligations concerning moveables," excluding claims founded on a written obligation. As the name implies, the period is five years and the effect, with the exception of arrestments, is not to extinguish any right, but to restrict methods of proof and to transfer the onus thereof.

5. *Sexennial Prescription*. This affects Bills of Exchange, the onus of proving the debt contained in the Bill being laid on the holder after expiry of six years.

6. *Vicennial Prescription*, introduced by the Act of 1669, precludes holograph writings from being proved except by the writ or oath of the debtor.

All the above prescriptive methods require to run without interruption, the nature of which varies with each type of prescription.

Register of Sasines and Sasine. A title to heritable property in Scotland can only be founded upon after the deed granting it has been registered for publication in the Register of Sasines. Sasine was originally the symbolical delivery of land, *i.e.*, stone and earth by a bailie on the site of the ground being disponed. Payment of the purchase price created a personal right in the buyer and delivery of Sasine converted this into a real right. After numerous Conveyancing Acts which have tended to simplify procedure, the position nowadays is that a "Recorded Title" forms the basis of real right to heritable property in Scotland.

Registration for Execution. A consent to registration for execution in a Scots Deed is theoretically a consent to decree for summary diligence—*i.e.*, the taking of the remedy provided without recourse to a separate process of law.

Removing. The process in Scotland by which a tenant of heritage is judicially warned to remove from the place when his tenure is concluded, failing obedience to which he is removed or ejected from the premises.

Ribbon Development, the name given to the extension of urban house building along main and country roads. Following the policy of the Town and Country Planning Acts, see IMPROVEMENT OF TOWNS, the Restriction of Ribbon Development Act, 1935 (25 & 26 Geo. 5, c. 47), enables local authorities to adopt a standard width for roads and to prevent building nearer the edge of the road than half its standard width, or nearer the centre of certain classified roads than 220 feet. Land may be purchased compulsorily for purposes of traffic. Compensation is provided for.

Subinfeudation. A common form of creating holdings in Scotland where generally the feudal principle of holding is universal. Responsible for many intricacies in the Conveyancing Law of Scotland through liability of successors to casualties or capital payments (now defunct through operation of Feudal Casualties (Scotland) Act, 1914).

Teinds, Originally the tenth part of agricultural produce offset to meet stipend. All land in Scotland was assessed for Teind, and Stipend was payable therefrom. Free-Teind—*i.e.*, the difference between the Teind and proportion of Stipend—was an asset. Now, under the Church of Scotland Act, 1929, Teinds and Stipends are stabilised.

Trade Marks. The Trade Marks (Amendment) Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 49), amends the law of trade marks. Sect. 1 substitutes a definition of trade mark for that in s. 3 of the Trade Marks Act, 1905, to the effect that a trade mark other than a certification trade mark shall mean a mark in relation to goods indicating a connection in course of trade between the goods and the proprietor or registered user having the right to use the mark. A certification trade mark is a registered trade mark, under s. 18 of the 1937 Act.

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A1—ABA

A1. An expression signifying a first-class vessel excellently built.—*Shipping term.* See LLOYD'S REGISTER.

'A' list. See CONTRIBUTORY.

A.B. Able-bodied seaman, having served at sea for three years before the mast.—Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 126, as amended by Merchant Shipping Act, 1906 (6 Edw. 7, c. 148), s. 58. Any false statement or false representation for the purpose of obtaining a rating as A.B. renders the offender liable to a fine not exceeding five pounds.—M. S. A. 1906, s. 58 (2).

A and B lists. See CONTRIBUTORY.

Ab, at the beginning of English-Saxon names of places, is generally a contraction of *Abbot* or *Abbey;* whence it is inferred that those places once had an abbey, or belonged to one elsewhere, as Abingdon in Berkshire.—*Blount's Law Dict.*

Abacot, the name of the ancient cap of state worn by the kings of England. It was made in the shape of two crowns.—*Jacob's Law Dict.*

Abactor [fr. *abigo,* Lat.], a stealer and driver away of cattle or beasts by herds or in great numbers at once, as distinguished from *fur,* a person who steals a single beast only.—*Encyc. Londin.* See ABIGEUS and ABIGEAT.

Abalienation [fr. *abalieno,* Lat.], a making over of realty, goods, or chattels, to another, by due course of law.—*Civil Law.*

Aballaba, the ancient name of Appleby, in Westmoreland.

Abandonee, one to whom anything is relinquished.

Abandonment [fr. *abandonner,* Fr.], the relinquishment of an interest or claim.

The relinquishment by an assured person to the assurers of his right to what is saved out of a wreck, when the thing insured has, by some of the usual perils of the sea, become practically valueless. Upon abandonment, the assured is entitled to call upon the assurers to pay the full amount of the insurance, as in the case of a total loss. The loss is in such case called a 'constructive total loss' (Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 60; no abandonment is necessary where there is nothing which, on abandonment, can pass to or be of value to the underwriters.—*Rankin* v. *Potter,* (1873) L. R. 6 H. L. 83.

The abandonment of a sunken ship frees the owner from responsibility: see *The Snark,* 1900, P. 105, where there was no abandonment of a barge sunk in the Thames, and therefore no freedom from responsibility.

Also the surrender of his property by a debtor for the benefit of his creditors.

The Civil Law permitted a master who was sued for his slave's tort, or the owner of an animal who was sued for an injury done by it, to abandon the slave or animal to the person injured, and thus relieve himself from further liability.

As to abandonment of a building contract, see *Sumpter* v. *Hedges,* 1898, 1 Q. B. 673, and *Hudson on Building Contracts,* 6th ed., 1933. As to abandonment of proceedings, see R. S. C., Ord. XXVI., and *Fox* v. *Star Newspaper Co.,* 1900, A. C. 19; as to abandoned mines, see the Metalliferous Mines Regulation Act, 1872, ss. 12-14; the Coal Mines Act, 1911, ss. 19, 21, 22; see also the Petroleum (Production) Act, 1934 (24 & 25 Geo. 5, c. 36), s. 7; and as to abandoned canals, see Railway and Canal Traffic Act, 1888, s. 45; also CHILDREN; RAILWAYS; DISCONTINUANCE.

Abandun, or **Abandum,** anything sequestered, proscribed, or abandoned. *Abandon,* i.e., *in bannum res missa,* a thing banned or denounced as forfeited or lost, whence to *abandon, desert,* or *forsake,* as lost and gone.—*Cowel.* Pasquier thinks it a coalition of *a ban donner,* to give up to a proscription, in which sense it signifies the band of the

empire. *Ban*, in the old dialect, signifies a curse; and to *abandon*, if considered as compounded of French and Saxon, is exactly equivalent to *diris devovere*. Consult *Du Cange*.

Ab antiquo, of an ancient date.

Abarnare [fr. *abarian*, Ang.-Sax., *denudo*, *detego*, Lat.], to lay bare, discover, detect. Hence, *æbere theof*, a detected or convicted thief; *æbere morth*, a detected homicide. Also to detect and discover any secret crime to a magistrate.—*Ancient Laws and Institutes of England; Leg. Canuti*, c. 104.

Abatamentum, Abatement, an entry by interposition.—*Co. Litt.* 277.

Abate [fr. *abbattre*, Fr.], to prostrate, break down, remove, or destroy; also to let down or cheapen the price in buying or selling.—*Encyc. Londin.* See ABATEMENT.

Abatement, a making less:—

(1) Abatement of Freehold.—The title of a real action which has been abolished. This takes place where a person dies seised of an inheritance, and before the heir or devisee enters, a stranger, having no right, makes a wrongful entry and gets possession of it. Such an entry is technically called an abatement, and the stranger an abater. It is, in fact, a figurative expression, denoting that the rightful possession or freehold of the heir or devisee is overthrown by the unlawful intervention of a stranger. Abatement differs from intrusion, in that it is always to the prejudice of the heir or immediate devisee, whereas the latter is to the prejudice of the reversioner or remainder man: and disseisin differs from them both, for to disseise is to put forcibly or fraudulently a person seised of the freehold out of possession.—*Co. Litt.* 277 *a*.

(2) Abatement of Nuisances.—A remedy allowed by law to a person injured by a nuisance to remove or put an end to it by his own act. Nuisances are either public or private. A public nuisance may be abated, that is, taken away or removed, by urban sanitary authorities and other public bodies under various statutes (see, e.g., Public Health Act, 1936, consolidating and repealing similar provisions in previous Public Health Acts; the Public Health (Smoke Abatement) Act, 1926 (16 & 17 Geo. 5, c. 43), also repealed and replaced by the Public Health Act, 1936; and the Public Health (London) Act, 1936), and also by any private individual to whom it does a special injury: see *Campbell Davys* v. *Lloyd*, 1901, 2 Ch. 518. Private nuisances may also be abated by the individuals aggrieved: see *Lemmon* v. *Webb*, 1895, A. C. 1. The law allows this because injuries of this kind require an immediate remedy, and cannot wait for the slow progress of the ordinary forms of justice.

(3) Plea in Abatement.—A defence by which a defendant showed cause to the Court why he should not be sued, or, if sued, not in the form adopted by the plaintiff, and praying that the action might abate, i.e., cease.

A plea in Abatement at Common Law (which by 4 Anne, c. 16, s. 11, had to be substantiated by affidavit, and which is now abolished, see R. S. C. Ord. XXI., r. 20) was one which stated some fact which gave a reason for quashing or abating the action, on account of an informality, or offered an exception to the personal competency of the parties suing or sued; e.g., that the plaintiff was an alien enemy, or that the defendant was a married woman.

In criminal proceedings, a plea in abatement might have been given in writing by a prisoner or defendant on account of misnomer, wrongful or no addition, annexing thereto an affidavit of its truth. But this plea is now obsolete, since by the Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 19, in case of misnomer the judge may amend the indictment or information, and call upon the prisoner or defendant to plead in bar to the merits; and by the Indictments Act, 1915 (5 & 6 Geo. 5, c. 90), the Court has power to amend defective indictments before or during trial (s. 5).

(4) Abatement of Debts and Legacies.—When the estate of a deceased person after 1st January, 1925, is insufficient to satisfy fully all the creditors, then subject to the personal representatives' rights of retainer and preference (see *A.-G.* v. *Jackson*, 1932, A. C. 365), their debts must abate in proportion according to their degree (see ADMINISTRATION OF ASSETS), and they must be content with a dividend.

So in the case of legacies, upon a deficiency of assets after payment of the debts they abate in proportion, unless a priority is specially given to any particular legacy. A testator is always presumed to intend that the legacies shall be equally paid, unless he express in his will a contrary intention.

When there are specific and pecuniary legacies, and the assets are not sufficient to pay both, the specific have the preference, and only abate in proportion amongst themselves, unless one of them is payable out of a particular fund, and others out of other funds, for then each must bear the loss

arising from any deficiency of the particular fund. See also DEMONSTRATIVE LEGACY.

(5) Abatement of Litigation.—By R. S. C., Ord. XVII., rr. 1, 2, a cause does not become abated by marriage, death or bankruptcy of any of the parties if the cause of action survives, but in any of such cases the Court or a judge may order the successor in interest to be made a party. See PARTIES.

(6) Abatement or rebate in commerce, an allowance or discount made for prompt payment.—*Lex. Merc.* It is sometimes used to express the deduction that is occasionally made at the Custom House from the duties chargeable upon such goods as are damaged, and for a loss in warehouses.

(7) A badge in coat-armour, indicating dishonour of some kind. It is also called rebatement.

Abator, or **Abater**, one who abates a nuisance or enters into a house or land vacant by the death of the former possessor, and not yet taken possession of by his heir or devisee.—*Cowel.* Also an agent or cause by which an abatement is procured.

Abatuda, or **Abatude,** anything diminished. *Moneta abatuda* is money clipped or diminished in value.—*Du Cange's Glos.* Used in old records.

Abavia, a great-grandmother's mother.

Abavus [fr. *avusavus, avavus,* Lat.], a great-grandfather's father.

Abbacy [fr. *abbatia,* or *abbathia,* Lat.], the government of a religious house and the revenues thereof, subject to an abbot, as a bishopric is to a bishop.—*Cowel.* The rights and privileges of an abbot.

Abbandunum, Abbendoma, Abbendonia, Abingdon in Berkshire; also, as some say, called Sewsham and Cloveshoe.

Abbas [fr. *æstuarium,* Lat.] (Anglo-Saxon) singly or in conjunction, the site of an abbey or land belonging to one. For instance, Cerne Abbas in Dorsetshire (from Crem, Anglo-Saxon, a cheese, indicating a place, where cheese-making was carried on) means the abbot's dairy or cheese farm. *Edmunds, Names of Places,* p. 161. According to Cowel, Abbas æstuarium is Humber in Yorkshire.

Abbatis, an avener or steward of the stables, an ostler.—*Spelm.*

Abbe, old Norman-French for abbot.

Abbey, or **Abby** [fr. *abbatia,* Lat.], a place or house for religious retirement, governed by an abbess where nuns are, and by an abbot where monks reside. No fewer than 190 abbeys were dissolved by Henry VIII., the yearly revenue of which amounted to 2,853,000*l.* per annum (an almost incredible sum, considering the value of money in those days), a great part of which went to Rome, the governors and governesses of several of the richest among them being foreigners resident in Italy. See 27 Hen. 8, c. 28, and 31 Hen. 8, c. 13, printed in supplement to vol. 16 of the 2nd ed. of the Statutes Revised.

Abbot, or **Abbat** [from *abbas,* Lat.; *abbé,* Fr.; *abbud,* Sax.: others derive it from *abba,* Syr., father], a spiritual lord or governor, who had the rule of a religious house. An abbot, with the monks of the same house, who were called the convent, made a corporation.—*Termes de la Ley.*

Mitred abbots were those privileged to wear the mitre and allowed full episcopal authority within their precincts. They were also lords of Parliament, and at the time of the dissolution of the monasteries by Henry VIII. were twenty-six in number.—1 *Bl. Com.* 151.

Abbreviate of Adjudication (in Scots Law), an abstract of the decree of adjudication, and of the lands adjudged, with the amount of the debt. Adjudication is that diligence (execution) of the law by which the real estate of a debtor is adjudged to belong to his creditor in payment of a debt; and the abbreviate must be recorded in the register of adjudication. See *Bell's Dictionary.*

Abbreviatio Placitorum is an abstract of ancient pleadings prior to the Year Books. *Stephen on Pleadings,* 7th ed., p. 410.

Abbreviation, an abridging or contraction, very frequent in old statutes, as of 'rationabilem' by 'rônabilem' (in the Statute de Prærogativa Regis) and of 'every' by 'evy' in 22 Hen. 8, c. 5, s. 4, and writings. The Act 4 Geo. 2, c. 26, provided that all law proceedings should be in the English language, written legibly and prescribed also that they shall be in words at length, and not abbreviated; but 6 Geo. 2, c. 14, permitted numbers to be expressed in figures, and such abbreviations as are commonly used. See 1923, W. N. 288. In 9 *Rep.* 48 is this maxim, *Ille numerus et sensus abbreviationum accipiendus est ut concessio non sit inanis.* (In abbreviations such number and sense is to be taken that the grant be not made void.) See REGNAL YEARS.

Abbreviators, officers who assisted in drawing up the Pope's briefs, and reducing petitions into proper form, for their conversion into Papal Bulls.

Abbroach, to monopolize goods or forestall a market.

Abbroachment, or **Abroachment** [fr. *ab*, Lat., and *broche*, Fr., a spit], the forestalling of a market or fair. See FORESTALLING AND REGRATING.

Abbuttals, or **Abuttals** [fr. *abutter*, or *aboutir*, Fr., to limit or bound; or perhaps fr. to *butt* or strike.—*Wedg.*], the buttings or boundings of any land, east, west, north, or south, declaring on what other lands, highways or other places it does abbut. The sides of the land are properly said to be adjoining to, and the ends abutting on, the land contiguous.—*Blount's Law Dict.* See BOUNDARIES. In building contracts, the meaning *prima facie* is 'in physical contact with.' See *Hudson on Building Contracts* 6th ed.

Abdicant, giving up, renouncing.

Abdicate [fr. *abdico*, Lat.], to renounce or refuse anything.—*Termes de la Ley.* In the civil law, to disinherit.

Abdication, where a magistrate or person in office voluntarily renounces or gives it up. It differs from resignation, in that resignation is made by one who has received his office from another and restores it into his hands; as an inferior into the hands of a superior. On King James II.'s leaving this kingdom, and abdicating the crown, the Lords would have had the word 'desertion' made use of, but the Commons thought it was not comprehensive enough, for that the king might then have liberty of returning, and the Lords ultimately gave way: see *Macaulay's Hist. of Eng.*, ch. x. Involuntary resignations are also termed abdications, as Napoleon's abdication at Fontainebleau. See 1 Edw. 8, c. 4.

Abditorium [fr. *abditus*, Lat.], an abditory or hiding-place to conceal and preserve goods, plate, or money, or a chest in which reliques are kept, as mentioned in the inventory of the Church of York.—*Dugdale's Monasticon Anglicanum.*

Abduction: (1) The forcible or fraudulent taking away of a woman. It is a felony:—

(*a*) Where any person from motives of lucre takes away or detains any woman who has any interest in any property (even a presumptive expectation) with intent to marry or carnally know her or to cause her to be married or carnally known. (*b*) Where any person fraudulently allures, takes away or detains with like intent such a woman under 21 out of the possession and against the will of her parent or other person having the lawful care of her. In either of these two cases a person convicted is incapable of taking any estate or interest in the woman's property.—Offences against the Person Act, 1861. (*c*) Where any person by force takes away or detains any woman being of age with like intent (*Ib.* s. 54). It is a misdemeanour:—

(*a*) Where any person takes away an unmarried girl under 16 out of the possession and against the will of her parent or other person having lawful charge of her (*Ib.* s. 55). A *bonâ fide* belief on reasonable grounds that the girl is over 16 is no defence (*R.* v. *Prince*, L. R. 2 C. C. R. 154). (*b*) Where any person takes away any unmarried girl under 18 out of the possession and against the will of her parent or other person having the lawful charge of her with intent that she shall be unlawfully and carnally known. —Criminal Law Amendment Act, 1885, s. 7. Reasonable belief that the girl was 'over 18' is a defence (*Ib.*).

(2) The offence of unlawfully taking or enticing away or detaining any child under 14 by force or fraud with intent to deprive any parent or other person having the lawful charge of such child of the possession of the child or with intent to steal any article upon or about the child is a misdemeanour. The receiving or harbouring of such child with like intent knowing the child to have been taken or enticed away or detained as aforesaid is a misdemeanour.—Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 56, and see Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12).

(3) The Common Law misdemeanour of forcibly stealing or carrying away any person, sometimes known as kidnapping and more accurately described as assault and false imprisonment. Where the person carried away is taken abroad the offence falls within the Habeas Corpus Act, 1679 (31 Car. 2, c. 2), s. 11.

(4) The removal of a ward of Court out of the jurisdiction: this is Contempt of Court (*q.v.*). See GUARDIAN.

The statutes 13 Edw. 1, c. 34 & 35, dealing with the carrying away of married women with the goods of their husbands, the abduction of nuns and of wards appear no longer to be of practical effect. See ABUSING CHILDREN; CHILDREN; RAPE.

Abearance, carriage or behaviour. A cognizance to be of good *abearance* means to be of good behaviour.—4 *Bl. Com.* 53.

Aberdeen Act, the Entail Provisions Act, 1824 (5 Geo. 4, c. 87), enabling the owners of entailed estates in Scotland to grant provisions to their wives or husbands and children. See TAIL.

Aberdeen University. See s. 18 of Universities of Scotland Act, 1858 (21 & 22 Vict. c. 83).

Aberemurder [fr. *abere*, apparent, notorious, and *mord*, murder, Sax.], plain or downright murder, as distinguished from the less heinous crime of manslaughter or chance medley. It was declared a capital offence, without fine or commutation, by the laws of Canute, c. 93, and of Henry I. c. 13.

Aberfraw [*aber-fraw*, Welsh, efflux of the Fraw]. The princely seat of Venedotia (North Wales) was situated where the brook Fraw flows into the sea. Here was erected the Supreme Court of Law for the administration of justice in that part of the principality.—*Ancient Laws and Institutes of Wales.*

Abessed [fr. *abaisser*, Fr], humbled, depressed, abased.

Abet [from *a* (*ad* vel *usque*), and *bedan*, or *beteren*, to stir up or excite, Sax.], to maintain or patronize: to encourage or set on. The act is called abetment. An abettor or abettator is an instigator or setter on, one who promotes or procures a crime to be committed.—*Old Nat. Br.* 21. See ACCESSARY.

Abeyance, or **Abbayance** [fr. *abayer*, Fr., to expect, to look at anything with open mouth], in expectation, remembrance, and contemplation of law. The word *abeyance* has been compared to what the civilians call *hereditas jacens*; for, as the civilians say land and goods *jacent*, so the common lawyers say that things in a similar condition are in abeyance, as the logicians term it *in posse* or in understanding. Thus in the case of a parson, who has an estate for life only, the fee simple of his glebe is in abeyance; and when the parsonage is void, the freehold, until a successor be appointed, is in abeyance.—2 *Bl. Com.* 107. Commonly used as meaning having no present owner—e.g., a peerage is said to be 'in abeyance' when there is no holder thereof.

Abide the Event. See EVENT.

Abigeat, the crime of stealing cattle by droves or herds. It was severely punished by the Roman law, the delinquent being often condemned to the mines, banishment, or death. See 4 *Bl. Com.* 239. Also a miscarriage produced by art.—*Ash's Dict.* See ABACTOR.

Abigeus [fr. *abigo*, Lat.], a stealer of cattle, the same as abactor.—*Civil Law.* See ABACTOR.

Ability. See s. 6 of the Statute of Frauds Amendment Act, 1828, tit. REPRESENTATION.

Ab initio [Lat.] (from the beginning). A person who abuses an authority given him by law becomes a trespasser *ab initio*, i.e., is liable as a trespasser from the beginning. See the *Six Carpenters' Case*, (1611) 8 *Rep.* 146; 1 *Smith's L. C.* A party making an irregular distress for rent is not deemed a trespasser *ab initio*, by virtue of the Distress for Rent Act, 1737 (11 Geo. 2, c. 19), s. 19. A second distress may be good if the first is void *ab initio* (*Grunnell* v. *Welch*, 1906, 2 K. B. 555).

Ab intestato, title, under the law of succession, to property of a deceased person who has not disposed of it by his will. See INTESTATE.

Ab irato [Lat.] (by a man in anger).—*Civil Law.*

Abishering, or **Abishersing,** quit of amercements. It originally signified a forfeiture or amercement, and is more properly *mishering*, *mishersing*, or *miskering*, according to Spelman. It seems by some authors to signify a freedom or liberty: see *Blount's Law Dict.*

Abjuration [fr. *abjuro*, Lat.], a forswearing or renouncing by oath. To abjure is to retract, recant or abnegate a position on oath. 'Abjuration of the realm,' in the old law, signified an oath taken by a person accused of crime who had claimed sanctuary (see that title) to forsake the realm for ever. It was abolished by 12 Jac. 1, c. 28.

The oath of abjuration (introduced by 13 Wm. 3, c. 16, and altered by 6 Geo. 3, c. 53) had to be taken by every person entering upon any public office or trust. By this he renounced the Pretender (the son of James II.) and recognized the right of Her Majesty, under the Act of Settlement (*q.v.*), engaging to support her, and promising to disclose all treasons and traitorous conspiracies against her.—*Staunforde Pl. C.* b. 2, c. 40. By 21 & 22 Vict. c. 48, one form of oath was substituted for the oaths of allegiance, supremacy, and abjuration. For this form another was substituted by Act 30 & 31 Vict. c. 75, s. 5. This has in its turn been superseded by the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), by which a new form of the oath of allegiance is provided numerous obsolete Acts as to oaths being repealed by the Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48).

Abjuratio et Juramentum Latronum, the oath which had to be taken by a thief who had claimed sanctuary and wished to escape punishment by abjuring the realm. See ABJURATION.

Abladium, cut corn.—*Cowel.*

Ablato-Bulgio, Bulness, or Bolness, in Cumberland.—*Cowel.*

Able-bodied Man, defined in Corn Production Act, 1917 (7 & 8 Geo. 5, c. 46) (repealed), as 'any male workman who is not incapable, by reason of age or mental or other infirmity or physical injury, of performing the work of a normally efficient workman.' In the Relief Regulation Order, 1930 (S. R. & O. 1930, No. 186), s. 6, 'Male person capable of work.'

Able-bodied Seaman. See A.B.

Ablegate [fr. *ablego*, Lat.], to send abroad a person on some public business or embassy.

Ablegati, Papal ambassadors of the second rank, who are sent to a country where there is not a nuncio, with a less extensive commission than that of a nuncio

Ablution. Ceremonial washing. In ecclesiastical law the ceremonial washing of the chalice and paten after the Communion and the drinking of the water used.

Ablocation, a letting out to hire for money.

Abnepos, the son of a great grandchild.

Abo, a carcase of an animal killed by a wolf or other beast of prey.

Abode, habitation or place of residence; stay or continuance. In law it is used in different senses, to denote the place of a man's residence, or business, temporary or permanent. For some purposes in law a man may be deemed to have an 'abode' where he has a place of business, even although he reside elsewhere, or where he has a temporary residence, although his permanent residence is elsewhere or even abroad. But 'abode' or residence is quite distinct from domicil, which means much more than even a place of permanent residence (see DOMICIL); whereas it would seem that 'abode' does not even necessarily imply that. 'Abode' seems larger and looser in its import than the word 'residence,' which in strictness means the place where a man lives, i.e., where he sleeps or is at home. 'A man's residence, where he lives with his family and sleeps at night, is always his place of abode in the full sense of that expression' (*R.* v. *Hammond*, (1852) 17 Q. B. 781, per Lord Campbell, C.J.). Consult *Stroud, Jud. Dict.*

Abolition [fr. *abolir*, Fr.; fr. *aboleo*, Lat.], a destroying; also the leave given by the sovereign or judges to a criminal accuser to desist from further prosecution.—25 Hen. 8, c. 21.

Abominable Crime. See BUGGERY.

Abone [*Abonis*, Lat.], Avington or Aventon, in Gloucestershire.

Aborigines [fr. *ab*, from, and *origo*, Lat.], the original or first inhabitants of any country. For observations in the Privy Council on the rights and status of aboriginal tribes, see *In re Southern Rhodesia*, 1919, A. C. 211.

Abortion, a miscarriage, or the premature expulsion of the contents of the womb before the term of gestation is completed.

By the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 58, the unlawful administration of drugs or unlawful use of instruments, by a pregnant woman to herself, or (whether she be with child or not) by any person to her, with intent to procure miscarriage, is made felony, punishable by penal servitude or imprisonment, in the discretion of the Court. A person charged under this section may be convicted under the Infant Life (Preservation) Act, 1929 (19 & 20 Geo 5, c. 34). By s. 59 of the Act of 1861, the unlawful procuring of drug or instrument with the intent that it may be used to procure miscarriage is a misdemeanour whether the woman be with child or not. Earlier Acts (see, e.g., 43 Geo. 3, c. 59) made the offence a capital felony, but applied only in case of the woman being quick with child. A woman can be convicted of conspiracy to procure her own miscarriage (*R.* v. *Whitchurch*, (1890) 24 Q. B. D. 420), or with aiding and abetting the commission of the offence by another (*R.* v. *Sockett*, 1908, 72 J.P. 428).

As to the 'common practice of inducing premature labour in certain cases of disease,' see *Tayl. Med. Jur.*

Above-cited, or **mentioned,** quoted before. A figurative expression taken from the ancient manner of writing books or scrolls, where whatever is mentioned or cited before in the same roll must be *above.*

Abrevicum, Berwick-upon-Tweed.

Abridge [fr. *abreger*, Fr., *abbreviare*, Lat.], to make shorter in words retaining the substance. Also the making a declaration or count shorter by subtracting or severing some of the substance therefrom, i.e., a man was said to abridge his plaint in assize, and a woman her demand in action of dower, where any land was put into the plaint or demand which was not in the tenure of the defendant; for if the defendant pleaded non-tenure, joint-tenancy, or the like, in abatement of the writ as to part of the lands, and plaintiff might leave out those lands, and pray that the tenant might answer to

the rest.—*Brooke*, tit. '*Abridgment*.' Now obsolete in consequence of the abolition of real and mixed actions, by the Real Property Limitations Act, 1833 (3 & 4 Will. 4, c. 27), s. 36, and the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 26.

Abridgment [fr. *abreviamentum*, Lat.], a large work contracted into a narrow compass; a summary, epitome, or compendium. As to how far this may be done without breach of copyright, see *Butterworth* v. *Robinson*, (1801) 5 Ves. 709; but it has been doubted whether any abridgment is lawful under the Copyright Act, 1911.

Abridgment, or **Digests of the Law,** of ancient authority. The principal of these are *Statham's*, *Brooke's*, *Fitzherbert's*, and *Rolle's Abridgments*, and *Comyn's Digest*. Besides these there are *Viner's* and *Bacon's Abridgments*, and *Harrison's*, *Chitty's*, *Fisher's*, and *Mews' Digests*, of later date; and the *English and Empire Digest*; also the *Encyclopædia of the Laws of England*; and *The Laws of England*, Halsbury, and Hailsham editions.

Abrogation [*abrogatio*, Lat.], the act of annulling; the repeal of a law. It stands opposed to rogation: it is distinguished from *derogation*, which implies the taking away only some part of a law; from *subrogation*, which denotes the adding a clause to it; from *obrogation*, which implies the limiting or restraining it; from *dispensation*, which only sets it aside in a particular instance; and from *antiquation*, which is the refusing to pass a law.—*Encyc. Londin.*

Abrum, the River Humber.—*Cowel.*

Abscond, to fly the country in order to escape arrest (see FLY FOR IT) for crime. By s. 6 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), in any action in the High Court in which before the Act the debtor might have been arrested on 'mesne process,' the plaintiff may procure the defendant to be arrested and imprisoned up to six months (unless he has sooner given security not to quit England without leave of the Court) on proof that he has good cause of action to the amount of 50*l.* or upwards; that there is probable cause to believe that the defendant is about to quit England unless he be apprehended; and that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action. See R. S. C., Ord. LXIX.

Absence of Accused. The accused must be present at the trial in cases of treason and felony, and cannot be sentenced in his absence (*R.* v. *Hales*, 1924, 1 K. B. 602). In cases of indictable misdemeanours, though the accused's presence at the actual trial is not absolutely essential, he must be present at the preliminary inquiry. With regard to summary jurisdiction, the justices may proceed *ex parte* after proof of service of the summons.

Absence Beyond the Seas. See LIMITATION OF ACTIONS, and TRUSTEE.

Absence of Husband or Wife for Seven Years is, under certain circumstances, a defence on an indictment for bigamy. See BIGAMY.

Absence of Party to Civil Action. See APPEARANCE.

Absentee, a person who is away from his usual place of residence; a non-resident landlord.

Absentees, or **des absentees.** A parliament so called was held at Dublin, 10th May, 8 Hen. 8. It is mentioned in letters-patent 29 Hen. 8.

Absionare, to shun or avoid, used by the English-Saxons in the oath of fealty.—*Somnerus.*

Absoluta sententia expositare non indiget [Lat.], legal maxim meaning Plain words need no explanation.

Absolute, complete, unconditional. A rule or order absolute is a completed judgment of a Court, and is so called in contradistinction to a rule or order *nisi* which is made on the application of one party only without notice to the other (*ex parte*), to be made absolute unless the other party succeed in showing cause why it should not be made absolute (*discharged*); but see also DECREE NISI.

Absolute Warrandice, a warranting or assuring of property against all mankind.—*Scots Conveyancing Phrase.* It is, in effect, a covenant of title.

Absolution, a dispensation; a remission of sins; an acquittal by sentence of law.

Absolve, to acquit of a crime, to pardon or set free from excommunication. See ASSOILE.

Absolvitor (*Scots Law*), an acquittal: a decree in favour of the defender in any action.

Absque hoc [Lat.] (without this), technical words of exception which were made use of in a *special* traverse; as, the defendant pleads that such a thing was done at B., etc., without this (*absque hoc*), that it was done at, etc.—1 *Saund.* 22: abolished, C. L. P. Act, 1852, s. 65.

Absque impetitione vasti [Lat.] (without impeachment of waste), a reservation fre-

quently made to a tenant for life, that no man shall proceed against him for waste committed. This reservation does not extend to allow excessive or outrageous acts of waste, such as felling timber planted for ornament, which is called 'equitable waste' and is ground for an injunction. See WASTE.

Absque tali causa [Lat.] (without such cause): formal words in the now obsolete replication *de injuriâ*.

Abstention, keeping an heir from possession; also, tacit renunciation of a succession by an heir.—*French Law.*

Abstract, in the, a thing looked at purely by itself and without comparison with any other thing or with any reference to surrounding circumstances.

Abstract [fr. *abstrahere, abstractus*; fr. *trahere*, Lat., to draw], an abridgment or epitome, as the abstract of pleas required in some cases before the Judicature Act; also a purloining.

Abstract of Title, an epitome of the evidence of title to property or power to deal with it.

Every purchaser of land or real estate has an implied right to have an abstract of title delivered to him within a reasonable time (*Compton* v. *Bagley*, 1892, 1 Ch. 313). As to registered land, see the Land Registration Act, 1925, s. 110, and *Brickdale* and *Stewart-Wallace* on the Land Registration Act, 1925.

An abstract is said to be perfect if it deduces the title from the date fixed by the contract or by statute for its commencement and discloses every incumbrance affecting it, by setting out the material parts of all deeds, wills and other documents, and stating the facts on which it depends: cf. 1 Pres. 42, 207. The statutory period is thirty years, Law of Property Act, 1925, s. 44, unless an earlier title may be required by law. On a sale of leaseholds, for instance, the lease, whatever its date, must be abstracted (*Frend* v. *Buckley*, (1875) L. R. 5 Q. B. Ex. 213) though the intermediate title before the statutory or agreed commencement need not be abstracted, *Williams* v. *Spargo*, 1893, W. N. 100. For other instances, see L. P. Act, 1925, s. 45, and *Wolstenholme and Cherry, Conv. Acts*, 2nd ed., p. 302.

Upon a sale or mortgage, the solicitor of the vendor prepares the abstract at his client's expense (except on sales to a company under the Lands Clauses Act, 1845, s. 22, when it must be borne by the company, unless it be stipulated otherwise), and delivers it to the solicitor of the proposed purchaser or mortgagee, who compares it with the original title-deeds, and makes requisitions (when necessary), in order to ascertain any important but undisclosed facts, to remedy any defects, or to dissipate any doubts or ambiguities.

The object of every abstract is to enable the purchaser or mortgagee to judge of the evidence deducing, and of the incumbrances affecting, the title. It should describe whatever will tend to enable him or his advisers to form an opinion of the precise state of the title at Law and in Equity, together with all chances of eviction or even of adverse claims.

At law a vendor cannot convey a greater legal estate than he possesses, or over which he has a common law or statutory power of disposal, and in equity every purchaser taking property with notice (*qu. vide*) of any estate, trust, incumbrance, or interest affecting it took the property subject thereto, but legislation and the practice of conveyancers have gradually lessened the inconvenience of this doctrine: see LEGAL ESTATE; PERSONAL REPRESENTATIVES; SETTLEMENT; MORTGAGE; TRUSTEES FOR SALE; UNDIVIDED SHARES; EQUITABLE INTERESTS, BANKRUPTCY and VESTING ORDERS. Abstracts on behalf of vendors who are absolute owners entitled in fee simple in possession are not exceptionally affected by legislation under these heads except so far as conveyances after 1925 to the vendor or his predecessors under special powers form part of the chain of title.

As to fraudulent concealment, see s. 183 of the L. P. Act, 1925.

A simple abstract relating to one estate only should set forth chronologically a clear statement of the material parts of the deeds, wills, writings, records, and private Acts of Parliament, which at all affect or concern the title to be deduced, together with such matters *in pais*, as births, majorities, marriages, deaths, survivorships, pedigrees, descents, and successions, as connect the several transactions, or in any wise vary the title; and these facts should be authenticated by such legal evidence as would be deemed satisfactory and conclusive in an action to try the title. Judgments, Crown debts, charges, and incumbrances should be fairly stated. Also a tracing of any plan which is referred to in the operative part of the deed (compare *Horne* v. *Struben*, 1902, A. C. 454). For illustrations of abstracts

of titles which have been simplified by the L. P. Act, 1925, and its transitional provisions, see the 6th Schedule to the Act.

But a complex or compound abstract is not susceptible of a chronological arrangement; as when the title relates to different parcels of land or different interests, or (before 1926) the property formerly belonging to joint tenants, tenants in common, or coparceners; it is then better to arrange the documents relating to one portion under a distinct heading, so as to keep the title to each part in a connected series, and, sometimes, separate abstracts for the different titles simplify the business and avoid an embarrassing confusion, especially if the several properties be distinct, or the title is compounded of both freehold and formerly copyhold estates. Should the distinct titles to the several parts of the property afterwards become united, then there should be a deduction of the title to each part separately up to the point of junction.

Under the L. P. Act, 1925, abstracts of title deduced after 1925 have become simplified in some cases, but the old rules relating to titles and the state of the title up to 1st January, 1926, have not been affected, and it is necessary to abstract all documents or matters relating to the title to that date according to the law existing on the 31st December, 1925. See LAND CHARGES and NOTICE.

As soon as practicable after the abstract of title is delivered to the purchaser's solicitor, he compares it with the original documents. As to production of deeds and by whom the expenses are to be borne, see L. P. Act, 1925, s. 45. The points to which his attention should be particularly directed in comparing the muniments with the abstract, are the stamps upon the deeds (see *Whiting* to *Loomes*, (1881) 17 Ch. D. 10, and s. 117, Stamp Act, 1891, and subsequent Finance Acts); the dates of the different assurances; the names and additions of the parties; that no important recitals are omitted; and that those that are abstracted are faithfully given. The receipt clause should be attended to, the amount of the consideration, the names of the grantors and grantees, and the identity of the parcels, and that there are no exceptions therein. The words of the different limitations of uses and trusts, if material to the title, must be carefully checked, and the covenants, particularly in leases, must be looked into, and, if equitable interests are material to the title it should be seen that all proper indorsements have been made as required by the L. P. Act, 1925, s. 137. The interest which tenants in possession have in the lands must also be inquired after, for the purchaser will be bound thereby; and it must be seen that the abstracted deeds and wills are all duly executed, and have where necessary been enrolled or otherwise perfected.

Whenever the deeds are in the possession of third parties, inquiry should be made as to their interests therein: see L. P. Act, 1925, s. 13. Such an inquiry should also be made of tenants or persons in possession, when the leases under which they hold cannot be inspected: L. P. Act, 1925, s. 14. If the property be vested in trustees, inquiries should be made of them as to any incumbrances, and they should have notice of the intended purchase, in order to exclude a subsequent purchaser or incumbrancer, since priority of notice gives priority of equity in dealings with equitable things in action, and dealings (after 1925) in equitable interest in land or its proceeds and investments thereof: see DEARLE *v.* HALL, (1823) 3 Russ. 1, and L. P. Act, 1925, s. 137. See also REGISTRATION OF TITLE TO LAND; *Dart, V. & P.*; and *Williams, V. & P.*

Abuse of Process. Actions manifestly frivolous or brought against good faith will be stayed as an abuse of the process of the Court. See, e.g., *Edmunds* v. *Attorney-General*, (1878) 47 L. J. Ch. 345. As to an action or defence which appears on the Pleadings to be frivolous or vexatious, see R. S. C., Ord. XXV., r. 4, and also VEXATIOUS ACTION and BILL OF PEACE.

Abusing Children, having carnal intercourse with young girls. If the girl be under the age of 13 (formerly 10 and afterwards 12) years, the offence is a felony punishable with penal servitude for life; if the girl be above the age of 13 (formerly 10 and afterwards 12) and under 16 (formerly 12 and afterwards 13), the offence is a misdemeanour punishable by imprisonment, with or without hard labour, to the extent of two years.—Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), repealing the Offences against the Person Act, 1875, repealing 24 & 25 Vict. c. 100, ss. 50, 51, which fixed lesser ages as above. The Criminal Law Amendment Act, 1922 (12 & 13 Geo. 5, c. 56), amends the Act of 1885, so that in the case of the second of the above-mentioned offences, it shall be a sufficient defence if it shall be made to appear to the Court or jury that the person charged had reasonable cause to

believe that the girl was of, or above the age of 16, but only if he has not reached his twenty-fourth birthday and is being charged under the section for the first time (*R.* v. *Chapman*, 23 Cr. App. R. 63); 'reasonable cause to believe' means that the accused had reasonable cause to and did, in fact, believe (*R.* v. *Banks*, 1916, 2 K. B. 621). An attempt to have carnal intercourse with a girl under 13 years is an offence punishable by a like imprisonment, by the Act of 1885. Consent of the girl is no defence, and the Act of 1885, by raising from 13 to 16 the age at which unresisted sexual intercourse is a crime, has made a very material amendment in the law. A prosecution under s. 5 of this Act in respect of a girl between 13 and 16 must be commenced within 9 months of the offence by virtue of s. 2 of the Criminal Law Amendment Act, 1922. A girl aiding and abetting in her own defilement cannot be convicted of any offence (*R.* v. *Tyrrel*, 1894, 1 Q. B. 710). The Act of 1885 has further provisions dealing with the causing and encouraging of prostitution of girls and allowing them to frequent brothels. See also CHILDREN.

Abut [fr. *aboutir*, Fr., to touch at the end], to border upon or approach.

Abuttals. See ABBUTTALS.

Accapitare, Acapitare, Accaptare, or **Acaptare,** the act of becoming vassal to a lord, or yielding homage to him.—*Encyc. Londin. Capitali domino acapitare*, i.e., to pay relief, homage, or obedience to the chief lord on becoming his vassal.—*Fleta, lib.* 2, c. 50, s. 6.

Accapitum, money paid by a vassal upon his admission to a feud; the relief due to the chief lord.—*Encyc. Londin.*

Accedas ad curiam [Lat.] (that you go to the Court), an original writ to the sheriff, issued out of Chancery, where a man had received false judgment in a Hundred Court or Court Baron, or justice had been delayed. —*Termes de la Ley.*

Acceleration, the shortening of the time for the vesting in possession of an expectant interest.

Acceptance, the taking and receiving of anything in good part, and as it were a tacit agreement to a preceding act, which might have been defeated or avoided if such acceptance had not been made.—*Jac. Law Dict.*

The assenting to an offer: it is by the acceptance, whether express or implied, of an offer that all contracts are made. See CONTRACT; AGREEMENT.

Acceptance of a bill of exchange is defined by the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 17, as 'the signification by the drawee of his assent to the order of the drawer.' It must be written on the bill, and signed by the drawee, whose mere signature is sufficient to charge him: and it must not express that the drawee will perform his promise by any other means than the payment of money.—*Ib.* See BILL OF EXCHANGE.

Acceptance of Goods. By s. 4 of the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), a contract for sale of goods of the value of 10*l.* or more is not enforceable by action unless the buyer 'accept' part of the goods and actually receive them, *or* partly pay, *or* unless there be a note or memorandum in writing of the contract signed by the party to be charged, and there is an acceptance 'when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale whether there be an acceptance in performance of the contract or not.'

Acceptance of service of Writ of Summons by solicitor in lieu of personal service on defendant. See R. S. C., Ord. IX., r. 1. Where with the authority of the defendant his solicitor accepts service of a writ and gives a written undertaking to 'enter an appearance in due course,' that undertaking is unconditional and must be performed forthwith, and at the instance of the plaintiff it can be enforced by attachment of the solicitor under R. S. C., Ord. XII., r. 18 (*In re Kerly*, 1901, 1 Ch. 467). It is necessary for the solicitor to have his client's authority (*Re Gray*, (1891) 65 L. T. 743); and unless an undertaking to appear is given, personal service cannot be dispensed with (*The Anna*, (1891) 64 L. T. 332); personal service also is requisite in divorce proceedings (*De Niceville* v. *De Niceville*, (1877) 37 L. J. Mat. 43).

Acceptilatio, the verbal extinction of a verbal contract, with a declaration that the debt has been paid when it has not, or the acceptance of something merely nominal in satisfaction of a verbal contract. In order to enter into acceptilatio the formal sentence was used in Civil Law: '*quod ego tibi promisi, habesne acceptum?* habeo.'—*Sand Just.* See STIPULATION.

Acceptor, or **Accepter,** a person who accepts a bill of exchange. See ACCEPTANCE.

Access, approach, or the means of approaching. The presumption of a child's legitimacy is rebutted, if it be shown by strong, distinct, satisfactory, and conclusive evidence (see *Atchley* v. *Sprigg*, (1864) 33

L. J. Ch. 345) that the husband—whether before or after marriage—had not access to his wife within such a period of time before the birth, as admits of his having been the father. ' If a husband have access, although others, at the same time, are carrying on a criminal intimacy with his wife, a child born under such circumstances is still legitimate ' : *per* Alderson, J., in *Cope* v. *Cope*, (1833) 5 C. & P. 604. Neither husband nor wife is admissible as a witness to prove non-access ; *Goodright* v. *Moss*, (1777) 2 Cowp. at p. 594. See also *Poulett Peerage Case*, 1903, A. C. 395, and *Russell* v. *Russell*, 1924, A. C. 687. See PATERNITY.

An owner of land adjoining a highway has a right of access to it where the land adjoins for any kind of traffic required for the reasonable enjoyment of his property (*Lyon* v. *Fishmongers Co.*, (1876) 1 A. C. 662 at p. 684 ; and the same case decides that an owner of land has a right of access to and from water whether tidal or non-tidal which is opposite and contiguous to his frontage. And see *Marshall* v. *Blackpool Corporation*, (1924) 103 L. J. K. B. 566. For access to light and air, see EASEMENTS. As to provision of access to roofs in the metropolis, see London Building Act, 1930 (21 Geo. 5, c. clviii.), s. 100 (1), (2).

Access to the Sovereign, see PEER, HOUSE OF COMMONS or MEMBERS OF PARLIAMENT.

Accessary, or **Accessory** [*particeps criminis quasi accedens ad culpam*, Lat. as though assenting to the offence], he who is not a chief actor at a felony, nor present at its perpetration, but yet is in some way concerned therein, either before or after the fact committed. An accessory before the fact is one who being absent at the time of the commission of the felony, yet procures, counsels, or commands another to commit a crime. Absence is necessary to make him an accessory, for if he be present, he becomes a principal. An accessory after the fact is one who, knowing a felony to have been committed, receives, relieves, comforts, or assists the felon ; but a wife may lawfully receive, comfort and assist her husband, though knowing him to be a felon. In treason and misdemeanours there are no accessories, either before or after the offence, every person implicated being a principal (see Accessories and Abettors Act, 1861, s. 8, and *Du Cros* v. *Lambourne*, 1907, 1 K. B. 40). In manslaughter there cannot be an accessory before the fact, for it is by judgment of law an unpremeditated offence.

As to the trial and punishment of accessories :—By the Accessories and Abettors Act, 1861, an accessory before the fact to any felony may be indicted, tried, convicted, and punished in all respects as if he were a principal felon, and an accessory after the fact is in general punishable with imprisonment for any term not exceeding two years (with or without hard labour), and may also be required to find security to keep the peace, or in default to suffer an additional imprisonment to the extent of one year ; but an accessory after the fact to murder is punishable by penal servitude for life, or not less than three years, or by imprisonment (with or without hard labour) to the extent of two years. Offences Against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 67. See *Russell on Crimes ; Roscoe's Criminal Evidence ; Archbold's Crim. Pleading ; Steph. Dig. Crim. Law.*

Accessory to Adultery, a phrase used in the law of divorce, and derived from the criminal law. It implies more than connivance, which is merely knowledge with consent. A conniver abstains from interference, an accessory directly commands, advises, or procures the adultery. A husband or wife who has been accessory to the adultery of the other party to the marriage cannot obtain a divorce on the ground of such adultery.—Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), ss. 29, 31. See *Browne on Divorce.*

Accession [fr. *accedo*, Lat.], addition, arriving at, the commencement of a sovereign's reign ; also the absolute or conditional acceptance by a nation of a treaty already concluded between other countries. The accession of a sovereign takes place immediately upon the death of the preceding monarch. See BILL OF RIGHTS.

Accession, property by. The doctrine of property arising from accession is grounded on the right of occupancy, and derived from the Roman Law ; thus if any given corporeal substance receive an accession, either by natural or artificial means, as by the growth of vegetables, the pregnancy of animals, the embroidering of cloth, or the conversion of wood or metal into utensils, the original owner of the thing was entitled by his right of possession to the property of it under its improved state ; but if the thing itself by such operation was changed into a different species, as by making wine, oil, or bread out of another's grapes, olives, or wheat (*specificatio*, Lat.), it belonged to the operator, who only made a satisfaction to

the former proprietor for the materials so converted. The brood of tame and domestic animals belongs to the owner of the dam or mother, the English law agreeing with the civil, that *partus sequitur ventrem* (the offspring follows the mother); and in accordance with the Roman Law principle, *si equam meam equus tuus prægnantem fecerit non est tuum sed meum quod natum est* (if your horse gets my mare with foal, the foal is not your property, but mine). *Bracton, l.* 2, c. 2, s. 3; *Puff, De Jur. Nat. et G. l.* 4, c. 7. The rule of the Roman Law was expressed thus: *Accessio cedit principali.* Commentators have used the word *accessio* not only for the increase itself, but also for the mode in which the increase becomes one's property.—*Sand. Justin.; Dig.* 34, *l.* 2, c. 19, s. 13. See ADJUNCTIO.

Accession Declaration Act, 1910.—See BILL OF RIGHTS.

Accessory.—See ACCESSARY.

Accident, an extraordinary incident; something not expected. It is also a head of equitable jurisdiction, which was concurrent with that of the Courts of Law.

The meaning to be attached to the word 'accident,' in relation to equitable relief, is some unforeseen and undesigned event, productive of disadvantage and not due to negligence or misconduct on the part of the person seeking relief. The cases in which equity may give relief under certain conditions are (1) lost or destroyed documents. (2) Imperfect execution of powers. (3) Erroneous payments, e.g., by personal representatives.

In logic, something, in any subject, person, or thing not belonging to the *essence.* See ESSENCE.

Accident occasioned by Negligence. As to the recovery of damages for injuries in such cases, see NEGLIGENCE. As to the rights of wife, husband, parent or child of person killed in such an accident, see CAMPBELL'S (LORD) ACT. Any adopted or illegitimate person is included in the expression 'parent or child' for the purposes of the Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41).

In Criminal Law a result is said to be accidental when caused unintentionally and in such circumstances that a person of ordinary prudence would not have taken precautions to prevent its occurrence.

In policies of insurance against accident the meaning of 'accident' depends on the context, but includes results brought about by the negligence of the assured and other persons. See *Macgillivray on Insurance Law; Re Scarr,* 1905, 1 K. B. 387.

Accident to Workman, compensation for. The Workmen's Compensation Act, 1925, provides s. 1, sub.-s. (1), that if in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall be liable to pay compensation. Sub-s. (2), that an accident resulting in death or serious and permanent disablement of a workman shall be deemed to arise out of and in the course of his employment, even if at the time of the accident he was acting in contravention of statutory regulations or of the orders of his employer, if such act was done by him for the purposes of and in connection with his employer's trade or business. (See *Guest* v. *Gaston & Co*, 1927, 1 K. B. 1.)

The word 'accident' in this section must be given its ordinary and popular sense; it has been defined as 'an unlooked for mishap or an untoward event, which is not expected or designed' (*Fenton* v. *Thorley & Co.*, 1903, A. C. 443). Thus compensation has been recovered in respect of death caused by anthrax bacillus (*Brintons Ltd.* v. *Turvey,* 1905, A. C. 230), and by reason of falling into the hold of a ship during an epileptic fit (*Wicks* v. *Dowell & Co. Ltd.*, 1905, 2 K. B. 225); but not where death was caused by gradual lead poisoning (*Steel* v. *Cammell Laird Ltd.*, 1905, 2 K. B. 232). Similarly for this Act 'heatstroke' is an accident (*Ismay* v. *Williamson,* 1908, A. C. 437), since if a workman in the reasonable performance of his duties sustains a physiological injury as the result of the work he is engaged in, this is an accidental injury in the sense of the statute, a principle extended to exertion causing the rupture of an aneurism (*Clover* v. *Hughes,* 1910, A. C. 242; distinguished, *Noden* v. *Galloways,* 1912, 1 K. B. 46. See also *Falmouth Docks and Engineering Co. Ltd.* v. *Treloar,* 1933, A. C. 431. A deliberate assault on the workman may be an 'accident' (*Trim School Board* v. *Kelly,* 1914, A. C. 667). However, where the accident arose from some peril to which the workman had voluntarily exposed himself by his own conduct and which he was not obliged to encounter by any term of his contract of service, the accident was held not to arise out of his employment. See *Stephen* v. *Cooper,* 1929, A. C. 570. See WORKMEN'S COMPENSATION, and tits. NOTICE OF ACCIDENT; INDUSTRIAL DISEASE.

Accident, Notice of. See tit. NOTICE OF ACCIDENT.

Accidental Fire. By the Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78), s. 86, no action shall be prosecuted against any person in whose house, chamber, stable, barn, or other building, or on whose estate any fire shall accidentally begin; but nothing herein contained shall defeat any contract or agreement made between landlord and tenant. The statute will not protect tenants from the consequences of fires caused by their negligence.

Accola, a husbandman who comes from some other country to till the land, and is thus distinguished from *incola*:—

'*Accola non propriam, propriam colit incola terram*' (Accola is one who does not till his own land, incola one who does).—*Du Cange.*

Accolade [fr. *accoler*, Fr., *collum amplecti*, Lat.], a ceremony anciently used in knighthood, by the king putting his hand upon the knight's neck.—*Cowel.* Greg. de Tours writes, that the kings of France, in conferring the gilt shoulder-belt, kissed the knight on the left cheek. The *accollé*, or blow, John of Salisbury assures, was in use among the Normans; by this William the Conqueror conferred the honour of knighthood upon his son Henry. It was first given with the naked fist, but afterwards with the flat of a sword.

Accomenda, a contract whereby a person entrusts property to the master of a vessel, to be sold for their joint profit.—*Italian.*

Accommodation Bill, one which the accommodating party has signed as drawer, acceptor, or endorser, without receiving value therefor and for the purpose of lending his name to some other person; he is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not. The accommodating party has a right to be indemnified by the party to whom he lent his name. See Bills of Exchange Act, 1882, s. 28.

Accommodation Works, works which a railway company is required to make and maintain for the accommodation of the owners or occupiers of land adjoining the railway, e.g., gates, bridges, culverts, fences, etc.—Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 68.

Accomplice [fr. *complice*, Fr., *complex*, Lat., bound up with one in a project, but always in a bad sense], one concerned with another or others in the commission of a crime.—*Hawk. P. C.* 87. An accomplice could always be called to give evidence, and by virtue of Lord Denman's Act, 1843 (6 & 7 Vict. c. 85), s. 1, even though convicted, and now by virtue of the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1, he can with his consent be called for the defence, but should he give evidence tending to incriminate his co-prisoner, such co-prisoner may cross-examine him (*R.* v. *Hadwen*, 1902, 1 K. B. 882; see also *R.* v. *Rowland*, 1910, 1 K. B. 458; *R.* v. *Paul*, 1920, 2 K. B. 183). See APPROVER.

Accord. Accord and Satisfaction [fr. *accorder*, Fr., to agree], an agreement between two persons, one of whom has a right of action against the other, that the latter should do or give and the former accept something in satisfaction of the right of action. When the agreement is executed, and satisfaction has been made, it is called accord and satisfaction. Accord and satisfaction bars the right of action; accord without satisfaction, or satisfaction without accord, does not.* In the case of an ascertained debt, the acceptance of a smaller sum is no satisfaction, e.g., payment of 50*l.* is no answer to an action for a debt of 100*l.*; though if anything other than money, e.g., a negotiable instrument for a smaller amount or a peppercorn, had been accepted in satisfaction, the action would have been barred; see *Couldery* v. *Bartrum*, (1881) 19 Ch. D. p. 399; *Cumber* v. *Wane*, (1718) 1 *Smith's L. C.*: *Foakes* v. *Beer*, (1884) 9 App. Cas. 605. So also if a smaller sum is sent by a third party 'in full settlement' and retained; *Punamchand* v. *Temple*, 1911, 2 K. B. 330; 80 L. J. K. B. 1155. A substituted agreement may be accepted in accord and satisfaction of a cause of action; *Hall* v. *Flockton*, (1849) 14 Q. B. 380; *Ib.*, 16 Q. B. 1039; but whether the new agreement in itself or the performance of it constitutes the accord and satisfaction depends on its construction. *Elton Cop Dyeing Co.* v. *Broadbent*, (1920) 89 L. J. K. B. 186.

If a bill or note is given by a debtor to his creditor on account and accepted by the latter and nothing is said as to the terms on which it is given, the legal effect of the transaction is that the original debt remains, but that the remedy is suspended until the maturity of the instrument in the hands of the creditor. The position is the same if the bill or note is given, not by the debtor, but by a stranger; *Allen* v. *Royal Bank of Canada*, 95 L. J. P. C. 17. And see CONSIDERATION.

Account or **Accompt** [fr. *compte*, Fr.,

* See *British Russian Gazette, Ld.* v. *Associated Newspapers, Ld.*, 1933, 2 K. B. 616.

computo, Lat.], a registry of debts, credits, and charges, or a detailed statement of a series of receipts (credits) and disbursements (debits) of money—which have taken place between two or more persons. Accounts are either—(1) open, where the balance is not struck, or it is not accepted by all the parties; (2) stated, where it has been expressly or impliedly acknowledged to be correct by all the parties; and (3) settled, where it has been accepted and discharged. Stated and settled accounts may be investigated and reopened by the Court on the ground of fraud or fiduciary relationships. See SURCHARGE and FALSIFY.

Companies under the Companies Act, 1929, must keep proper books of account, and present to the company in general meeting not less than 18 months after incorporation and subsequently at least once in every year a profit and loss account and balance sheet, to copies of which shareholders of all companies, except private companies, are entitled. See ss. 122 and 131 of the Act (and for contents) s. 124. The regulations relating to Balance Sheets apply to companies registered outside Great Britain and established there; s. 347 *ibid.*

As to the ancient action of account at Common Law, see 3 *Steph. Com.*, 9th ed. 451, and *Bac. Ab.* '*Account.*'

Prior to the Judicature Act, 1873, Equity entertained suits for accounts when they were mutual, i.e., where there existed a series of expenditures on one side, and of payments on the other, and not merely one payment and one receipt, and also where the account was on one side only, but was of so complicated and intricate a nature that it could not be satisfactorily disposed of at Law, and a discovery was wanted which was material to the right of relief. But for a mere matter of set-off at Law, a suit in Equity would not be the remedy.

By the Judicature Act, 1925, s. 56 (formerly the Judicature Act, 1873, s. 34 (3)), all causes and matters for the taking of partnership or other accounts are assigned (subject to a power of transfer) to the Chancery Division of the High Court of Justice. If the plaintiff in the first instance desires to have an account taken, the writ of summons must be endorsed with a claim that such account be taken (R. S. C., Ord. III., r. 8), and in such cases the order made must include the directions which were usual in the Court of Chancery. (*Ib.*, Ord. XV., rr. 1, 2.)

As to the Court's power to order an account to be taken, see R. S. C., Ord. XXXIII., rr. 2–9.

By the Judicature Act, 1925, see ss. 88–97, repeating s. 14 of the Arbitration Act, 1889, in any cause or matter (other than a criminal proceeding by the Crown) if the question in dispute consists wholly or in part of matters of account the Court or a judge may order trial before a referee agreed upon, or an official referee.

The Statute of Limitations cannot be pleaded in bar to an open account, unless all accounts have ceased above six years. See the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), s. 9.

Account Current, a running or open account between two or more persons or firms.

Account Duties. Duties first made payable by the Customs & Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), s. 38, at the same rates as the Probate Duties, upon a *donatio mortis causâ* (*q.v.*); upon the gift *inter vivos* of a donor dying within *three* months; on joint property voluntarily so created and taken by survivorship; and on property taken under a voluntary settlement in which the settlor had reserved a life interest. These duties were in *name* superseded by the 'Estate Duty' imposed by the Finance Act, 1894 (57 & 58 Vict. c. 30), the property chargeable under the Customs & Inland Revenue Act, 1881, s. 38, being included in the classes of property deemed by the Finance Act, 1894, to 'pass' by death and thus chargeable with the new 'Estate Duty,' and the original provisions affecting gifts *inter vivos*, voluntary settlements, etc., have been considerably amended by subsequent legislation. See ESTATE DUTY.

Account, Settled. See tit. ACCOUNT.

Account Stated. An account stated is the admission of a balance due from one party to another, and that balance being due there is a debt; the statement of the account and the admission of the balance implies a promise in law to pay it; see *Irving* v. *Veitch*, (1837) 3 M. & W. 106. The account must have been stated before action brought. An account stated, however, creates only a *primâ facie* liability, which may be rebutted by disputing the debts charged in the account, as, for instance, by proving mistake (among other ordinary defences): *Camillo Tank Steamship Co.* v. *Alexandria Engineering Works*, (1921) 38 T. L. R. 134. For statutory power to re-open an account stated, see MONEY LENDERS ACT. By the Infants Relief Act, 1874 (37 & 38 Vict. c. 62),

s. 1, an account stated with an infant is void.

Accountable. As to the person accountable for Estate Duty, see *O'Grady* v. *Wilmot*, 1916, 2 A. C. 231 and Law of Property Act, 1925, ss. 16 to 18, and ESTATE DUTY.

Accountable Receipt, a written acknowledgment of the receipt of money or goods to be accounted for by the receiver. It differs from an ordinary receipt, or acquittance, in this, that the latter imports merely that money has been paid. See *Clark* v. *Newsam*, (1847) 1 Ex. 131. By the Forgery Act, 1913 (3 & 4 Geo. 5, c. 27), ss. 2 (2) and 18, the forgery of an accountable receipt, or any assignment thereof or endorsement thereon with intent to defraud, is a felony punishable with penal servitude for not exceeding 14 years.

Accountant or **Accomptant,** one whose business it is to compute, adjust, and range in due order accounts; also to audit accounts. The Institute of Chartered Accountants in England and Wales was incorporated by Royal Charter, May 11th, 1880. No person is entitled to describe himself as a chartered accountant unless he is a member of an Institute of Accountants incorporated in the United Kingdom by Royal Charter: see *Society of Accountants in Edinburgh* v. *Corporation of Accountants Ltd.*, (1893) 20 R. 750; *Society of Accountants and Auditors* v. *Goodway*, 1907, 1 Ch. 489.

Accountant in Bankruptcy, an officer who had the management of the proceeds of bankrupts' estates. The repealed Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), s. 12, provided that upon the first vacancy the office should be abolished, and its duties discharged by the Chief Registrar. The funds in the Bank of England standing in his name were transferred (upon certain conditions) to the National Debt Commissioners, by 32 & 33 Vict. c. 91. See BANKRUPTCY.

Accountant-General, or **Accomptant-General,** an officer of the Court of Chancery, appointed by Act of Parliament to receive all money lodged in Court, and to place the same in the Bank of England for security. (12 Geo. 1, c. 32; 1 Geo. 4, c. 35; 15 & 16 Vict. c. 87, ss. 18–22 and 39.) The office was abolished by the Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), and the duties transferred to the Paymaster-General. See Sup. Court of Judicature (Funds) Act, 1883 (46 & 47 Vict. c. 29). The office of Accountant-General was revived by the Judicature Act, 1925, Part VI., ss. 133 to 149, repealing and replacing the Act of 1883.

Accountant to the Crown. One who has received money for the Crown and for which he must account. The Crown's lien upon the lands of the accountant has been abolished by statute, but a lien remains upon the accountant's goods. See tit. CROWN DEBTS.

Accounts, Falsification of, a misdemeanour on the part of a clerk, etc., by the Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), punishable by penal servitude up to seven years or imprisonment, with or without hard labour, up to two years. See *R.* v. *Oliphant*, 1905, 2 K. B. 67. The document or account mentioned in s. 1 of that Act must belong to or be in possession of the employer (*R.* v. *Palin*, 1906, 1 K. B. 7). Falsification of accounts may amount to forgery within the Forgery Act, 1913 (3 & 4 Geo. 5, c. 27) (*Re Arton*, 1896, 1 Q. B. 509). The falsification of a mechanical means of recording an account, e.g., a taxi-meter, and thereby defrauding the employer, is within the Act (*R.* v. *Solomons*, 1909, 2 K. B. 980). As to officers of companies and bodies corporate keeping fraudulent accounts, etc., see Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 82–84, and Larceny Act, 1916 (6 & 7 Geo. 5, c. 50), s. 20; in the case of a company being wound up, Companies Act, 1929, ss. 271 and 272.

Accouple, to marry.

Accredit, to countenance or procure honour or credit to any person.—*Johns.* To accredit a diplomatic agent is to furnish him with such authority and credentials as are calculated to ensure his being received with the credit and rank due to his public character.

Accredulitare, to purge an offence by an oath.—*Blount.*

Accrescendi, Jus. See JUS ACCRESCENDI.

Accretion [fr. *accresco*, or *adcresco*, Lat.], the act of growing to a thing; usually applied to the gradual and imperceptible accumulation of land out of the sea or a river. Accretion of land is of two kinds: by alluvion, i.e., by the washing up of sand or soil, so as to form firm ground; or by dereliction, as when the sea shrinks below the usual water mark. If this accretion of land be by small and imperceptible degrees, it belongs to the owner of the land immediately adjacent to it, but if it be sudden and considerable it belongs to the Crown.—*Hale, De Jure Maris*, 14; 2 *Bl. Com.* ch. xvi; *A. G. of Southern Nigeria* v. *John Holt & Co.*, 1915, A. C. p. 613. Consult *Coulson & Forbes on the Law of Waters*. See ACCESSION.

Accroaching Royal Power, or attempting

to exercise royal power, was in the 21 Edw. 3 held to be treason. 4 *Br. & Had. Com.* 83.

Accroche [fr. *accrocher*, Fr.], to hook or grapple unto, to encroach. The French use it for delay, as *accrocher un procès*, to stay proceedings in a suit.—*Cowel.*

Accrue [fr. *accroitre, accru*, Fr. ; fr. *crescere*, Lat., to grow], to grow to, or to arise.

Accumulation, a gathering together, heaping up, or amassing. The dominion over property, and its rents, issues, and profits, is restrained by our law as regards perpetuity and accumulation. See PERPETUITY.

The prospective accumulation of income of real or personal estate is restrained by the Law of Property Act, 1925, s. 164, replacing with amendments the Accumulations Act, 1800 (39 & 40 Geo. 3, c. 98), commonly called 'The Thellusson Act,' because the case of *Thellusson* v. *Woodford* (4 Ves. 227–343, 1798 ; and 11 Ves. 112–151, 1805) was the occasion of its enactment. The Act of 1925 declares that no person shall by any instrument or otherwise settle or dispose of any property, in such manner that the income thereof shall be accumulated for any longer term than—

(1) The life of the grantor or settlor ;

(2) 21 years from the death of the grantor or settlor, or testator ;

(3) During the minority of any person who shall be living or *en ventre sa mère* at the time of the death of the grantor, settlor or testator ;

(4) During the minority of any person who, under the limitations of the instrument, directing such accumulations, would, for the time being, if of full age, be entitled to the income directed to be accumulated. See *Re Cattell*, 1914, 1 Ch. 177.

In every case where any accumulation is directed otherwise than as aforesaid, the direction shall (save as thereinafter mentioned) be void ; and the income of the property directed to be accumulated, will, so long as the same is directed to be accumulated contrary to that section (164), go to the person or persons who would have been entitled thereto if such accumulation had not been directed (s. 1).

The section (164), however, does not extend to any provision—

(1) For payment of the debts of the grantor, or other persons. See *Re Heathcote*, 1904, 1 Ch. 826 ; or

(2) for raising portions for any child or remoter issue of the grantor, settlor or testator, or any child or remoter issue of any person taking any interest under the settlement or other disposition or to whom any interest is thereby limited ; or

(3) respecting the produce of timber or wood.

The statute operates as a restraint upon those trusts for accumulation which aim at a duration beyond the statutory limits, simply by causing them to cease and become of no effect immediately upon the appropriate statutory period becoming exceeded, and until that date leaves them as valid as if the Act had not passed.

The period of any minority during which income is accumulated under compulsion of law is not to be taken into account in computing the permissible period. See s. 165, L. P. Act, 1925.

Section 166 of the L. P. Act, 1925, replacing the Accumulations Act, 1892 (55 & 56 Vict. c. 58), restricts accumulations for the purpose of purchase of land only to the period during minority. Only settlements and dispositions made after 27th June, 1892, are affected, and see *Re Llanover*, 1903, 2 Ch. 330, but the special restrictions of this section do not apply if the money is capital money under the Settled Land Act, 1925.

Accumulative Judgment, Sentence. If a person already under sentence for a crime be convicted of another offence, the Court is empowered to pass a second sentence, to commence after the expiration of the first.

Accusation, the formal charging of any person with a crime.

Accused. Person charged with crime, commonly called 'the prisoner' if the crime be felony, and 'the defendant' if it be a misdemeanour.

Accused, Statement of. Where an accused person is brought before justices of the peace, the Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86), s. 12, directs the justices, after the close of the evidence for the prosecution, to ask him whether he wishes to say anything in answer to the charge, telling him that he is not obliged to say anything unless he desires to do so, but that whatever he says will be taken down in writing, and may be given in evidence upon his trial. The justices, before the accused person makes any statement, must make him clearly understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any confession, but that whatever he says may be given in evidence upon his trial, notwithstanding such promise or threat. Whatever the accused

states in answer to the charge shall be taken down in the mannner shown in the forms prescribed by the rules made under the Act; and shall be read over to the accused and signed by the magistrates, and by the accused if he desires it.

See further ADMISSION; CONFESSION.

Accustomed Rent. Where there was a power of leasing under a settlement it was formerly usual to stipulate that the accustomed rent should be reserved. The term is now seldom used, but see STANDARD RENT.

Acemannes-ceaster, Bath.

Acephali, the levellers in the reign of Henry I., who acknowledged no head or superior.—*Leges H.* 1; *Cowel.* Also certain ancient heretics, who appeared about the beginning of the sixth century, and asserted that there was but one substance in Christ, and one nature.—*Gibbon's Dec. and Fall,* ch. xlvii.

Ac Etiam [and also]. The introduction to the statement of the real cause of action in cases where it was necessary to allege a fictitious cause in order to give the Court jurisdiction.—*Bouvier's Law Dict.* The *ac etiam* clause appears to have been invented in consequence of the enactment of 13 Car. 2, St. 2, c. 2, that the particular cause of action must be expressed in the writ where more than 40*l.* was claimed.—*Davison* v. *Frost,* (1802) 2 East, 305. See also LATITAT and BILL OF MIDDLESEX.

Achat [Fr.], a purchase or bargain.—*Cowel.*

Achators, or **Achetors,** purveyors, because they frequently bargain; also purchasers.—*Chaucer.*

Achelanda, Auchelandia, Auklandia, Auckland, in the Bishopric of Durham.

Acherset, a measure of corn, conjectured to have been the same with our quarter or eight bushels.—*Cowel.*

Achwre [*Ach-gwré,* near belt], an enclosure of wattles or thorns surrounding a building, at such a distance as to prevent cattle reaching and damaging the thatch.—*Anc. Inst. Wales.*

Acknowledgment-money, a sum formerly paid in some parts of England by copyhold tenants on the death of their lords, as a recognition of their new lords, in like manner as money is usually paid on the attornment of tenants. See COPYHOLDS.

Acknowledgment of Debt or Liability, is an admission that a debt is due or that some claim or liability is still in existence, so as to prevent the operation of the Statute of Limitations. The precise form of acknowledgment necessary in any particular case depends on the terms of the relevant statute. An acknowledgment or part payment after the statutory period will not revive a barred claim to land under s. 34 of the Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), *Kibble* v. *Fairthorne,* 1895, 1 Ch. 219, but an acknowledgment at any time before action brought will revive actions, on debt grounded on simple contract, if in writing under 9 Geo. 4, c. 14, and for money charged on land under s. 40 of the Real Property Limitation Act, 1833: see *re Clifden, Annaly* v. *Agar Ellis,* 1900, 1 Ch. 774. See LIMITATIONS, STATUTE OF.

Acknowledgment of a Wife's Assurance If, before 1st January, 1925 (see L. P. Act, 1925, s. 167), a woman married before 1883 disposed of her estate or interest in lands or her reversionary interest in personal property she was required, unless her title thereto had accrued since 1882, or unless she was entitled thereto for her separate use to comply with the formalities prescribed by the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 77–91, with regard to land, and by 20 & 21 Vict. c. 57, commonly called 'Malins's Act,' which incorporated the procedure of the Fines and Recoveries Act, with regard to reversionary interests in personal estate.

The Fines and Recoveries Act required the acknowledgment to be made before two commissioners, but the 7th section of the Conveyancing Act, 1882, substituted one only, and also dispensed with the affidavit and certificate of acknowledgment required by the former Act; see also the rules made under this section. Now, in the case of deeds executed and orders made after 1st January, 1925, these formalities are no longer necessary, as the L. P. Act, 1925, s. 167, has abolished the necessity for any acknowledgments by and the separate examination of married women. Further, if the Court is satisfied that the wife is entitled for her separate use to the property to be dealt with, the Court may dispense with any concurrence by the husband which would otherwise be required and declare that the disposition shall have the same effect as if the husband had concurred therein, without acknowledgment by the wife. Previously to 1925, by the Married Women's Property Act, 1882, no married woman need acknowledge a deed conveying property accrued to her after 1882; and no woman married since the Act need acknowledge any deed at all. There

was formerly an exception in the case of property vested in a married woman as a trustee, but this was removed by the Married Women's Property Act, 1907, replaced and extended by s. 170, sub-s. 2 of the L. P. Act, 1925, in regard to all women married after 1882, or to any woman married before 1883 who became a trustee or personal representative after 1882. As to the Court's power to bind by order or judgment for her benefit and with her consent, the interest of a married woman in property in respect of which she is restrained from anticipation or alienation or is by law unable to dispose of or bind, including reversionary interests under her settlement, see L. P. Act, 1925, s. 169, replacing and extending the Conveyancing Act, 1911, s. 7. See also MARRIED WOMAN ; LAW REFORM.

Aclea [fr. *ac*, an oak, and *leag*, place, Sax.], a field where oaks grow.

Acquest or **Acquet** [Fr.], goods acquired by purchase or donation, not by heritage.—*Encyc. Londin.*

Acquiescence, consent, either express or implied.

Acquietandis Pleglis, an obsolete writ, lying for a surety against the creditor who refuses to acquit him after the debt is satisfied.

Acquietantia de shiris et hundredis, freedom from suits and services in shires and hundreds.—*Cowel.*

Acquietare [fr. *quietum reddere*, Lat.], to acquit, absolve. Also sometimes signifies ' to pay.'—*Cowel's Law Dict.*

Acquisition, the act of procuring property.

Acquittal [fr. *acquitter*, Fr. ; *quietus*, Lat., to free, acquit, or discharge], a deliverance and setting free of a person from the suspicion or guilt of an offence ; also to be free from entries and molestations by a superior lord, for services issuing out of lands.—*Cowel.* Acquittal is of two kinds—(1) Acquittal in deed, as when a person is cleared by verdict ; and (2) Acquittal in law, as if two be indicted for a felony, the one as principal and the other as accessory, and the jury acquit the principal, by law the accessory is also acquitted.—2 *Inst.* 384.

If a person is acquitted and ordered to be discharged it is illegal any longer to detain him, and the duty of seeing that he is at once discharged is upon the governor of the prison, and he will be liable for any illegal act of the prison warders though done without his knowledge (*Mee* v. *Cruikshank*, (1902) 20 Cox, 210).

Acquittal Contracts, a discharge from an obligation, which is either by deed, prescription, or tenure.—*Co. Litt.* 100 *a.*

Acquittance is a discharge in writing of a sum of money or duty which ought to be paid or done ; as where a man is bound to pay money on a bond, rent reserved upon a lease, etc., and the party to whom it is due, on receipt thereof, gives a writing under his hand witnessing that he is paid, this will be such a discharge in Law that he cannot demand and recover the sum or duty again, if the acquittance be produced.—*Termes de la Ley.* As to forgery of an acquittance, see Forgery Act, 1913 (3 & 4 Geo. 5, c. 27), s. 2 (2) (*a*), s. 18 (1).

Acre [fr. *αγρος*, Gr. ; *ager*, Lat. ; *acker*, Germ.], a measure of land. The extent of the acre was first defined by statute in the 33 Edw. I., according to which an acre contains 160 square perches, the then perch being 5½ yards. See *Blount's Law Dict.* The imperial or standard English acre contains 4 roods, each rood 40 poles or perches, each pole 272¼ square feet, and consequently each acre = 43,560 square feet or 4,840 square yards. See Weights and Measures Act, 1878. The French acre, *arpent*, contains 1¼ English acres, or 54,450 square English feet. The Welsh acre contains commonly 2 English acres. The Irish acre is equal to 7,840 square yards ; the Scots to 6,150⅔ square yards.

Act in Pais [*Pais*, Law Fr., country], a thing done out of Court, and not a matter of record.—2 *Bl. Com.* 294.

Act of Attainder. See BILL OF ATTAINDER.

Act of Bankruptcy, an act, the commission of which by a debtor renders him liable to be adjudged a bankrupt if the petition is presented within three months thereafter.

Under s. 1 of the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), any one of the following acts of a debtor is an act of bankruptcy :—

(*a*) Having made an assignment of his property in trust for his creditors generally.

(*b*) Having made a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof.

(*c*) Having made a conveyance amounting to a ' fraudulent preference.'

(*d*) Having, with intent to defeat or delay his creditors, departed out of England, or being out of England, remained out of England ; or having absented himself ; or begun to keep house.

(*e*) If execution against him has been

levied by seizure of his goods under process in any Court or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for 21 days.

Provided that where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the sheriff is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of 21 days.

(*f*) Having filed, in the Bankruptcy Court, a declaration admitting his inability to pay his debts or having presented a bankruptcy petition against himself.

(*g*) Having neglected to pay or secure a judgment debt after service of a ' bankruptcy notice,' or satisfied the Court that he has a good cross claim. See BANKRUPTCY NOTICE.

(*h*) If the debtor gives notice to any of his creditors that he has suspended or is about to suspend payment of his debts.

A bankruptcy commences at the actual time of day on which an act of bankruptcy is committed (*Re Bumpus*, 1908, 2 K. B. 330).

See BANKRUPT ; DEBTOR'S SUMMONS ; *Williams on Bankruptcy.*

Act of Curatory, the order by which a curator, or guardian, is appointed by the Court.—*Scots Law.*

Act of God, a direct, violent, sudden, and irresistible act of nature, which could not, by any reasonable care, have been foreseen or resisted ; see *Nugent* v. *Smith*, (1876) 1 C. P. D. 423. The general rule is that where the law creates a duty and the party is disabled from performing it, without any default of his own, by the act of God or the King's enemies, the law will excuse him ; but when a party by his own contract creates a duty he is bound to make it good, notwithstanding any accident by inevitable necessity (*Nichols* v. *Marsland*, (1876) 2 Ex. D. p. 4). See also Common Carrier, tit. CARRIER.

Act of Grace. The Act so termed in Scotland was passed in 1696 ; it provides for the maintenance of debtors imprisoned by their creditors. It is usually applied in England to general pardons granted at the beginning of a new reign, or on other great occasions.

Act of Indemnity. See INDEMNITY.

Act of Oblivion, 12 Car. 2, c. 11, a general indemnity and legal oblivion of all that had been done amiss in the late interruption of government, but with an exception in the case of certain specified persons ; see *Hall. Const. History.*

Act of Parliament, a law made by the sovereign, with the advice and consent of the Lords spiritual and temporal, and the Commons, in Parliament assembled (1 *Bl. Com.* 85) ; but, in the case of an Act passed under the provisions of the Parliament Act, 1911, a law made by the sovereign ' by and with the advice and consent of the Commons in this present Parliament assembled in accordance with the provisions of the Parliament Act, 1911, and by authority of the same ' ; also called a ' statute.'

The Parliament Act, 1911, made a fundamental alteration in the powers previously possessed by the House of Lords in relation to the passing of Acts of Parliament. Its provisions are briefly as follows :—(1) If a money bill sent up by the House of Commons is not passed by the House of Lords within a month without amendment, it becomes an Act of Parliament on receiving the Royal assent without the House of Lords having consented to it. (2) If a bill, other than a money bill or a bill containing any provision to extend the duration of Parliament beyond five years, is passed by the Commons in three successive sessions (whether of the same Parliament or not) and is rejected on each occasion by the Lords, it becomes an Act on receiving the Royal assent without the Lords having consented to it ; but two years must have elapsed between the date of the second reading in the first of these sessions of the bill in the Commons and the date on which it passes the Commons in the third of those sessions ; and provision is also made for the introduction of amendments in the second and third sessions. (3) Five years are substituted for seven (fixed by the Septennial Act) as the duration of Parliament. Every money bill must be endorsed with a certificate signed by the Speaker of the House of Commons that it is a money bill. As to the statutory effect given to resolutions varying or renewing taxation, see Provisional Collection of Taxes Act, 1913 (3 Geo. 5, c. 3), and Finance Act, 1930 (20 & 21 Geo. 5, c. 28), s. 12.

The Royal assent to a bill is given either by the sovereign personally or by commission. Consent by commission is limited to those bills set out in the schedule to the commission. The words of Royal assent are, ' *Le Roy le veult,*' or in the case of a money bill, ' *Le Roy remercie ses bons sujets, accepte leur bénévolence et ainsi le veult.*'

Acts of Parliament are either (1) public ;

(2) local or special; or (3) private or personal. Public Acts are those which affect the whole realm or important parts of it. Local Acts, which are very numerous, and since 1798 have been printed in separate volumes from those which contain the public Acts, concern particular localities, as railway or gas and water Acts. Private Acts concern individuals and families only, as Acts naturalizing a party, dissolving a marriage, or settling particular estates. There is a further class of Acts which contain clauses frequently required in local Acts. The provisions of such general Acts are incorporated in private Acts by reference, e.g., Railways Clauses Act, 1863.

The principal rules for the interpretation of Acts of Parliament are the following:— (1) a statute begins to operate from the time when it receives the Royal assent, unless otherwise provided (Acts of Parliament (Commencement) Act, 1793 (33 Geo. 3, c. 13)). Before this Act, all statutes related back to the first day of the sessions in which they were passed. But where an Act expires before a bill continuing it has received the Royal assent, the latter Act takes effect from the expiration of the former, unless otherwise provided, and except as to any penalty: Acts of Parliament (Expiration) Act, 1808 (48 Geo. 3, c. 106). (2) A statute is to be construed according to the intent and object with which it was made, and not according to the mere letter; (3) these points must be considered—the old law, the mischief, and the remedy; (4) remedial statutes are to be more liberally, and penal more strictly, construed; (5) in construing a statute, all other statutes made *in pari materiâ* ought to be taken into consideration; (6) a statute which treats of things and persons of an inferior rank cannot by any general words be extended to those of a superior; (7) where the provision of a statute is general, everything which is necessary to make such provision effectual is supplied by the Common Law; (8) a subsequent statute may repeal a prior one, not only expressly, but by implication, as when it is contrary thereto, i.e., so clearly repugnant that it necessarily implies a negative, but if the Acts can stand together, they shall have a concurrent efficacy; (9) Acts of Parliament cannot derogate from the power of subsequent Parliaments; (10) the King is not bound by any Act of Parliament unless he be named therein by special and particular words; and see INCORPORATION BY REFERENCE.

As to the important 'Interpretation Act, 1889,' see that title.

Statutes are variously cited; many of the old statutes are called after the name of the place where the Parliament which passed them was held, as the Statute of Merton, of Marlebridge, or Westminster; others entirely from their subject, as the Statute of Distribution (22 & 23 Car. 2, c. 10), or the Fines and Recoveries Act (3 & 4 Wm. 4, c. 74); others from their initial words, as the statute *Quia emptores* or *De donis* (see those titles); others from the Member of Parliament who introduced them, as Lord Campbell's Act (6 & 7 Vict. c. 96); Jervis's Act (11 & 12 Vict. c. 43); and some few, as the Statute of Elizabeth, which founded the Poor Law (43 Eliz. c. 2), and the Statute of James, which founded the law of limitation of time for suing (21 Jac. 1, c. 16) from the name of the sovereign in whose reign they were passed. After the time of Edward II. they were for a long time generally cited by their full titles, by naming the years of the sovereign's reign during which the session of Parliament was held in which the statute was passed, together with the chapter or particular Act, according to its numerical order, e.g., 3 & 4 Wm. 4, c. 74, the chapter, if the Act be a local or personal one, being printed in Roman figures, e.g., 20 & 21 Vict. c. xciv.

In 1845 'short titles' began to be introduced, by enacting (see 8 & 9 Vict. c. 16, s. 4) that 8 & 9 Vict. c. 16 might be cited in other Acts of Parliament and in legal instruments, as the 'Companies Clauses Consolidation Act, 1845,' and similarly 8 & 9 Vict. c. 18, as the 'Lands Clauses Consolidation Act, 1845,' and 8 & 9 Vict. c. 20, as the 'Railways Clauses Consolidation Act, 1845.' This useful nomenclature was more and more frequently adopted, and is now almost universal, two 'Short Titles Acts,' passed in 1892 and 1896 (55 & 56 Vict. c. 10), and (59 & 60 Vict. c. 14) (the latter repealing, and, with additions, re-enacting the former), having supplied more than 2,000 short titles.

All the Acts of a session together make properly but one statute, and therefore, when two sessions have been held in one year, stat. or sess. 1 or 2 is spoken of. Thus the Bill of Rights is cited as 1 W. & M. sess. 2, c. 2; and the Riot Act as 1 Geo. 1, st. 2, c. 5.

Of late years many steps have been taken by the Government with a view to classifying and consolidating the Statute Law, and various Statute Law Revision Acts (see that title) have been passed, by which a vast

number of obsolete and unnecessary Acts and portions of Acts have been repealed; but the inconvenience of 'incorporation by reference,' that is, of incorporating in a later Act the provisions of an earlier one by mere reference to the earlier one—a practice of very long standing—has been much felt. See *Practical Legislation*, by Lord Thring, late Parliamentary Counsel, p. 48.

A statute is passed annually continuing various temporary Acts, some of them of great importance. See EXPIRING LAWS CONTINUANCE ACTS. For an invaluable collection of selected Acts, arranged in alphabetical and chronological order, see *Chitty's Statutes of Practical Utility*, annually continued.

Act of Settlement, 12 & 13 Wm. 3, c. 2 (1700), limiting the Crown, after the death of William III. and Princess (afterwards Queen) Anne, to the Princess Sophia of Hanover, and to the heirs of her body being Protestants. The Act further provided (*inter alia*) that (i.) the sovereign shall join in the communion with the Church of England as by law established. (ii.) No pardon under the Great Seal of England be pleadable to an impeachment. Ministers were thus prevented from escaping responsibility because the King had pardoned them. (iii.) Judges should hold office *quamdiu se bene gesserint* (during good behaviour), i.e., not at the King's pleasure, and should be removable upon the address of both Houses of Parliament. Substantially re-enacted by s. 5 of the Judicature Act, 1875 (now repealed), which specifically excepted the Lord Chancellor.

Act of State. The act of the sovereign power of a country or its agent (if acting *intra vires*). By its very nature such an act cannot be questioned by any Court of Law.

Act of Uniformity, 14 Car. 2, c. 4 (1662), which enacts that the Prayer Book, scheduled thereto, shall be used in churches, and applies as to such Book the penalties of the earlier Acts of Uniformity, 2 & 3 Edw. 6, c. 1 (1548), 5 & 6 Edw. 6, c. 1 (1551), and 1 Eliz. c. 2 (1558). See UNIFORMITY.

Act of Union. The term usually applied to the Union with Scotland Act, 1706 (5 Anne, c. 8); when applied to Wales, refers to 27 Hen. 8, c. 26 (1536), by which Wales was made subject to English law. The *Statutum Walliæ* of 1284 made Wales feudally subject to the King of England, but left the Welsh law unaltered. The Union with Ireland Act, 1800 (39 & 40 Geo. 3, c. 67), is often so called. See Irish Free State (Agreement) Act, 1922.

Actio ad exhibendum, an action for the purpose of compelling a defendant to exhibit a thing or title in his power. It was preparatory to another action, which was always a real action in the sense of the Roman Law, that is for the recovery of a thing, whether it was movable or immovable.—*Civil Law.*

Actio bonæ fidei is an action available in Civil Law to a party in a *negotium bonæ fidei*. All actions instituted by the *prætorian* Law were *actiones bonæ fidei*. The obligations produced by a *negotium bonæ fidei* are not precisely determined, therefore the *intentio* of an *actio bonæ fidei* is *incerta quidquid N^us N^um A^o A^o dare facere oportet ex bona fide.* Accordingly the judge was allowed to take consideration of equity into account and he was acting as an arbiter rather than as a *judex*. See CONDICTIO.—*Sand. Just.*

Actio commodati contraria, an action by a borrower against a lender, to enforce the execution of a contract.—*Civil Law.*

Actio commodati directa, an action by the lender against the borrower in order to enforce the recovery of the object lent to the defendant and the fulfilment of all other liabilities undergone by the borrower *ex bona fide.*—*Civil Law.*

Actio condictio indebiti, an action for the recovery of a sum of money or other thing paid by mistake.—*Civil Law.*

Actio conducti, an action resulting from a contract called *locatio conductio* which enables the conductor to enforce the duties of the locator. There are three forms of *locatio conductio* and accordingly the object of the *actio conducti* varies: (1) *locatio conductio rei* (locator agrees, in consideration of money payment, to let conductor have the use, or the use and fruits, of a thing); (2) *locatio conductio operarum* (locator agrees, in consideration of a money payment, to supply conductor with a certain amount of labour); (3) *locatio conductio operis* (conductor agrees, in consideration of a money payment, to supply locator with a certain result of labour).—*Civil Law.* See also ACTIO LOCATI.

Actio ex conducto, an action by a bailor of a thing for hire, against a bailee, to compel him to deliver the thing hired.—*Civil Law.*

Actio contra defunctum cæpta continuitur in hæredes. (An action begun against a person who dies is continued against his heirs.) This rule did not apply to actions strictly personal. See *Lansdowne* v. *Lansdowne*, (1815) 1 Mad. 116; and see ACTIO PERSONALIS.

Actio contraria. See ACTIO DIRECTA AND CONTRARIA.

Actio depositi contraria, an action which a depositary has against a depositor, to compel him to fulfil his engagement towards him.—*Civil Law.*

Actio depositi directa, an action by a depositor against a depositary, in order to get back the thing deposited.—*Civil Law.*

Actio directa and contraria. Contracts and obligations in the Roman Law gave rise to two actions: the *actio directa* for enforcing implement of the essential obligation, and the *actio contraria* for enforcing the counter-obligation.

Actio judicati, an action after four months had elapsed from the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards, and then the immovables, which were delivered in pledge to the creditor, or put under the care of a curator, and, if at the end of two months the debt was not paid, the land was sold.—*Civil Law.*

Actio locati, an action resulting from a contract called *locatio conductio,* which enables the locator to enforce the duties of the conductor.—*Civil Law.* See ACTIO CONDUCTI.

Actio non accrevit infra sex annos, the name of the plea of the Statute of Limitations when the defendant alleges that the plaintiff's action has not accrued within six years.—See LIMITATIONS, STATUTE OF.

Actio personalis moritur cum personâ. A personal action dies with the person, i.e., the right to sue is gone. 'As if battery be done to a man, if he who did the battery or the other die, the action is gone' (*Noy,* 9th ed., p. 20). This maxim now states the general rule that actions of tort are destroyed by death of either the injured or the injuring party. Besides the statutory exceptions mentioned below, an action may be brought by the personal representatives of a deceased person for injury done to his property in his lifetime. It has also been applied to actions arising out of contracts of a purely personal nature, e.g., promise to marry (*Finley* v. *Chirney,* (1880) 20 Q. B. D. 494), or to write a book or paint a picture.—See *Leake on Contracts; Broom's Max.; Twycross* v. *Grant,* (1877) 4 C. P. D. 40; *Phillips* v. *Homfray,* (1883) 24 Ch. D. 439; and *Jones* v. *Simes,* (1890) 43 Ch. D. 607 as to injunction.

This rule of the Common Law has been encroached upon by various statutes; by 4 Edw. 3, c. 7, as to trespass to goods (no limit of time by that statute), and the Civil Procedure Act, 1833, s. 2, as to trespass to land within 6 months before death (action to be within one year after death), and by the Fatal Accidents Act, 1846 (Lord Campbell's Act) (*q.v.* sub-tit. CAMPBELL'S (LORD) ACT), as to negligence causing death (action to be brought within 12 months after death); and the maxim does not apply in cases under the Workmen's Compensation Act, 1906 (*United Collieries, Ltd.* v. *Simpson,* 1909, A. C. 383). See DEPENDANT.

A further restriction upon the doctrine has been effected by the Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), which amends the law as to the effect of death in relation to causes of action and as to the awarding on interest in civil proceedings. Subject to the provisions of s. 1 of the Act, on the death of any person after the commencement of the Act all causes of action subsisting against or vested in him shall survive against or for the benefit of his estate. By s. 1 (2) the damages are limited in certain cases by s. 1 (3); the action must either be pending at the date of death or commenced not earlier than six months before or not later than six months after grant of probate of letters of administration. This provision does not apply to causes of action for defamation of character or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery; and see LAW REFORM.

Actio pro socio, an action by which either partner could compel his co-partners to perform their social contract.—*Civil Law.*

Actio quanti minoris, an action in which the purchaser of an object claimed an abatement of the price proportionate to the reduction in value caused by a defect. This action was barred within one year from the conclusion of the contract.—*Civil Law.*

Actio redhibitoria, an action instituted to avoid a sale within six months from the conclusion of the contract on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed the buyer would not have purchased it had he known of the vice.—*Civil Law.*

Action, conduct, something done; also the form prescribed by Law for the recovery of one's due, or the lawful demand of one's right. Bracton (Bk. 3, cap. 1) defines it:—*Actio nihil aliud est quam jus prosequendi*

in judicio quod alicui debetur.—(An action is nothing else than the right of suing in a court of justice for that which is due to some one.) Actions are divided into criminal and civil: criminal actions are more properly called prosecutions, and perhaps actions penal, to recover some penalty under statute, are properly criminal actions. There were formerly three classes of actions in England: personal actions, in which the plaintiff sought to recover a debt or damages from the defendant; real actions, in which he sought to establish his title to land or other hereditaments; mixed actions, in which he sought only to establish his right to possession of land. All forms of action are now abolished, but there still inevitably remains the distinction between actions *in personam* brought against an individual, actions *in rem*, which determine questions of title, and possessory actions, which decide merely the right to have physical control of the property in dispute (*Odgers on the Common Law*, p. 1254). For old forms of actions, see under their respective titles—e.g., COVENANT; ASSUMPSIT; TRESPASS; CASE; TROVER; DETINUE; REPLEVIN; EJECTMENT. See also VENUE.

The term 'action' is now applied to all proceedings in the Supreme Court which would have been commenced by writ in the Superior Courts of Common Law, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham; and all suits formerly commenced by bill or information in the Court of Chancery or by a cause in the Court of Admiralty, or in the Court of Probate (Jud. Act, 1925, s. 225, and R. S. C. 1883, Ord. I., r. 1).

Also stock or shares in a company or corporation.—*Fr. Comm. Law.*

Action of a Writ, a phrase used when a defendant pleads some matter by which he shows that the plaintiff had no cause to have the writ which he brought, although it may be that he is entitled to another writ or action for the same matter.—*Termes de la Ley.*

Action of abstracted Multures, an action for multures or tolls against those who are thirled to a mill, i.e., bound to grind their corn at a certain mill, and fail to do so.

Action of Adherence, an action competent to a husband or wife, to compel either party to adhere in case of desertion; unknown in practice except where combined with an action for aliment.—*Scots Law.*

It is analogous to the English suit for restitution of conjugal rights.

Action on the Case. See CASE.

Action possessory, a class of real actions where the plaintiff had been seised of the land claimed, e.g. novel disseisin as opposed to action ancestral, where the claim was founded on descent from a person who had been seised, such as Mort d'Ancestor. Actions ancestral were ancestral droirural, and ancestral possessory.—*Co. Inst., Part 2*, 241.

Action prejudicial, otherwise called preparatory or principial, an action arising from some preliminary doubt, as in case a man sue his younger brother for lands descended from the father, and it is objected against him that he is bastard, this point of bastardy must be tried before the cause can proceed. It is, therefore, termed *præjudicialis.*

Actionare [i.e., *in jus vocare*, Lat.], to prosecute a person in a cause at law.

Actionary [fr. *actionnaire*], a foreign commercial term for the proprietor of an action or share of a public company's stock, a stockholder.

Actio non. A plea in bar under the old system of pleading had a formal 'commencement'—'that the said plaintiff ought not to have or maintain his aforesaid action against him, the defendant, because etc.' This commencement was called *actio non.*—*Steph. Plead.*

Abolished by the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 66.

Actiones nominatæ, writs for which there were precedents. The Statute of Westminster 2, c. 24, gave Chancery authority to form new writs *in consimili casu.* Hence the action on the case.—*Bac. Ab.* '*Court of Chancery,*' *a.* See CASE.

Actions ordinary, all actions not rescissory.

Actions rescissory are either (1) actions of proper improbation for declaring a writing false or forged; (2) actions of reduction—improbation, for the production of a writing in order to have it set aside or its effect ascertained under the certification that the writing if not produced shall be declared false or forged; or (3) actions of simple reduction, for declaring a writing called for null until produced.—*Scots Law.*

Actitation, a debating of law suits.

Active Debt, a debt whereon interest is paid.

Active Service. 'On active service,' as applied to a person subject to military law, is defined by the Army Act (44 & 45 Vict. c. 58) as meaning 'whenever he is attached to or forms part of a force which is engaged in operations against the enemy or is engaged in military operations in a country or place wholly or partly occupied by an enemy or

is in military occupation of any foreign country.'

Active Trust, a confidence connected with a duty. See BARE TRUSTEE.

Active Use, formerly a use leaving the legal estate in the feoffee to uses, *q.v.*

Acto, Acton or **Aketon** [ex *Gallico Hoqueton* or *Hanqueton*, or ex *Cambro-Britannico Actium*], a military cloak.—*DuCange.*

Acton-Burnel, the statute enacting that a debtor's property might be sold to pay his debts, 11 Edw. 1, A.D. 1283, so termed from the place where it was made, situated in Shropshire. Repealed by the Statute Law Revision Act, 1863.

Actor, a doer, generally a plaintiff or complainant. In a civil or private action the plaintiff was called by the Romans *petitor*; in a public action (*causa publica*) he was called *accusator*. (*Cic. ad. Att.* 1. 16.) The defendant was called *reus*, both in private and public causes; this term, however, according to Cicero (*De Orat.* ii. 43), might signify either party, as indeed we might conclude from the word itself. In a private action the defendant was often called *adversarius*, but either party might be called so with respect to the other. Also a proctor or advocate in civil Courts or causes. *Actor dominicus*, a term often used for the lord's bailiff or attorney. *Actor ecclesiæ* was sometimes the forensic term for the advocate or pleading patron of a church. *Actor villæ* was the steward or head bailiff of a town or village.—*Cowel.*

Actori incumbit onus probandi.—(The burthen of proof lies on the plaintiff.)—*Hob.* 103. See BURDEN OF PROOF AND EVIDENCE.

Acts of Court, legal memoranda of the nature of pleas, especially in Admiralty Courts. See ADMIRALTY.

Acts of Sederunt, rules of the Court of Session in Scotland. See SEDERUNT, ACTS OF.

Acts of the General Assembly of the Church of Scotland. The acts of the General Assembly, issued under their legislative powers, are binding on all the members and judicatories of the church. The form of their procedure is regulated by an Act of the church (1697), termed the Barrier Act.—*Bell's Scotch Law Dict.*

Actual Bodily Harm. 'An assault occasioning actual bodily harm' is an offence within s. 47 of the Offences against the Person Act, 1861. On an indictment for an assault occasioning actual bodily harm the accused may be convicted of a common assault (*R.* v. *Oliver*, (1860) 30 L. J. M. C. 12). A husband, who, whilst suffering from venereal disease, had marital intercourse with his wife and thereby infected her, cannot be convicted under this section (*R.* v. *Clarence*, (1888) 22 Q. B. D. 23). The expression is also used in the Dangerous Performances Acts, 1879 and 1897. See also BODILY HARM.

Actuarius, a notary.

Actuary, a registrar of a public body. Also a clerk who registers the acts and constitutions of the Lower House of Convocation; or a registrar in a Court Christian. Especially a person skilled in calculating the value of life interests, annuities, and insurances. The Local Government and other Officers' Superannuation Act, 1922 (12 & 13 Geo. 5, c. 59), defines actuary as meaning a fellow of the Institute of Actuaries or the Faculty of Actuaries in Scotland. The Institute of Actuaries was formed in 1848 and incorporated by royal charter on July 29, 1884.

Actus, a servitude of footway and horseway.—*Civil Law.*

Actus curiæ neminem gravabit. *Jenk. Cent.* 118.—(An act of the Court will hurt no person.) See *Broom's Leg. Max.*, citing *Cumber* v. *Wane*, (1719) 1 Str. 126; 1 *Smith L. C.*, in which it was held that if one party to an action die during a *curia advisari vult*, judgment may be entered *nunc pro tunc*—a principle recently applied in *Ecroyd* v. *Coulthard*, 1897, 2 Ch. 554; 1898, 2 Ch. 358.

Actus Dei nemini nocet [or, *facit injuriam*].—(The act of God does injury to nobody.)—*Lofft*, 102; see *Broom's Leg. Max.* And see ACT OF GOD.

Actus non facit reum, nisi mens sit rea. 3 *Inst.* 307; *Co. Litt.* 247 *b.*—(An act does not make a man guilty, unless there be guilty intention.) This is one of the most important rules of criminal law. 'As a general rule of our law, a guilty mind is an essential ingredient of crime, and this rule ought to be borne in mind in construing all penal statutes.'—*Broom's Leg. Max.* Applied by 9 judges to 5 in *Reg.* v. *Tolson*, (1889) 23 Q. B. D. 168, so as to acquit on trial for bigamy a woman reasonably believing her first husband (whom she had lost sight of for less than 7 years) to be dead; see the elaborate judgment of Stephen, J., pp. 184 *et seq.*, who, however, described the maxim as most unfortunate and misleading. An intention to offend against the penal provisions of a statute constitutes *mens rea* (*Bank of New South Wales* v. *Piper*, 1897, A. C. 383).

The trend of modern legislation in regard to the health or security of the public is to attach the offence to the person who possesses, at least hypothetically, some control over the acts constituting the offence and to impose penalties on the breach of the regulation either without inquiring into the knowledge or volition of the accused or leaving the onus on him of proving that he is innocent. See *Blaker* v. *Tillstone*, 1894, 1 Q. B. 345, where the defendant was charged with exposing unwholesome meat. In cases under the Merchandise Marks Act, 1887, 50 & 51 Vict. c. 28, s. 2, the employer is liable unless he can show that he acted in good faith and has taken all reasonable steps to prevent the offence. See L. Q. R. Vol. 52, January, 1936.

A.D. [Lat.], contraction for Anno Domini (in the year of our Lord).

Adawlut, corrupted from *Adalat*, justice, equity; a Court of justice. The terms Dewanny Adawlut and Foujdarry Adawlut denote the civil and criminal Courts of Justice in India. See DEWANNY and FOUJDARRY.

Ad colligenda bona, Administrator, a person to whom the Probate Division has made a limited or temporary grant for the purpose of collecting the property of a deceased person. See *Whitehead* v. *Palmer*, 1908, 1 K. B. 156.

Adcordabilis denarii, money paid by a vassal to his lord upon the selling or exchanging of a feud.—*Encyc. Londin.*

Adcredulitare, to purge one's self of an offence by oath. See ACCREDULITARE.

Ad damnum (to the damage). The concluding words of the declaration which state the amount of the plaintiff's damage. See 1 *Chit. Pl.* 434.

Addecimate, to take tithes.

Addictio, the act of a magistrate, the *prætor* in Civil Law. The *addictio* had different purposes: to enfranchise a slave (*manumissio vindicta*), to adopt a child, or to transfer the ownership of goods. The transfer of ownership by *addictio* was like the *mancipatio* an *acquisitio civilis*. Such an *addictio* might be pronounced, either when ownership is transferred by way of *in jure cessio*, or on the ground of a sale by public auction or upon succession, or for the purposes of an *assignatio* (magistral grant of *ager publicus*),or it might take the form of an '*adjudicatio*,' the judge deciding a partition suit.

Ad diem, at the day (appointed).

Addition, the title, or occupation, and place of abode of a person besides his names. See 1 Hen. 5, c. 5; *Termes de la Ley*, and compare the Criminal Procedure Act, 1851, s. 24.

Additionales, propositions or terms added to a former agreement or contract.

Address, a petition, also a place of business or residence.

Address for Service. See INDORSEMENT OF ADDRESS.

Adeling, Ethling, or Edling [*œdelan*, Sax.], noble, excellency. A title of honour among the Anglo-Saxons, properly belonging to the king's children.—*Spelm. Glos.*

Ad ea quæ frequentius accidunt jura adaptantur. *Wing.* 216; 2 *Inst.* 137; *Broom's Leg. Max.*—(The laws are adapted to those cases which more frequently arise.)—'A good sound maxim in construing Acts of Parliament' (*Dixon* v. *Caledonian Ry. Co.*, (1880) 5 App. Cas., at p. 838, per Lord Blackburn).

Ademption [fr. *adimo*, Lat.], revocation; a taking away of a specific legacy, i.e., if a testator, after having given a legacy of this nature by his will, alienate the subject of it during his life, it is an ademption and the legacy is gone. As to charges on specific legacies of personal estate, see s. 35 of the Administration of Estates Act, 1925. See *Theobald on Wills*. The term is also used to denote the satisfaction of a legacy to a child by the testator subsequently giving the child a portion on his or her marriage. See SATISFACTION.

Ad feodi firmam. To fee farm.—*Fleta, lib.* ii. c. 50, s. 30.

Ad filum aquæ. To the thread or centre line of the stream. See AD MEDIUM FILUM AQUÆ.

Ad filum viæ. To the centre of the way or road. See AD MEDIUM FILUM VIÆ.

Ad finem, abbrev. *ad fin.* [Lat.] (at or near to the end).

Adiation, a term used in Dutch law signifying the entrance upon an inheritance by an heir or executor, without which the succession is not complete; see *Van Leeuwen's Roman-Dutch Law*, p. 402; *B. Freyhaus* v. *Cramer*, (1829) 1 Knapp, 107.

Ad idem (at the same point), said of negotiating parties when they are quite agreed, so that a binding contract has been made between them. So long as any new term is put forward by one party and not accepted by the other, this cannot be.

Ad infinitum (without limit).

Ad inquirendum, a judicial writ commanding inquiry to be made of anything relating to a cause in the Superior Courts. And see AD MELIUS INQUIRENDUM.

Ad interim (in the meantime).

Adiratus, a price or value set upon things stolen or lost as a recompense to the owner.—*Cowel's Law Dict.*

Adjoining, conterminous with, see *Mayor, etc., of New Plymouth* v. *Taranaki Electric Power Board,* 1933, A. C. 653, but the word sometimes means near or neighbouring; 'adjacent' is not as precise, and this word generally includes places which are near or neighbouring, *ibid.*; and see *Ecclesiastical Commrs.' Case,* 1936, Ch. 430.

Adjoining Owner. An adjoining owner has a common law right to the support necessary to sustain his own land in its natural unincumbered state (*Brown* v. *Robins* (1859) 4 H. & N. 186); but only obtains a right to support for buildings by grant, express or implied, or by prescription (20 years); see *Angus* v. *Dalton,* (1881) 6 App. Cas. 740.

By the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), upon the sale of superfluous lands (s. 127) adjoining owners have a right of pre-emption (s. 128).

By the London Building Act, 1930 (21 Geo. 5, c. clviii.), s. 5, the expression 'adjoining owner' means the owner or one of the owners, and 'adjoining occupier' means the occupier or one of the occupiers of land, buildings, storeys or rooms adjoining those of the building owner; see *Crosby* v. *Alhambra Co.,* 1907, 1 Ch. 295. See ACCESS; PARTY-WALLS.

Adjournment [fr. *jour,* Fr., a day], a putting off to another time or place, a continuation of a meeting from one day to another. An adjourned meeting is in ordinary cases a mere continuation of the original meeting and no fresh notice of it need be given (*Scadding* v. *Lorant,* (1851) 3. H. L. C. 418). The adjournment of a trial is in the discretion of the judge. As to adjournment of trial in the High Court, see R. S. C. Ord. XXXVI., r. 34; and as to adjournments in County Courts, see County Courts Act, 1934, s. 36.

As to adjournment by justices on hearing charge of offence punishable on summary jurisdiction, see Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), s. 16.

Adjournment-day, a further day appointed by the judges at the *Nisi Prius* sittings to try issues in fact which were not then ready for trial. See NOTICE OF TRIAL.

Adjudication, giving or pronouncing a judgment or decree. In Bankruptcy Law, adjudication is the act of the Court declaring a person to be bankrupt. In Scots Law it signifies the 'diligence' by which land is attached in security and payment of debt, or by which a feudal title is made up in a person holding an obligation to convey without a procuratory of resignation or precept of sasine. There are thus (1) the adjudication for debt; (2) the adjudication in security; and (3) the adjudication in implement.—*Bell's Dict.*

Adjudication contra hæreditatem jacentem. When a debtor's heir apparent renounces the succession, any creditor may obtain a decree *cognitionis causâ,* the purpose of which is that the amount of the debt may be ascertained so that the real estate may be adjudged.—*Scots term.* Consult *Encyc. of Scots Law.*

Adjudication in debitum fundi. See ACTION FOR POINDING OF THE GROUND.

Adjudication in Implement. See ADJUDICATION.

Adjudication Stamp, the stamp impressed on or affixed to an instrument after the Commissioners of Inland Revenus have been requested by any person under s. 12 of the Stamp Act, 1891, in a case of doubt, to assess the duty chargeable on any instrument. There is an appeal from this assessment to the High Court.

Adjunctio, the act by which the owner of one thing attaches to or includes in his own property a thing belonging to another. If it cannot be separated again and thereby becomes an *extincta res,* the property in the whole generally belongs to the person who effected the change. If it can be separated, each owner retains his property.—*Civil Law.*

Adjuncts, additional judges.

Adjunctum accessorium, an accessory or appurtenance.

Ad jura regis, a writ which was brought by the king's clerk, presented to a living, against those who endeavoured to eject him, to the prejudice of the king's title.—*Reg. Brev.,* 61.

Adjuration, a swearing or binding upon oath.

Adjustment of a loss [fr. *adjuster,* Fr., to make even], the settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions made, is entitled to receive under the policy, and fixing the proportion which each underwriter is liable to pay. See *York-Antwerp Rules,* 1890, Marine Insurance Act, 1906 (6 Edw. 7, c. 41), and *Lowndes on Average.*

Adlamwr [*ad-lam-gwr,* Cym., one returning], a proprietor, who, for some cause, entered the service of another proprietor without agreement, and left him after the

expiration of a year and a day, was liable to the payment of thirty pence to his patron.—*Welsh Law.*

Ad Lapidem, Stoneham in Hampshire.

Ad largum (at large), used in the following and other expressions: title at large, common at large, assize at large, verdict at large, to vouch at large, etc.

Adlegiare [fr. *aleier*, Fr.], to purge oneself of a crime by oath.—*Du Cange.*

Ad longum, at length.

Admanuenses, in ancient law books persons who swore by laying their hands on the book, in contrast to clergymen, whose word was reputed as their oath.—*Du Cange.*

Admeasurement, Writ of. It lay against persons who usurped more than their share, in the two following cases; admeasurement of dower, where the widow held from the heir more land, etc., as dower than rightly belonged to her; and admeasurement of pasture, which lay where any one having common of pasture surcharged the common. —*Termes de la Ley.*

Ad medium filum viæ (aquæ) [*filum*, a thread, Lat.], an imaginary line in the centre of a road or river. The soil of a highway, and the bed of a non-tidal river, are presumed to belong to the owners of the adjacent lands *usque ad medium filum viæ*, or *aquæ;* and accordingly where in a conveyance of land it is said to be bounded by a highway or a river, half of the road or half of the bed of the river passes to the grantee, unless a contrary intention is shown; see *Micklethwait* v. *Newlay Bridge Co.*, (1886) 33 C. D. 133, and *City of London Land Tax Commissioners* v. *Central London Railway*, 1913, A. C. 364. The presumption does not apply to a railway that is a boundary (*Thompson* v. *Hickman*, 1907, 1 Ch. 550).

Ad melius inquirendum. A writ directed to a coroner commanding him to hold a second inquest. See *Reg.* v. *Carter*, (1876) 45 L. J. Q. B. 711, in which the defendant coroner was directed on a second view, by exhumation, of the body, to hold a second inquest (two months after the first), in a case of death by poison, and Coroners Act, 1887, s. 6, sub-s. 1, by which the High Court may direct another inquest where necessary or desirable by reason of fraud, rejection of evidence, irregularity of proceedings, etc., sub-s. (3) dispensing with the necessity, 'unless the Court otherwise order,' of a view of the body. See also Coroners (Amendment) Act, 1926 (16 & 17 Geo. 5, c. 59), s. 19.

Adminicle, aid, help, or support, 1 Edw. 4, c. 1. In Scots Law, it is a term used in the action of proving the tenor of a lost deed, and signifies any deed, or even scroll, tending to establish the existence or terms of the deed in question.—*Bell's Dict.*

Adminicular Evidence, explanatory or completing testimony.

Administration, the giving or supplying of something. The term is used in three different senses. (1) The granting of letters of administration to an administrator by the Probate Division. (2) The administration of the estate of a deceased person by an executor or administrator, i.e., the payment of his debts and the distribution of his assets among the persons entitled. See ss. 32 *et seq.*, First Sched., Part III., of the Administration of Estates Act, 1925, and *Re Tong*, 1931, 1 Ch. 202. (3) The administration of the estate by the Chancery Division in cases where difficulties have arisen in the course of administration. Orders for administration by the Chancery Division are made on originating summons, and only by the judge in person. See *Trist. and Coote, Prob. Pr.;* R. S. C. Ord. LV., rr. 3 *et seq.; Seton on Judgments.* And see ADMINISTRATOR; WIDOW.

The body of ministers appointed by the Crown to carry on the government of the country; now more commonly called 'the Government.'

Administration Bond. The bond, usually for double the value of the property placed in possession of the administrator of the grant required under s. 167 (1) of the Jud. Act, 1925, as amended by the Administration of Justice Act, 1928, Schedule 7, from every person to whom a grant of administration of a deceased person's estate has been made. As a rule, two sureties are also required. The conditions of the Bond are (1) to make and exhibit an inventory; (2) to administer according to law; (3) to exhibit any later will if found, and then deliver up the letters of administration. See Jud. Act, 1925, and Probate Rules, 1925; and see ADMINISTRATOR.

Administration, Oath of, an oath which is required from persons applying for administration showing title or right to the grant and for due administration, see P. R., 1925, 113 (Principal) and 106 (District) Registry. See ADMINISTRATOR.

Administrative Business, the business of managing conducted in private by persons having complete discretion, as distinguished from judicial business, which is conducted in Court under specific rules as to evidence, etc. In the Chancery Division the term is

used as meaning that portion of the business of the Court which consists of executing the trusts of deeds and wills and deciding the numerous questions which arise in connection therewith, as distinguished from the 'contentious' business of the Court, which means hostile litigation between parties. Formerly also certain business transacted at Quarter Sessions now transferred to County Councils by s. 3 of the Local Government Act, 1888.

Administrative Counties. The divisions of the counties of York, Lincoln, Sussex, Suffolk, and Northampton, the county of London, the sixty-one 'county boroughs,' and the other counties of England and Wales, except such parts of them as are not included in London or the county boroughs, form separate 'administrative counties' of themselves for the purpose of managing, through county councils, the administrative business (see COUNTY COUNCIL) of their respective areas. Local Government Act, 1933, s. 1.

Administrator, he to whom the property of a person dying intestate, or without executors appointed, accepting, or surviving, is committed by the Probate Court (now the Probate, Divorce and Admiralty Division of the High Court of Justice). Supreme Court of Judicature (Consolidation) Act, 1925, s. 56 (3). By the Court of Probate Act, 1857 (20 & 21 Vict. c. 77) (re-enacted in Supreme Court of Judicature (Consolidation) Act, 1925, s. 175), 'Administration' includes all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes.

Administration is ordinarily granted to some one or more . . . persons interested in the residuary estate of the intestate. Supreme Court of Judicature (Consolidation) Act, 1925, s. 162, as amended by Administration of Justice Act, 1928, s. 9. See DISTRIBUTION. If there is a minority, or if a life interest arises under the intestacy, administration must be granted to not less than two persons, or to a trust corporation (with or without another administrator). Judicature Act, 1925, s. 160. The oath to be made by an applicant is so worded as to clear off any person possibly entitled in priority to a Grant and to show the capacity in which the proposed Administration applies.

A Creditor may obtain a Grant of Administration if none of the persons entitled to the estate are willing to apply (Probate Rules, 120).

Where the estate is known or believed to be insolvent, the Public Trustee can obtain a grant subject to certain conditions (Public Trustee Act, 1906, s. 6 (1); see PUBLIC TRUSTEE).

The proposed administrator must give a bond to the Senior Registrar of the Probate Division, conditioned for due collection and administration of the estate (Supreme Court of Judicature (Consolidation) Act, 1925, s. 167, as amended by Administration of Justice Act, 1928, Schedule 1). See ADMINISTRATION BOND and Probate Rules.

Until a grant is obtained, the personal estate of a person who dies intestate vests in the President of the Probate Division: Administration of Estates Act, 1925, s. 9, reproducing and extending to real estate the Statute of Westminster II. (13 Edw. 1), c. 19, and the Court of Probate Act, 1858, s. 19; *Whitehead* v. *Palmer*, 1908, 1 K. B. 157.

In certain cases limited administrations are granted, which are as follows:—*Administration durante minore ætate*, where an infant is entitled to administration, or is made sole executor, the grant is made to the duly appointed guardian of the infant for his use and benefit until he attain the age of 21 years, when it ceases: *Administration durante absentiâ*, when the next person entitled to the grant is beyond sea, lest the goods perish or the debts be lost: *Administration pendente lite*, where a suit is commenced in the Probate Court concerning the validity of a will or the right to administration, until the suit be determined, in order that there may be somebody to take care of the estate: *Administration cum testamento annexo*, when there is no executor named in the will, or the person named is incapable or refuses to act: *Administration de bonis non*, arising thus: The office of an administrator is not transmissible like that of an executor; consequently if an administrator dies before he has completely administered, a grant of administration *de bonis non administratis*, or shortly *de bonis non*, becomes necessary; and so if an executor dies intestate before he has fully administered, a like grant is required. There is also what is known as an *ancillary administration*, so called because it is subordinate to the original administration, which is granted for collecting the assets of foreigners; it is taken out in the country where the assets are situated. And there are certain

other cases of limited or temporary administrations which do not very often occur ; as to the powers of such limited or temporary administrators, see *Whitehead* v. *Palmer*, 1908, 1 K. B. 156.

A County Court Judge may, in certain cases, when the estate does not exceed 200*l.*, make an order for grant of administration. See County Courts Act, 1934, ss. 60–62, and COUNTY COURTS.

The administration in bankruptcy of the estate of a person dying insolvent is provided for by the Bankruptcy Act, 1914, s. 130. See *Re Hay*, 1915, 2 Ch. 189.

The term ' administrator ' also means the person appointed under the Forfeiture Act, 1870, 33 & 34 Vict. c. 23, in whom a convict's property vests ; see *Re Gaskell*, 1906, 2 Ch. 1.

The corresponding term in Scotland is ' executor-dative.'

Admiral [derived through the Fr. *amiral*, from *Amir al Bahir*, Arab., commander of the sea or fleet], an officer having high command in the Royal Navy. An admiral has two subordinate commanders under him, a vice-admiral and rear-admiral, distinguished into three classes by the colour of their flags, white, blue, and red. The admiral carries his flag at the main-topmost head, the vice-admiral at the fore-topmast head, and the rear-admiral at the mizzen-topmost head.

Admiralty, the Executive Department of State which presides over the naval forces of the kingdom. The normal head is the ' Lord High Admiral,' but in practice the functions of the Office are discharged by several Commissioners, of whom one is the Chief, and is called the First Lord. He is a member of the Cabinet and is assisted by four Sea Lords, now always selected from Officers of the Service, two Civil Lords and a Secretary.

Admiralty. The Probate, Divorce, and Admiralty Division of the High Court of Justice was, as far as relates to Admiralty, formerly called the High Court of Admiralty, and was held before the Judge of the Admiralty, who formerly sat as deputy of the Lord High Admiral of England until that office was put into commission, and afterwards as deputy of the Lords Commissioners. As to the jurisdiction of the High Court of Admiralty, see *Reg.* v. *Judge of City of London Court*, 1892, 1 Q. B. 273 ; *The Zeta*, 1893, A. C. 468, Judicature Act, 1925, s. 22. and Administration of Justice Act, 1928 (18 & 19 Geo. 5, c. 49), s. 58. The Judge now holds his appointment of the Crown as a Judge of the High Court of Justice. The jurisdiction of the Admiralty Division comprises (1) the matters set out in s. 22 of the Judicature Act, 1925 ; (2) the jurisdiction of a Prize Court within the meaning of the Naval Prize Acts, 1864 to 1916, as amended by subsequent Acts, s. 23, *ibid.*

Proceedings in Admiralty may be *in rem* or *in personam*. By the first, the property in relation to which the claim has arisen, or the proceeds thereof, may be made available to meet the claim. As to warrants for arrest in Admiralty actions, the property is arrested on a warrant supported by affidavit (see R. S. C. Ord. V., rr. 38 and 39). Upon arrest, bail may be accepted for the value of the property arrested : see *Williams and Bruce, Admiralty Practice*. Appeals from the Admiralty Court lie to the Court of Appeal (R. S. C. Ord. LVIII.) and from the same Court sitting as a Prize Court only to the Privy Council : Jud. Act, 1925, s. 27. See DROITS OF ADMIRALTY—NAVAL PRIZE.

This Court formerly had cognizance of all crimes and offences, committed either upon the sea or on the coasts out of the boundary or extent of any English county, until the 4 & 5 Will. 4, c. 36, establishing the Central Criminal Court, when this jurisdiction was transferred to the latter Court, the Judge of the Admiralty being made a member of the tribunal.

County Court Jurisdiction.—Certain County Courts, as selected by the Sovereign in Council, on the representation of the Lord Chancellor, have Admiralty jurisdiction up to a limited amount under the County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), ss. 55-59, replacing County Courts Admiralty Jurisdiction Acts of 1868 and 1869.

There is also an unlimited jurisdiction when the parties so agree.

A list of the County Courts exercising Admiralty Jurisdiction will be found in the *Yearly County Court Practice*.

There is a Court of Admiralty in Ireland.

In Scotland a Court of Admiralty existed prior to 1830. In that year it was abolished by 1 Will. 4, c. 69, and its jurisdiction was transferred to the Court of Session and the Sheriff Courts.

The jurisdiction of the Admiralty in the colonies is regulated by the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27) ; and see Statute of Westminster, 1931 (22 & 23 Geo. 5, c. 4).

Admiralty, Droits of. See DROITS OF ADMIRALTY.

Admission. See CONFESSION BY CULPRIT.

Admission of a Clerk by the bishop when a patron of a church has presented him to it. It is, in fact, the ordinary's declaration that he approves of the presentee to serve the cure of the church to which he is presented.—*Co. Litt.* 344 *a.*

Admissions in Evidence, concessions of certain facts by an opponent. See NOTICE TO ADMIT.

Admittance, giving possession of a copyhold estate, now abolished by the L. P. Act, 1922. See COPYHOLDS; formerly it was of three kinds: (1) Upon a voluntary grant by the lord, where the land has escheated or reverted to him. (2) Upon surrender by the former tenant. (3) Upon descent, where the heir became tenant on his ancestor's death. Land formerly copyhold now being freehold vests in the person having the best right to be admitted, see L. P. Act, 1922, 12th Schedule (8) as amended, and L. P. Act, 1925, s. 202 and 1st Schedule, Part II., S. L. Act, 1925, 2nd Schedule, and see *Re King's Theatre*, 1929, 1 Ch. 483.

Admittendo clerico, a writ of execution upon a right of presentation to a benefice being recovered in *quare impedit*, addressed to the bishop or his metropolitan, requiring him to admit and institute the clerk or presentee of the plaintiff.—*Reg. Brev.* 33 *a.*

Admittendo in socium, a writ for associating certain persons, as knights and other gentlemen of the county, to justices of assize on the circuit.—*Reg. Brev.* 206.

Admonition, a judicial or ecclesiastic censure or reprimand. See MONITION.

Admortization or **Amortization** [fr. *Amortissement*, Fr.], (1) the alienation of lands or tenements into mortmain; (2) the redemption of debt by a sinking fund.

Ad Murum, Waltown or Walton.

Adnichiled [fr. *nihil*, Lat.], annulled, cancelled, made void.—28 Hen. 8.

Adolescence, the period from 12 in females and 14 in males till 21 years of age.

Adoption, an act by which a person adopts as his own the child of another. Until recently there was no law of adoption in this country though it exists in other countries, as France and Germany, where the civil law (as to which, see *Sand. Just.*) prevails to any great extent. In 1889 and 1890, Lord Meath introduced Bills in the House of Lords to legalize adoption.

By the Adoption of Children Act, 1926 (16 & 17 Geo. 5, c. 29), after the 31st December, 1925, the Court (usually in the Chancery Division) may authorize the adoption of an infant who is under twenty-one years of age, a British subject, and resident in England and Wales, by an applicant who is more than twenty-five years of age, and also twenty-one years older than the infant, unless closely related, and a British subject, resident and domiciled in England or Wales, but a single adopter, only, will be authorized unless two spouses jointly apply. A male may not adopt a female infant unless the Court finds special reasons.

The consents of the parents and guardians (if any) and of any other persons having the custody of, or liable to contribute to, the support of the child, are required, and one of two spouses may not apply without the consent of the other, but the Court may dispense with any of these consents in the special circumstances provided for by the Act.

The Court may impose terms and require the adopter to make and secure such provision for the adopted child as the Court thinks fit. Probationary adoptions not exceeding two years may likewise be authorized, and if the infant had been maintained and in the custody of the proposed adopter for at least two years before 1926, the Court may dispense with the consents referred to. No money or reward may be paid to any adopter, parent or guardian without leave of the Court and no other person may give any such money or reward. The effect of the order is to place the adopted child for all purposes except as mentioned below in the position of a child as if born to the adopter in lawful wedlock, *inter alia* in regard to custody, maintenance and education, appointment of guardians or consent to marriage, and the child assumes the same relation to the adopter, e.g., in regard to liability for the latter's maintenance, and natural parents are deprived permanently of their parental rights, and are required to acknowledge the fact.

In regard to property, however, under any disposition or an intestacy the child retains his status as a child of his or her own parents and does not acquire any right or interest as a child of the adopter. The death duties in respect of any interest in property under any disposition of the adopter and *vice versâ* are leviable as if the child had been born to the adopter in lawful wedlock. See DEATH DUTIES, INTESTACY.

The adoption of children is not recognized by the Common Law of Scotland, but the

Adoption of Children (Scotland) Act, 1930 (20 & 21 Geo. 5, c. 37), provides that upon an application of any person desirous of being authorized to adopt a child, the Court of Session or the Sheriff Court may in certain circumstances make an adoption order authorizing the adoption. Applications are made to the Court within whose jurisdiction the child resides at the date of application, and are heard *in camera*.

For the Roman Law, as altered by Justinian, see *Sand. Just.*

Adoption is much practised amongst the Hindoos, and in the United States of America there are State laws regulating it.—*Chamb. Encycl.*

Except as provided by the Adoption of Children Act, 1926, in English Law any renunciation by parents of their legal rights and liabilities in favour of an adopter is a mere empty form; however desirable an adoption may be, and however solemnly consented to by the parents, it may be cancelled by them, and the adopted children restored to the parents, unless they be legally unfit to have the custody of the children; see Custody of Children Act, 1891 (54 & 55 Vict. c. 3), s. 3. A contract by the mother of even an illegitimate child for the transfer to another person of the rights and liabilities of the mother in respect of the child is invalid (*Humphreys* v. *Polak*, 1901, 2 K. B. 385; *Reg.* v. *Walker*, (1912) 28 T. L. R. 342 and 375).

See *Geary* on *Marriage and Family Relations*, and Law Reform (Misc. Prov.) Act; 1934, s. 2.

Adoption of Poor Child.—Sometimes benevolent persons apply to County or Borough Councils, formerly boards of guardians, to be permitted to adopt children from the workhouse whose parents are unknown. Though there is no legal objection to the authorities giving up the possession of the children under such circumstances, they should satisfy themselves that it is for the child's advantage before consenting to it.—*Glen's Poor Law Orders.* See now the Poor Law Act, 1930 (20 & 21 Geo. 5, c. 17), s. 52.

Adoptive Act of Parliament, an Act which comes into operation within a limited area upon being adopted, in manner prescribed therein, by the local authorities or inhabitants of that area, e.g.:—

The Vestries Act, 1831 (repealed as to rural parishes by the Local Government Act, 1894).

Also the following, which in rural parishes can only be adopted by Parish Meetings:—

The Lighting and Watching Act, 1833. See *Chitty's Statutes*, tit. '*Gas.*'

The (repealed) Baths and Washhouses Acts, 1846 to 1899, and London Government Act, 1899 (62 & 63 Vict. c. 14). See *Chitty's Statutes*, tit. '*Baths.*'

The Burial Acts, 1852 to 1906. See *Chitty's Statutes*, tit. '*Burial.*'

The Public Improvements Acts. See *Chitty's Statutes*, tit. '*Public Improvements.*'

The Infectious Diseases Notification Act, 1879—made general in England by Act of 1899: The Infectious Diseases Prevention Act, 1890 (all repealed): The Public Health Acts Amendment Act, 1907 (part repealed). See PUBLIC HEALTH, and *Chitty's Statutes*, tit. '*Public Health.*'

The Museums and Gymnasiums Act, 1891. See *Chitty's Statutes*, tit. '*Museums.*'

The Public Libraries Act, 1892 to 1919. See *Chitty's Statutes*, tit. '*Libraries.*'

Sometimes an adoptive Act may be put in force in spite of non-adoption, see e.g., s. 3 of the Notification of Birt.. Act, 1907 (7 Edw. 7, c. 40) (repealed). See P. H. Act, 1936.

Ad ostium ecclesiæ, Dower. Where a tenant in fee-simple of full age, openly 'at the door of the church' (where all marriages were formerly celebrated) after affiance made and troth plighted between them, endowed his wife with the whole or such quantity of his land as he pleased, specifying and ascertaining the same, the wife, after her husband's death, might have entered without further ceremony. Abolished by the Dower Act, 1833 (3 & 4 Will. 4, c. 105, s. 13).

Ad Pontem, Pantown in Lincolnshire.

Adpromissor, an accessory to a promise; in order to give a stipulator greater security he guaranteed the fulfilment of a promise.—*Sand. Just.*

Ad quem [Lat.], to whom.

Ad questiones facti non respondent judices; ad questiones legis non respondent juratores. Co. Litt. 295.—(Judges do not answer questions of fact; juries do not answer questions of law). See *Broom's Leg. Max.* Since the Common Law Procedure Act, 1854, and now by R. S. C. Ord. XXXVI., a judge in a civil action may answer questions of fact without a jury.

Ad quod damnum, a writ which ought to be issued before the Crown grants further liberties, as a fair, market, etc., which may be prejudicial to others; it is addressed to the sheriff, to inquire what damage it may do to grant a fair, market, etc. It is also used to inquire of lands given in mortmain to any house of religion, etc.—*Termes de la Ley.* See 27 Edw. 1, st. 2.

Adrectare, to do right, satisfy, or make amends.—*Cowel's Law Dict.*

Adrogation. See ARROGATIO.

Adscripti vel adscriptitii glebæ, a class of slaves, among the Romans, attached to and transferred along with the land which they cultivated.

Adstipulator, an accessory party to a promise, who received the same promise as his principal did, and could equally receive and exact payment; or he only stipulated for a part of that for which the principal stipulated, and then his rights were co-extensive with the amount of his own stipulation.—*Civil Law.*

Ad terminum qui preterit, a writ of entry, which lay for a lessor or his heirs, where a lease of premises had been made for life or years, and after the term had expired the premises were withheld from the lessor or his heirs, by the tenant or other person in possession of them; but see now the titles, DOUBLE RENT and DOUBLE VALUE.

Ad tunc et ibidem [Lat.] (then and there).

Adulteration, the corrupt production of any article, especially food: indictable at common law (see *R.* v. *Dixon,* (1814) 3 M. & S. 11). The adulteration of bread, corn, meal, or flour is made a statutory offence by the Bread Act, 1836, and the Bread Acts (Amendment) Act, 1922 (12 & 13 Geo. 5, c. 28), and that of food, including drink, generally by the Food and Drugs (Adulteration) Act, 1928 (18 & 19 Geo. 5, c. 31).

By this Act the mixing, colouring, staining or powdering of any article so as to render it injurious to health, as to affect injuriously the quality of the drugs or lettering any article in such estate, is punishable for a first offence by a fine not exceeding 50*l.*; for a second offence by imprisonment not exceeding six months. The sale to the prejudice of the purchaser of articles of food and drugs not of the nature, substance or quality demanded by the purchaser, is prohibited. Where, however, the article is properly labelled as mixed, no liability arises. Provision is made for setting up of Food and Drug Authorities, who can appoint analysts who have powers of sampling articles for the purpose of analysis. Prosecution for offences is in accordance with the Summary Jurisdiction Acts. The Act also has special provisions dealing with milk, butter, margarine, cheese, etc.

As regards milk the complete public control over the production and distribution is provided by the Milk and Dairies (Consolidation) Act, 1915 (5 & 6 Geo. 5, c. 66), the Milk and Dairies (Amendment) Act, 1922 (12 & 13 Geo. 5, c. 54), and the Statutory Rules and Orders.

Cream which is artificial cream must not be sold except as artificial cream; for a definition of cream and artificial cream see the Artificial Cream Act, 1929 (19 & 20 Geo. 5, c. 32) s. 6; and *Lyons* v. *Keating,* 1931, 2 K. B. 525.

Tea.—See the Adulteration of Tea and Coffee Act, 1724 (11 Geo. 1, c. 30); the Adulteration of Tea Act, 1776 (17 Geo. 3, c. 29), and the Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), s. 30, provide for the examination of imported tea. See TEA.

As to food imported from abroad, see Public Health (Regulations as to Food) Act, 1907 (7 Edw. 7, c. 32), and the Public Health (Imported Food) Amendment Regulations, 1933 (S. R. & O., 1933, No. 347), and see FERTILIZERS, UNSOUND FOOD.

As to the adulteration of seeds, see Adulteration of Seeds Act, 1869 (32 & 33 Vict. c. 112); Adulteration of Seeds Act, 1878 (41 Vict. c. 17); the Seeds Act, 1920 (10 & 11 Geo. 5, c. 54), and the Amending Act, 1925 (15 & 16 Geo. 5, c. 667), deal with the sale and use of seeds and provide for the testing of them.

In addition to the Acts mentioned above, the following should be referred to: Bread Acts Amendment Act, 1922 (12 & 13 Geo. 5, c. 28), the Milk and Dairies (Consolidation) Act, 1915 (5 & 6 Geo. 5, c. 66), and the Amendment Act of 1922 (12 & 13 Geo. 5, c. 54).

Adulterine, the issue of an adulterous intercourse. Consult *Sir Harris Nicolas on Adulterine Bastardy.*

Adulterine Guilds, traders acting as a corporation without a charter, and paying a fine annually for permission to exercise their usurped privileges.—*Smith's Wealth of Nations,* bk. 1. c. 10.

Adulterium, a fine imposed for the commission of adultery.

Adultery [*ad.* Lat., and *alter,* another person], anciently termed *Advowtry* (*quasi ad alterius thorum*). The sin of incontinence between two married persons, or it may be where only one of them is married, in which case it may be called single adultery to distinguish it from the other, which has sometimes been called double.

By the Matrimonial Causes Act, 1857, which created a Court for Divorce and Matrimonial Causes (superseding the Ecclesiastical Court) which would grant to the innocent party a divorce *a mensâ et thoro* on the ground of the other's adultery, a hus-

band could obtain a dissolution of his marriage (before that Act, only obtainable and not infrequently obtained by a private Act of Parliament) upon the ground of his wife's adultery, and a wife could obtain a judicial separation on the ground of her husband's adultery, or a dissolution of marriage on the ground of his adultery coupled with cruelty or desertion or bigamy, or of his incestuous adultery, provided there be no collusion or connivance, and that the alleged charges have not been condoned. The Matrimonial Causes Act, 1923, gave a wife the right to divorce a husband for adultery only if committed after the marriage and since July 18, 1923. Section 176 of the Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), now governs the grounds for divorce, and s. 185 those for judicial separation. By s. 189 a husband may claim damages from an adulterer (who in ordinary circumstances must be made a co-respondent, s. 177) to be assessed by a jury, and the Court has power to direct in what manner the damages shall be paid and that the whole or any part thereof shall be settled for the benefit of the children or the wife. See now DIVORCE and also HUSBAND AND WIFE.

Where a man finds another in the act of adultery with his wife (see *Rex* v. *Greening*, 1913, 3 K. B. 846), and kills him or her, in the first transport of passion, he is only guilty of manslaughter, and this has been extended to a sudden confession by a wife of past adultery (*R.* v. *Rothwell*, (1871) 12 Cox, C. C. 145; *Rex* v. *Jones*, (1908) 72 J. P. 215); but the killing of an adulterer deliberately and upon revenge is murder.

Formerly the husband of an adulteress was relieved from the obligation to support her, though he himself had committed adultery, and was the first offender, but now see the very full powers of granting maintenance and alimony which the Court has by virtue of the Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 190. Proof of a wife's adultery is a good defence to a summons against the husband for maintenance under s. 6 of the Summary Jurisdiction (Married Women) Act, 1895, unless the husband has condoned, connived at or conduced to the adultery. An order already made may be set aside by proof of the wife's subsequent adultery, or even on proof of prior adultery, if unknown to the husband at the time of the previous hearing, or if he was unable to prove it owing to sufficient cause, e.g., non-attendance through illness.

The word is also used by ecclesiastical writers to describe the intrusion of a person into a bishopric during the former bishop's life. The reason of the appellation is, that a bishop is supposed to contract a sort of spiritual marriage with his church.

Adultery is a ground of divorce in Scotland.

Adurni portu, De, Etherington, or Ederington.

Ad valorem, a term used in speaking of the duties or customs paid on certain goods (see e.g. Import Duties Act, 1932 (22 Geo. 5, c. 8)); the duties on some articles are paid by the number, weight, measure, tale, etc., and those on others are paid *ad valorem*—that is, according to their value. The term is used also of stamp duties, which, in many cases—e.g., in the case of an award, a bill of exchange, a conveyance or transfer, and a lease—are payable under the Stamp Act, 1891, according to the value of the subject-matter of the particular instruments or writings. See STAMP DUTIES.

Advance [fr. *avancer*, Fr., to push forwards, fr. *avant*, Fr., *avante*, It., *ab ante*, Lat.], money paid before it is due; a loan; increase.

Advance Note. A draft on the owners of a ship or their agents issued by the captain to a seaman for a sum not exceeding a month's wages payable to the seaman's order after the sailing of the ship, provided he goes to sea pursuant to his agreement (Merchant Shipping Act, 1894, s. 140).

Advanced Member, a member of a building society who has obtained an advance of money from the society on mortgage of real or leasehold estate; see BUILDING SOCIETY.

Advancement, promotion; additional price. An advancement clause in a settlement or will is a provision authorizing the trustees, with the consent of the tenant for life, to pay by anticipation a limited portion of the share to which a remainderman will ultimately be entitled for his benefit or advancement in life.

In equity the presumption of advancement is an important exception to the doctrine of resulting trusts that a conveyance to a stranger without a consideration is merely a nominal one, and no intention on the face of it of conferring the beneficial interests will result to the grantor. The presumption of advancement generally arises where a person advances money for the purchase of any property or right in the name of another for whom the purchaser is under a legal or even in some cases a moral

obligation to provide. It will arise in favour of a wife, legitimate children, and in some cases in regard to persons to whom the purchaser stands *in loco parentis*, but it has been held not to arise where the money was advanced for a purchase in the name of a wife who had not been legally married (*Soar* v. *Foster*, 4 K. & J. 152) or of a mistress (*Rider* v. *Kidder*, 10 Ves. 360). A purchase by a parent in the joint names of himself and his child and a stranger will be held an advancement for the child to the extent of the interest vested in him, the stranger, however, holding the interest vested in him in trust for the parent. The presumption of advancement is rebuttable by parol or other extrinsic evidence. In all cases the whole of the surrounding circumstances must be considered (*Re Whitehouse*, 37 C. D. 683). See *Lewin on Trusts*.

By the A. of E. Act, 1925, s. 47 (1) (iii.) (replacing s. 3 of the Statute of Distribution), any money or property which has been paid or settled by way of advancement or on the marriage of a child shall, subject to any contrary intention expressed or appearing, be brought into account and taken towards satisfaction of the child's share in the intestate estate as provided by the A. E. Act, 1925. The child may elect not to take under the intestacy (see *Wolst. & Ch. Conv. Acts*, vol. 2, p. 1502).

A power conferred by settlement upon trustees authorizing them to advance a part (or the whole) of the estate or funds to which a beneficiary may ultimately become entitled under the will or settlement for his or her benefit before the period of enjoyment or vesting. The Trustee Act, 1925, s. 32, confers very wide powers on trustees (extended in the case of intestacies by s. 47 (1) of the A. E. Act, 1925, to personal representatives) to advance up to one half of the beneficiary's interest in personal property and proceeds of a trust for sale of land, subject to the protection of interests prior to the interest of the beneficiary and other conditions as provided by s. 32 of the Trustee Act, 1925. The section only applies to trusts constituted or created after 1925 and does not extend the power to land or capital money for the purposes of the S.L.A., 1925. In all settlements of land other than by way of trust for sale a power of advancement should be conferred expressly if so intended by the settlement See *Lewin on Trusts*.

Adventitious, that which comes unexpectedly or incidentally.

Ad ventrem inspiciendum [to inspect the womb]. See DE VENTRE INSPICIENDO.

Adventure [fr. *advenire*, Lat., to come to], the sending to sea of a ship or goods at the risk of the sender.

Adventure, Bill of, a writing signed by a merchant, stating that the property in goods shipped in his name belongs to another, to the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce.

Adversaria [*adversa*, things remarked or ready at hand], rough memoranda, commonplace books.

Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that person's title, see Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time when the right first accrued, and does away with the doctrine of adverse possession, except in the cases provided for by s. 15. See *Nepean* v. *Doe*, (1837) 2 M. & W. 910.

Possession is not held to be adverse if it can be referred to a lawful title. *Doe* v. *Bightwen*, 10 East, 583, *Wall* v. *Stanwick*, 34 Ch. D. 763. Non-adverse possession is of two kinds. The title of the dispossessed may not be paramount, as in the case of a leasehold term when dispossession of the lessee is not necessarily inconsistent with the reversioner's rights, and secondly, the person setting up dispossession may have been holding under the rightful owner's title, e.g., trustees, guardians, bailiffs or agents. Such persons cannot set up possession adverse to their *cestui que* trust, principal or persons for whom they are acting or may be presumed to be acting until the character of the possession is changed. See *Nepean* v. *Doe*, (1834) 2 M. & W. 894, *Sm. L. C.*, *Carson's R. P. St.*, and LIMITATION OF ACTIONS.

Advertisement [fr. *avertissement*, Fr.], a public notice or announcement of a thing.

The duties payable on advertisements were repealed by 16 & 17 Vict. c. 63, s. 5.

As to the protection afforded to Trustees and Personal Representatives by issuing an advertisement for creditors before distributing any real or personal property, see Trustee Act, 1925, s. 27, amended by the Law of Property (Amend.) Act, 1926, s. 7, and extending the Law of Property Amendment

Act, 1859 (22 & 23 Vict. c. 35), s. 29; *Re Bracken*, (1890) 43 Ch. D. 1.

The regulation of advertisements is provided for by the Advertisements Regulation Act, 1907 (7 Edw. 7, c. 27), and the Ancient Monuments Act, 1931 (20 & 21 Geo. 5), s. 7. See also Advertisements Regulation Act, 1925, respecting advertisements affecting the view or amenities of a village or historic building. Advertisements for stolen property may amount to an offer to compound a felony, and thus constitute an offence within s. 102 of the Larceny Act, 1861. See *Mirams* v. *Our Dogs Publishing Co.*, 1901, 2 K. B. 564, and the Larceny Advertisements Act, 1870 (33 & 34 Vict. c. 65).

Persons advertising the treatment of, or any remedy for, venereal disease may be summarily proceeded against under the Venereal Disease Act, 1917 (7 & 8 Geo. 5, c. 21).

As to defacing advertisements set up by local authorities, see Public Health Acts Amendment Act, 1890 (c. 59), s. 48, and for advertising in streets by wearing fancy dress or to drive, etc., any animal or vehicle either wholly or partly for advertisement, see London Traffic (Miscellaneous Provisions) Consolidation Provisional Regulations, 13th April, 1934.

Persons affixing to walls, etc., any advertisements ' of any indecent or obscene nature ' may be summarily proceeded against under the Indecent Advertisements Act, 1889 (52 & 53 Vict. c. 18). *Chit. Stat.*, tit. ' *Criminal Law.*'

The owner of land used for advertisements and not otherwise occupied is rateable, according to the value of such use, by virtue of the Advertising Stations (Rating) Act, 1889 (52 & 53 Vict. c. 27).

See STOLEN GOODS; REWARD; LIBEL; SUBSTITUTED SERVICE; SKY SIGN; and as to contract by acceptance of advertised offer, see *Carlill* v. *Carbolic Smoke Co.*, 1893, 1 Q. B. 256.

By the Health Resorts and Watering Places Act, 1936 (26 Geo. 5, and 1 Edw. 8, c. 48), powers are given to local authorities to levy a rate for the purpose of advertising the amenities of the district.

Advice [fr. *avis*, Fr., *avviso*, It., *avice*, Old Eng.], view, opinion, counsel; also, the instruction usually given by one merchant or banker to another by letter, informing him of bills or drafts drawn on him, with particulars of date, or sight, the sum, and the payee. Bills presented for acceptance or payment are frequently dishonoured for ' want of advice.'

Advice on Evidence. The advice of counsel is usually taken as to the evidence with which it is necessary to be prepared at the trial of an action. It is customary to lay all the papers before counsel for this to be done as soon as the pleadings are closed and the case entered for trial.

Advisement, deliberation.

Ad vitam aut culpam, an office which is to determine only by the death or delinquency of the holder, or which is, in fact, held *quamdiu se bene gesserit* (so long as he conducts himself properly). See *Encyc. of Scots Law.*

Advocare [(Lat.) *Tyman getyman*, Ang.-Sax.], to defend, to call to one's aid, also to vouch to warranty.

Advocate [Lat. *advocatus*], a patron of a cause assisting his client with advice, and pleading for him. He is defined by Ulpian (*Dig.* 50, tit. 13) to be any person who aids another in the conduct of a suit or action. The term is at the present day confined to persons professionally conducting cases in Court, i.e., Barristers and Solicitors (*q.v.*).

In the English Ecclesiastical and Admiralty Courts, until 1857, certain persons learned in the civil and canon law, called advocates, had the exclusive right of acting as counsel. They were members of a college situate at Doctor's Commons, incorporated by charter, June 22, 8 Geo. 3, under the title of ' The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts,' and had, previously to their admission to that college, taken the degree of Doctor of Laws at an English university. The jurisdiction of the Ecclesiastical Courts in matters matrimonial and testamentary was in 1857 transferred to the Court for Divorce and Matrimonial Causes and the Court of Probate respectively. It is now vested in the High Court, see Judicature Act, 1925, s. 21.

In Scotland all counsel are called advocates. See ADVOCATES, FACULTY OF; and BARRISTER.

Advocate, Lord, the principal Crown Lawyer in Scotland, and one of the great Officers of State of Scotland. It is his duty to act as public prosecutor; but private individuals injured may prosecute upon obtaining his concurrence. He is assisted by a Solicitor-General and four junior counsel, termed advocates-depute. He has the power of appearing as public prosecutor in any Court in Scotland where any person can be

tried for an offence, or in any action where the Crown is interested, but it is not usual for him to act in the inferior Courts, which have their respective public prosecutors, called procurators-fiscal, acting under his instructions. He does not, in prosecuting for offences, require the intervention of a grand jury, except in prosecutions for treason, which are conducted according to the English method. Until the creation of the office of Secretary for Scotland the Lord Advocate was virtually Secretary of State for Scotland. Consult *Omond's Lord Advocates of Scotland.*

Advocate, King's, a member of the College of Advocates, appointed by letters patent, whose office was to advise and act as counsel for the Crown in questions of civil, canon, and international law. It is believed that the office has never been formally abolished.

Advocates, Faculty of, the bar of Scotland. The Faculty was instituted along with the College of Justice in 1532. Members are entitled to plead in every Court in Scotland, and also before the House of Lords, the Judicial Committee of the Privy Council, and Parliamentary committees. In the Supreme Courts in Scotland they have an exclusive right of audience except (1) where a party conducts his own case, and (2) in cases falling under s. 3 of the Administration of Justice (Scotland) Act, 1933. The head of the Faculty is Dean of Faculty, who is elected annually. He takes precedence of all other members of the Bar except the Lord Advocate; these two and the Solicitor-General for Scotland in Court sit within the Bar. Before 1897 only the Law Officers and Deans of Faculty were appointed King's Counsel, but since that year it has been the practice to confer this honour on distinguished Counsel recommended by the Lord Justice-General. They do not sit within the Bar. The Library of the Faculty was in 1925 transferred to the nation and is now the National Library of Scotland.

Advocates in Aberdeen, Society of. A society of Solicitors in Aberdeen, originating in 1633. Until the passing of the Law Agents Act of 1873, they enjoyed the exclusive privilege of practising in all the Courts within the City of Aberdeen.

Advocati, patrons of churches.

Advocatia, the quality, function, privilege, or territorial jurisdiction of an advocate.—*Civil Law.*

Advocati fisci, advocates of the revenue among the Romans.

Advocation, a process by which an action was carried from an inferior to a superior Court in Scotland. By the Court of Session Act (31 & 32 Vict. c. 100), s. 64, the process of advocation is abolished, and appeals are substituted.

Advocatione decimarum, a writ which lay for tithes, demanding the fourth part or upwards that belonged to any church.—*Reg. Brev.* 29.

Advocatus diaboli, the devil's advocate, the name popularly given to the promoter of the Faith (*promotor fidei*), an officer of the Sacred Congregation of Rites at Rome, whose duty is to prepare all possible arguments against the admission of any one to the posthumous honours of beatification and canonization.—*Enc. Brit.*

Advow, or **Avow,** or **Avouch** [under the feudal system, when the right of a tenant was impugned, he had to call upon his lord to come forward and defend his right. This, in the Latin of the time, was called *advocare,* Fr. *voucher à garantie,* to vouch or call to warrant. As the calling the lord of the fee to defend the right of the tenant involved the admission of all the duties implied in feudal tenancy, it was an act jealously looked after by the lords, and *advocare,* or the equivalent, Fr. *avouer,* to avow, came to signify the admission by a tenant of a certain person as feudal superior. Finally, with some grammatical confusion, the words *advocare,* and avow or avouch, came to be used in the sense of performing the part of the vouchee, or person called on to defend the right impugned. *Wedgw.*], to justify or maintain an act, e.g., one distrains for rent, and he that is distrained brings an action of replevin; if the distrainer in his defence justify or maintain his act, he is said to advow or avow, and his plea is called avowment or avowry. See AVOWRY.

It also signifies to call upon or produce—thus anciently, where stolen goods were bought by one and sold to another, it was lawful for the right owner to take them wherever they were found, and he in whose possession they were found was bound to produce the seller to justify the sale, and so on till they found the thief.—*Old Nat. Br.* 43.

Advowee, or **Avowee,** the person or patron who has a right to present to a benefice.—*Fleta, lib.* v. c. 14.

Advowee paramount, the sovereign, or highest patron.

Advowson [fr. *advocare,* Lat.], a right of presentation to, or the patronage of, a church or spiritual living; the person possessed of

this right or patronage being called the patron or advocate (*patronus aut advocatus*), on account of his obligation to protect and defend the privileges of the particular benefice. An advowson is in the nature of a temporal property and spiritual trust. For the origin and history of advowsons, consult *Mirehouse on Advowsons*, pp. 1-6.

There are several kinds of advowsons, viz. :—

(I.) Presentative advowsons, subdivided into,
  Appendant.
  In gross, and
  Partly appendant, and partly in gross.

(II.) Collative advowsons.

(I.) A presentative advowson appendant is a right of patronage annexed to the possession of some corporeal hereditament. Thus, where an advowson has immemorially passed together with a manor or reputed manor by a simple grant of such manor, without particularly referring to the advowson, it is then said to be appendant, i.e., annexed to the demesnes of such manor, which subsist perpetually.

A presentative advowson in gross is a right of patronage self-subsistent, belonging to the patron as an individual, and not in any wise appendant to a corporeal inheritance.

While a few advowsons were originally in gross, as when the right originated in an agreement that a builder of a church and his heirs should be its patrons *ratione fundationis*, yet the greater number of them were primarily appendant, becoming by subsequent circumstances severed in gross.

The severance may take place in several modes :—(1) when the corporeal inheritance is conveyed away, with a special reservation of the advowson ; (2) when the advowson is granted away, and not the corporeal inheritance to which it was incident ; (3) when the patron presents to it as though it were already severed. An advowson, once completely and unconditionally severed, can never again become appendant. But should an advowson be disappended conditionally, as in the case of a mortgage, it will reunite when the loan is repaid. So, if the advowson be excepted in a lease of the corporeal inheritance, it remains in gross during the lease, but upon its expiration it becomes appendant again. These instances, however, are rather suspensions than severances.

A disappendancy created by a wrongful act may be done away with by defeating such act ; and should it be effected by operation of law, the appendancy will be preserved, unless otherwise expressly intended.

A presentative advowson may be partly appendant and partly in gross ; thus, when the owner grants to another every second presentment, for then the advowson will be appendant for the grantor's turn, and in gross for that of the grantee. And should the advowson appendant, and that in gross, be afterwards possessed by the same person, still the advowson will be appendant for one turn, and in gross for the other. So, if three persons be seised of a manor with a presentative advowson appendant, and two of them release their right of the patronage to the third, he then becomes seised of two-thirds of the advowson as in gross and of the unsevered third as appendant ; but on death of this third person, the entire advowson will devolve in gross upon his heir or devisee. —*Mirehouse on Advowsons*, 20.

(II.) A collative advowson arises when a bishop has the right of patronage. Collation is the conferring of a benefice by a bishop. It is an immediate institution without any presentation, and is completed by the induction of the collatee. Where a bishop collates and dies before induction, the Crown presents as having in its custody the temporalities of the vacant bishopric.

There was also formerly another class called donative advowsons, but they are all now converted into presentatives : see DONATIVE.

The transfer of presentative advowsons is much restricted by the Benefices Act, 1898 (61 & 62 Vict. c. 48), and by the Benefices Act, 1898 (Amendment) Measure, 1923 (14 & 15 Geo. 5), No. 1. See also the Benefices (Transfer of Rights of Patronage) Measure, 1930 (20 & 21 Geo. 5), No. 8, and the Benefices (Purchase of Rights of Patronage) Measure, 1933 (23 Geo. 5), No. 1 (see BENEFICE).

The patrons of united churches (1 & 2 Vict. c. 106, ss. 15 *et seq.* ; and 4 & 5 Vict. c. 39, s. 23) have several rights, for though there be but one advowson, yet every patron has the whole advowson in his turn, since the patronage remains as before, though by the union the incumbency of one church is extinguished ; and though the incumbency of the churches is united, the tithes, boundaries, moduses, and profits continue as before, for there can be no union of parishes though there be of churches.

As to the exchange of advowsons, see 3 & 4 Vict. c. 113, s. 73, and 4 & 5 Vict. c. 39, s. 22 and *Elcho (Lord)* v. *Andrews*, 1910, 1 Ch. 706.

As to the sale of advowsons held by or in trust for parishioners and others forming a numerous class, see 19 & 20 Vict. c. 50. By the Lord Chancellor's Augmentation Act, 1863 (26 & 27 Vict. c. 120), the Lord Chancellor is authorized to sell the numerous advowsons specified in the schedule to that Act, the proceeds to be applied in the augmentation of benefices and otherwise. As to the union of contiguous benefices in cities, towns, and boroughs, see 23 & 24 Vict. c. 142. See NEXT PRESENTATION.

Æbudæ, the Hebrides or Western Isles of Scotland.

Ædificatum solo, solo cedit. *Co. Litt.* 4 *a.*—(That which is built upon the land goes with the land.) See FIXTURES.

Æfesn. [*Pasnagium* or *Pannagium*, Lat.], the remuneration to the proprietor of a domain for the privilege of feeding swine under the oaks and beeches of his woods.

Æglesburgus, Aylesbury in Buckinghamshire.

Ægylde, or **Agylde,** or **Orgylde** [*inultus*, Lat.], uncompensated, unpaid for, unavenged. From the participle of exclusion, *a*, *æ*, or *ex* (Goth.), and *gild*, payment, requital.—*Anc. Inst. Eng.*

Ægyptians, commonly called Gypsies. See GYPSIES.

Æhlip, transgression of the law.—*Ancient Inst. Eng.*

Æhte-swan [*Servus Porcarius*, Lat.], a swine herd, from 'æht,' property, and 'swan' (Old Norse or Icelandic, *sveinn*), a servant.—*Ibid.*; *Bosworth, Ang. Sax. Dict.*, 1898, p. 13.

Ælmfeoh, or **Ælmsfeoh,** Peter pence, which used to be paid to the Pope.

Ærarium, the State Treasury of Rome. Under the Emperors the ærarium as the public treasure was distinguished from the fiscus, the privy purse of the emperor.—See FISCUS.

Aerial Navigation. The Aerial Navigation Acts, 1911, 1913 and 1919, were repealed by the Air Navigation Act of 1920 as amended, which together with the Air Navigation Orders thereunder contain the general law, and see also the Air Navigation Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 44). The purpose of this legislation was (*inter alia*) to prevent air-craft from being a military danger and to protect persons on the ground. Air-craft from abroad are obliged to land in specified areas. Very stringent powers of enforcing orders are given, including power to fire into any disobedient craft. Air-craft are now included among the things which may be requisitioned for army purposes; see Army (Annual) Act, 1913, s. 5. For rules of the air, see *The Air Navigation (Consolidation) Order*, 1923 (S. R. & O. 1923, No. 1508). For the composition of the Air Force and Air Force Reserve, see the Air Force Act, 1917, and succeeding Acts, also the Army (Annual) Acts.

Æria [fr. *æria accipitum*, Lat.], an airy, or nest of goshawks.—*Spelm. Glos.*

Æstimatio capitis [*pretium hominis*, Lat.], fines paid for offences committed against persons according to their degree and quality, by estimation of their heads, ordained by King Athelstane.—*Cressy, Ch. Hist.* 834.

Ætate probanda, a writ which inquired whether the king's tenant, holding in chief by chivalry, was of full age to receive his lands. It was directed to the escheator of the county. Long disused.—*Reg. Brev.* 294.

Ætheling, a noble, though generally signifying a prince of the blood.—*Anc. Inst. Eng.*

Æthlyp [fr. *evasio*, Lat.], escape, assault. The old Latin version renders it *conclamatio.*—*Ibid.*

Affairs, a person's concerns in trade or property.

Affairs of the Church. These, including the distribution of offertories and other collections made in any church, were transferred by the Parochial Church Councils (Powers) Measure, 1921 (11 & 12 Geo. 5), No. 1, to the control of the Parochial Church Council.

Affectum, challenge propter.—See JURY.

Affeerors [fr. *afeurer*, or *afferer*, Fr., to tax, fr. *forum*, Lat., a market], persons who, in courts-leet, upon oath, settle and moderate the fines and amercements imposed on those who have committed offences arbitrarily punishable, or that have no express penalty appointed by statute. They are also appointed to moderate fines, etc., in courts-baron.—*Cowel's Law Dict.*; 4 *Bl. Com.* Shakespeare was an affeeror in Stratford-on-Avon.

Affiance [fr. *fidem dare*, Lat.], the plighting of troth or promise between a man and woman, upon agreement of marriage.—*Termes de la Ley*; *Co. Litt.* 34 *a.*

Affidare, to plight faith, or give or swear fealty, i.e., fidelity.—*Cowel's Law Dict.*

Affidatio dominorum, an oath taken by the lords in parliament.—*Ibid.*

Affidatus, a tenant by fealty, a retainer.—*Blount.*

Affidavit [fr. *affidare*, M. Lat., to pledge one's faith, fr. *fides*, Lat.], a written state-

ment sworn before a person having authority to administer an oath.

By the practice of the Supreme Court of Judicature, all evidence is, as a rule, to be given *viva voce;* but this may be altered by agreement of the parties, or the Court or a judge may for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial on such conditions as are thought reasonable; provided that no such order be made where a witness can be produced and is *bonâ fide* required for cross-examination (R. S. C. 1883, Ord. XXXVII., r. 1). A New Procedure is provided for by R. S. C., Ord. XXXVIII. A., r. 8 J. Affidavits must be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted.

As to time for filing affidavits, see Ord. XXXVIII., r. 25.

Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript (R. S. C. 1883, Ord. LXVI., r. 4).

Where the above rules do not state anything to the contrary, the practice previously existing in reference to affidavits is still applicable (Jud. Act, 1925, s. 101). In the Chancery Division, motions and proceedings, commenced by originating summons, are heard on affidavit evidence. So applications for attachments, certiorari, criminal information, mandamus, quo warranto, and other processes are usually made on affidavit (see, e.g., r. 53 of the Crown Office Rules of 1886), and by R. S. C. 1883, Ord. LII., r. 4, copies of affidavits intended to be used on the hearing of a motion for attachment, to set aside an award, and in certain other cases must be served on the other party together with the notice of motion. Any person who has made an affidavit in any cause or matter is liable to be cross-examined thereon. See Ord. XXXVIII., r. 28.

The Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), repealing 24 enactments from 16 & 17 Car. 2, c. 9, to s. 18 of the Solicitors Act, 1877, regulates the appointment and powers of commissioners to 'administer any oath or take any affidavit' in England or elsewhere. See COMMISSIONER FOR OATHS, and also AFFIRMATION and DECLARATION.

Affidavit of Documents, an affidavit by a party against whom an order for discovery has been made specifying all the documents material to the matters in dispute in the action which are or have been in his possession or power. See DISCOVERY.

Affidavit of Increase. See INCREASE.

Affidavit Office in Chancery, abolished by 15 & 16 Vict. c. 87, ss. 27 and 29, and its duties transferred to the Clerks of Records and Writs.

Affidavit to hold to Bail. By the Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 3, it was provided that upon an affidavit of the existence of a debt to the amount of 20*l.* or upwards, and that a defendant was about to quit England, the plaintiff might apply to a judge to hold such defendant to bail. The Bankruptcy Repeal and Insolvent Court Act, 1869, s. 20, repealed the above section and substituted other provisions. See ABSCOND.

Affidiari (*seu affidiari ad arma*), to be mustered and enrolled for soldiers, upon an oath of fidelity.—*Cowel's Law Dict.*

Affiliation, the fixing any one with the paternity of a bastard child and the obligation to maintain it. The process is regulated by the Bastardy Acts, 1845, 1872, and 1873 (8 & 9 Vict. c. 10, 35 & 36 Vict. c. 65, and 36 Vict. c. 9), and the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), ss. 4–8, *Chitty's Statutes,* tit. '*Bastardy.*' The law has been further amended by the Affiliation Orders Act, 1914, which provides for the payment of money through an officer of the Court unless ordered to be paid to applicant personally, and the Bastardy Act, 1923, which makes the maximum sum payable per child 20*s.* per week, and see 25 & 26 Geo. 5, c. 46. The evidence of the mother must be corroborated in some material particular by other testimony, by virtue of s. 6 of the Act of 1845, and s. 4 of the Act of 1872 (*Cole* v. *Manning,* (1877) 2 Q. B. D. 611; *Thomas* v. *Jones,* 1921, 1 K. B. 22).

As to issue of process for compelling attendance of witnesses, see Bastardy (Witness Process) Act, 1929 (c. 38), and Poor Law Act, 1884, s. 70, as regards bastardy proceedings. See *Lushington on Affiliation.*

Affinage [*purgatio metalli,* Lat.], refining metal, hence fine and refined.—*Blount.*

Affinitas affinitatis, the connection which has neither consanguinity nor affinity, as, the connection between a husband's brother and his wife's sister.

Affinity, relationship by marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband.—1 *Bl. Com.* 434.

Affinity is distinguished into three kinds, (1) *Direct*, or that subsisting between the husband and his wife's relations by blood, or between the wife and the husband's relations by blood. (2) *Secondary*, or that which subsists between the husband's and his wife's relations by marriage. (3) *Collateral*, or that which subsists between the husband and the relations of his wife's relations.

Marriage within the prohibited degrees of affinity as well as of consanguinity as printed in the Prayer Book Table is void by s. 2 of the Marriage Act, 1835 (5 & 6 Wm. 4, c. 54), as varied by the Marriage (Prohibited Degrees of Relationship Acts, 1907 to 1931. See CONSANGUINITY; MARRIAGE.

Affirm, to ratify or confirm a former law or judgment; to make a statement which, though not on oath, carries with it, if false, the penalties of perjury.

Affirmance, the confirmation of a voidable act.

Affirmant, a person who solemnly affirms, instead of taking an oath.

Affirmation, a solemn declaration without oath; the being allowed to make it was an indulgence at first confined to the people called *Quakers*, and *Moravians* (9 Geo. 4, c. 32, s. 1; 3 & 4 Wm. 4, c. 49), and to *Separatists* (3 & 4 Wm. 4, c. 82), but was afterwards extended to all persons objecting to take an oath. See Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 20; 24 & 25 Vict. c. 66 (criminal proceedings); 30 & 31 Vict. c. 35, s. 8 (jurors); and particularly the Evidence Amendment Act, 1869, s. 4 (extended to evidence before arbitrators and others by 33 & 34 Vict. c. 49, s. 1), under which persons having no religious belief were first allowed to affirm, the former statutes having applied only to persons prevented by a religious belief from swearing.

The Act of 1869, however, did not apply to promissory oaths, e.g., to the oath directed by the Parliamentary Oaths Act, 1866, as amended by the Promissory Oaths Act, 1868, to be taken by Members of Parliament (*Clarke* v. *Bradlaugh*, (1880) 7 Q. B. D. 38).

Finally, therefore, the Oaths Act, 1888 (see OATHS) (51 & 52 Vict. c. 46), has allowed every person objecting to be sworn to affirm, instead of taking an oath, in all places and for all purposes where an oath is required by law. A form of affirmation sufficient to satisfy the requirements of this Act is:—

'I A.B. solemnly and sincerely affirm and declare as follows' [*or* 'that as touching the matters in question I will speak the truth, the whole truth, and nothing but the truth'].

For the purposes of the Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), the forms and ceremonies used in administering an oath are immaterial, and the expression 'oath' in the Act includes 'affirmation'; see s. 15. See the False Oaths (Scotland) Act, 1933 (23 & 24 Geo. 5, c. 20), which consolidates and simplifies the law of Scotland relating to false oaths, declarations and statements.

Affirmative pregnant, an assertion implying a negation.

Afforare, to set a price or value on a thing. See AFFEERORS.—*Blount.*

Afforatus, appraised or valued, as things vendible in a fair or market.—*Cowel.*

Afforciament, a fortress, stronghold, or other fortification.—*Cowel.*

Afforciare, Afforce, to add, increase, or make stronger; in case of disagreement of the jury, let the assize be increased, which is an enforcement of the assize.—*Cowel.*

Afforest, to turn ground into a forest.—*Carta de Foresta*, c. 1. See Forestry Act, 1919 (9 & 10 Geo. 5, c. 58), and FOREST.

Affranchise, to make free.

Affray [fr. *effrayer*, Fr. to affright], a skirmish or fighting between two or more persons; there must be a stroke given or offered, or a weapon drawn, otherwise it is not an affray. It is a public offence, and is so called because it affrights persons. It differs from an assault in that it is a wrong to the public, while an assault is of a private nature.—1 *Hawk. P. C.* 154.

Affreightment [fr. *fret*, Fr.], the contract of a shipowner to carry goods for the payment called freight. See CHARTER-PARTY; BILL OF LADING.

Affri, or **Affra,** bullocks, horses, or beasts of the plough.—*Cowel.*

Aforesaid, already mentioned.

Aforethought, prepense, premeditated.

A fortiori [by so much stronger (reason), Lat.]. It is thus applied:—A private person, and *à fortiori* a peace officer (*it being his especial duty*), who is present at the commission of a felony, is bound by the law to arrest the felon, on pain of fine and imprisonment. —2 *Hawk. P. C.* 74.

African Company, a company which, under a charter of Charles II., enjoyed an exclusive trade from the port of Sallee, in South Barbary, to the Cape of Good Hope, both inclusive, with all the islands near to those coasts. Several statutes were passed, placing their trade upon a new footing, but 1 & 2 Geo. 4,

c. 28, abolished the company and annulled all the grants made to them; under it the Crown took possession of their forts and castles, and the trade was thrown open.

After-acquired Property. A covenant to settle any property that may be acquired by the wife subsequently to the marriage is often inserted in marriage settlements. The construction and effect of such a covenant depends chiefly on the language of the covenant itself. See *Wurtzburg on Covenants for the Settlement of a wife's after-acquired property;* Bankruptcy Act, 1914, s. 42 (2). And see SETTLEMENT.

Aftermath, the second crop of grass after a meadow has been mown for hay.

Agard, award.

Age, the criminal responsibility of males and females, and their power to do certain acts, depends upon their age. A child under 7 cannot commit any offence; between the ages of 7 and 14 is presumed to be *doli incapax*, but this presumption may be rebutted by evidence of the infant's capacity to discern good from evil (*malitia supplet ætatem*—malice supplies age). The old rule in criminal matters was that a person of the age of 14 might be capitally punished for any capital offence, but under the age of 7 he could not. A male under the age of 14 years is presumed impotent as well as *doli incapax*, and since the presumption of impotence cannot be rebutted (*R.* v. *Phillips*, 8 C. & P. 736), he cannot be convicted of an offence involving carnal knowledge, except as a principal in the second degree in a rape, or the like, where if he has a mischievous discretion, the presumption of impotence will not excuse him from aiding and assisting in the commission of the offence. He may, it seems, be convicted of indecent assault (*Reg.* v. *Williams*, 1893, 1 Q. B. 320). The penalties are now regulated by the Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), which provides that a 'child,' i.e., a person under 14, shall not be imprisoned or sent to prison or penal servitude; and a 'young person,' i.e., a person of 14 or upwards and under 17, shall not be sent to penal servitude at all, and shall not be imprisoned except under special circumstances (s. 52). Further, no sentence of death may be pronounced against a child or young person (s. 53), but provision is made for the detention of the offender in the case of certain crimes committed by children or young persons; see s. 54, and see generally ss. 50 to 63, dealing with juvenile offenders. A male at 12 years old may take the oath of allegiance. At 21 males and females are at their own disposal, may alien their lands, goods and chattels and possess the parliamentary and municipal franchise. Full age in male or female is 21 years, which age is completed on the day preceding the twenty-first anniversary or a person's birth. By s. 1 (1) 5 of the Law of Property Act, 1925, a legal estate in land is not capable of being held by an infant, by s. 21 *ibid.* A married infant can give a receipt for income. As to marriage settlements by male of 20 or female of 17, see MARRIAGE SETTLEMENT.—1 *Co. Litt.* 78; *Bro. Abr*, '*Age*.' For an infant's rights upon intestacy, see INTESTACY. See also EDUCATION; CHILDREN.

The Age of Marriage Act, 1929 (19 & 20 Geo. 5, c. 36), makes a marriage between persons either of whom is under the age of 16 void. Nothing in the Act shall affect any marriage solemnized or contracted before the passing of the Act or in Scotland any right or capacity of legitimation *per subsequens matrimonium*.

There is no age in law at which a man is presumed to be too old to be the father of a child, or a woman to be past child-bearing, but in the latter case the Court will sometimes in fact make this presumption for convenience in the administration of estates (*Farwell on Powers*, 3rd ed., p. 339); see, e.g., *Re Widdow's Trusts*, (1871) 11 Eq. 408 (widow 55½ years and spinster 53¾ years); *Re Millner's Estate*, (1872) 14 Eq. 245 (married woman 49¾ years, but childless); *Davidson* v. *Kimpton*, (1881) 18 Ch. D. 213 (spinster 54 years); but the Court refused to make the presumption in *Croxton* v. *May*, (1878) 9 Ch. D. 388 (woman 54½ years but married three years previously).

The Roman Civil law divides age thus :—

I. *Infantia*, from birth to 7 years.

II. *Pueritia*. (*a*) *Ætas infantiæ proxima*, from 7 to 10½. (*b*) *Ætas pubertati proxima*, from 10½ to 14.

III. *Pubertas*, from 14 upwards. During *infantia* and *ætas infantiæ proxima*, a person was not punishable for any crime. During *ætas pubertati proxima*, a person was liable, if *doli capax*. At *pubertas*, a person became fully responsible.—*Tayl. C. L.* 254 *et seq.*

Agency, the relation which exists between one person, called 'the principal' and another person called 'the agent' who, by his authority, express or implied, acts on his behalf. See AGENT.

Agency, Deed of, a revocable and voluntary

trust for payment of debts.—Consult *Lewin on Trusts.*

Agenfrida, the true lord or owner of anything.—*Cowel.*

Agenhine, otherwise, but less correctly, 'Hogenhine,' and also 'Third-night awne hine,' a guest at an inn, who having stayed there for three nights, was then accounted one of the family, 'and if he offend the king's peace, his host' had to be 'answerable for him.'—*Bracton, lib.* 3, c. 10, s. 2.

Agent, a person acting for another, whether by his express or implied authority, the general rule being, that whatever a person may do himself, that he may, as 'principal,' authorize another to do for him, and in accordance with the maxim, *qui facit per alium facit per se,* to fix him with the same liability in contract or tort as if he had done it himself. See BROKER, FACTOR, MERCANTILE AGENT, VICARIOUS RESPONSIBILITY, and consult *Bowstead on Agency* or *Evans on Principal and Agent.*

Where the principal is disclosed, only the principal can be sued. Where the principal is not disclosed, but the agent acts as agent, either the agent or the principal, when disclosed, can be sued. If an agent represents himself as such, and contract for an undisclosed and unascertained principal, his contract may be ratified by the principal when disclosed and ascertained.

If a person when making a contract does not disclose that he is acting as agent, a principal who subsequently ratifies, cannot inconsistently with the contract render himself able to sue or liable to be sued (*Durant* v. *Keighley, Maxted & Co.*, 1910, A. C. 240).

The expression 'agents or servants' used in the Carriage of Goods by Sea Act, 1924 (14 & 15 Geo. 5, c. 22), Sched., Art. IV., r. 2 (2), includes stevedores (*Heyn and Others* v. *Ocean Steamship Co. Ltd.*, (1927) 43 T. L. R. 358).

For the purposes of s. 136 (2) of the Companies Act, 1929 (19 & 20 Geo. 5, c. 23), the expression 'agents' in relation to a company shall be deemed to include the bankers and solicitors of the company and any persons employed by the company as auditors whether those persons are or are not officers of the company.'

An agent who represents himself to have authority when in fact he has none, is answerable to those who are deceived by him for the breach of an implied warranty (*Collen* v. *Wright*, (1857) 7 E. & B. 301; *Godwin* v. *Francis*, (1870) L. R. 5 C. P. 295; *Durant* v. *Keighley, Maxted & Co.*, 1910, A. C. 240). As to election agents see the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), by new law. As to bribery of agents and their secret profits, see CORRUPTION.

Agentes et consentientes pari pœnâ plectentur. 5 *Rep.* 80.—(Acting and consenting parties are liable to the same punishment.)

Agents-General. The colonies forming the Commonwealth of Australia are each represented in London by an official called an Agent-General. The Commonwealth is represented as an entity by a High Commissioner.

Age-prier, or **prayer** [*ætatis precatio,* Lat.], to pray age; thus, when an action is brought against a minor for the recovery of lands, which he possesses by descent, he petitions or moves the Court to stay the action until he attain his majority, which is generally acceded to.—*Termes de la Ley.*

Aggravated Assaults. 'Aggravated' means aggravated in respect of violence, not by reason of indecency, *R.* v. *Baker,* (1876) 46 L. J. Ex. 75; on females or boys under fourteen, see Offences against the Person Act, 1861, s. 43, which allows two justices, 'if the assault or battery is of such an aggravated nature that it cannot in their opinion be sufficiently punished under the provisions of s. 42 as to common assaults and batteries,' to give a convicted offender six months' imprisonment with hard labour or to fine him up to 20*l.* including costs (the maximum punishment for a common assault being two months' imprisonment, or a fine up to 5*l.*) and to bind him over to keep the peace. Criminal Justice Act, 1925 (c. 86), s. 39 (2), has increased the fine up to 50*l.*, not including costs.

Aggravation, the increase of the enormity of a wrong. Matters of mere aggravation, that is, which tend only to increase the amount of damages, and do not constitute the right of action itself, need not be traversed in pleading. In a count, for example, charging a trespass in pulling down a house, it is mere matter of aggravation to state that the plaintiff was in it at the time. And see DAMAGES.

Aggregate, a collocation of individuals, units, or things, in order to form a whole.

Aggregation of all property passing at death in one estate for the purposes of ascertaining the rate of estate duty. See ESTATE DUTY.

Aggressor, the beginner of a quarrel or dispute.

Agild [*sine mulcta,* Lat.], free from penalties, not subject to customary fines or impositions.—*Blount.*

Agiler [fr. *a gilt*, Sax., without fault], an observer or informer.—*Ibid.*

Agillarius, a hey-ward, a herd-ward, or keeper of cattle in a common field, solemnly sworn at the lord's court. There were two sorts, one of the town or village, another of the lord of the manor.—*Ken. Paroch. Antiq.*, 534, 576.

Agio [*aggio*, Ital., an exchange of money for a premium], expresses the difference in point of value between metallic and paper money, or between one sort of metallic money and another.—*McCall. Com. Dict.*; *Smith's Wealth of Nations.*

Agistment [fr. *jacere*, Lat.; *gesir*, Fr., to lie, whence *giste*, a lodging], the taking in of other men's cattle into pasture-land, at a certain rate per week, without letting them the land for their exclusive use as tenants; so called because the cattle are suffered *agiser*, i.e., to be *levant et couchant* there. Also the profit of such feeding. As to the extent to which the 'agister' is liable for negligence in the keeping of the cattle, see *Halestrap* v. *Gregory*, 1895, 1 Q. B. 561. A restriction upon the power of distraining agisted cattle (in some parts of the country called 'tacks') for rent is imposed by s. 35 of the Agricultural Holdings Act, 1923. See also *Manwood's Forest Laws*, cc. 11–80, where to 'agist' is to take in and feed strangers' cattle in the Royal Forest and to collect the money due for it. Agistment does not include a right of lien. *Chapman* v. *Allen*, (1631) Cro. Car. 271.

Agistment of sea banks [*terræ agitatæ*, Lat.] is where lands are charged with a tribute to keep out the sea.

Agnates, agnati, or **adgnati,** relations derived *per virilis sexus personas*, i.e., relations by the father's side, as distinguished from *cognati*, relations by the mother's. An agnate is related by generation; thus, my son, brother, paternal uncle, and their children, as also my daughter and sister, are agnated to me. See *Smith's Dict. of Antiq.*; *Maine's Ancient Law.*

Agnation, kinship by the father's side.

Agnomen, a name derived from some notable personal circumstance, as the name Africanus, borne by the two Scipios on account of their victories over the Carthaginians.

Agnomination, a surname.

Agnus Dei (Lat.), a piece of white wax, in a flat, oval form, like a small cake, stamped with the figure of a lamb, and consecrated by the Pope.

Agraria lex, an Agrarian law. Agrarian laws were enacted to distribute among the Roman people lands which they had gained by conquest, or to limit the quantity of such land possessed by each person to a certain number of acres.—*Cicero pro Leg. Agr.*

Agreed. This word in a deed creates a covenant. As to the persons respectively bound by a clause beginning 'It is hereby agreed,' see *Dawes* v. *Tredwell*, (1881) 18 Ch. D. 359. By the Real Property Act, 1845, as reproduced and extended by L. P. Act, 1925, s. 56, a person may take an immediate interest or the benefit of any covenant or agreement over land or other property although not named as a party to the Agreement. See COVENANT.

Agreement [fr. *gratus*, Lat., acceptable; *aggregatio mentium*, Lat.], a consensus of two or more minds in anything done or to be done. See CONTRACT.

Agri, arable lands in common fields.

Agri limitati, lands belonging to the state by right of conquest, and granted or sold in plots.—*Sand. Just.*

Agricultural Children Act, 1873 (36 & 37 Vict. c. 67). This Act made regulations as to the employment of children under ten years of age. It was repealed by the Elementary Education Act, 1876, which was itself repealed by the Education Act, 1921, see Part VIII. of which for restrictions on employment of children and young persons, and see Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 18. See *Chitty's Statutes*, tit. '*Education.*'

Agricultural Credits Acts, 1923 and 1928, The 1923 Act to facilitate the advance of money and granting of credit for agricultural purposes and to amend the Improvement of Land Act, 1864. The Public Works Loans Commissioners are empowered to lend to associations money to be advanced upon mortgage to certain persons for the purpose of buying land for agricultural purposes. See the Act and the Agricultural Credits (Approved Associations) Regulations, 1923, and the Agricultural Credits (Advances to Credit Societies) Regulations, 1923. Under the Agricultural Credits Acts, 1928 and 1932, an agricultural loan company has been established for making long-term loans, and also for short-term loans which may be charged on farming stock.

Agricultural Fixtures. See AGRICULTURAL HOLDINGS ACTS, 1923, and FIXTURES.

Agricultural Gangs Act, 1867 (30 & 31 Vict. c. 130). This Act, after reciting that in certain counties in England certain persons known as gangmasters hire children, young

persons, and women, with a view to contracting with farmers and others for the execution on their lands of various kinds of agricultural work, enacts certain regulations to be observed by gangmasters, and requires them to obtain licences. Amended as to children by the Agricultural Children Act, 1873, *ante*.

Agricultural Holdings Acts, 1923 (13 & 14 Geo. 5, cc. 9 and 25). By a series of statutes commencing with the Agricultural Holdings Act, 1875, statutory compensation has been provided for an outgoing agricultural tenant in respect of the improvements effected by him during his tenancy. The operation of this Act could be and frequently was excluded by agreement, but now the tenant cannot deprive himself by contract of the right to claim compensation which is conferred on him by the Act, although he may within limits substitute other benefits by agreement. The Act of 1923 (as amended by the Agricultural Holdings Amendment Act, 1923) repeals and consolidates all the earlier statutes dealing with the subject, and confers on outgoing tenants of 'holdings' the rights and benefits briefly outlined below. The term 'holding' means any parcel of land held by a tenant which is wholly agricultural or wholly pastoral, or in whole or in part cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment or employment under the landlord, but it does not include an allotment garden or land unless cultivated wholly or mainly for the purpose of the trade of market gardening (s. 57). See *Re Joel's Lease*, 1930, 2 Ch. 359.

1. *Compensation for Improvements* (ss. 1–8).—Where a tenant of a holding makes any improvement comprised in the First Schedule of the Act (or where the contract of tenancy was made on or after January 1st, 1921, whether required by it to make the improvement or not), the tenant becomes entitled at the termination of the tenancy on quitting the holding to compensation from the landlord for the improvement, the compensation being such sum as fairly represents the value of the improvement to an incoming tenant, allowance being made for any benefit allowed by the landlord in consideration of the improvement being made by the tenant.

The principal improvements mentioned in the First Schedule are :—

(1) ***Buildings, silos, laying down permanent pasture, various kinds of planting, fencing, works, etc.***—For these the written consent of the landlord is required : the consent may be either unconditional or upon such terms as to compensation as may be agreed, which terms take the place of the statutory compensation.

(2) *Drainage.*—For this, written notice to the landlord is necessary not more than three nor less than two months before beginning to execute the improvement. Terms of compensation may be agreed in place of the statutory compensation. The parties may agree to dispense with notice.

(3) *Chalking of land, clay burning, liming, marling, manuring with artificial or purchased manure. Consumption on the holding by animals, other than those regularly employed on the holding, of foodstuffs not produced on the holding or of corn produced on the holding. Laying down temporary pasture with clover, etc., sown more than two years prior to the termination of the tenancy.*—Neither consent nor notice is necessary.

(4) *Repairs to necessary buildings other than repairs which the tenant is obliged to execute.*—The tenant must give notice with particulars before beginning to execute the repairs and give the landlord a reasonable time to carry them out himself.

In the case of (3) and (4), an agreement entered into before January 1st, 1921, which provides for fair and reasonable compensation to the tenant, may substitute the compensation therein agreed to for the statutory compensation. Where an outgoing tenant has been paid for improvements by an incoming tenant with the landlord's written consent, the incoming tenant is entitled on quitting the holding to claim compensation in respect of the improvements in like manner as if the outgoing tenant had continued in occupation. The Act contains restrictions on compensation in respect of improvements by tenants about to quit.

2. *Compensation in respect of increased or diminished value of holding* (ss. 9 and 10).—The Act provides for compensation to a tenant who increases the value of the holding to an incoming tenant by the continuous adoption of a standard or system of farming more beneficial than that required by the contract of tenancy. Compensation is not payable unless a record of the condition of the holding has been made under statute and the tenant has given notice of his intention to claim compensation to the landlord (s. 9). S. 10 contains similar provisions entitling the landlord to compensation for failure by the tenant to cultivate in accordance with the rules of good husbandry or the terms of his tenancy.

3. *Compensation for Damage by Game.*—S. 11 provides for compensation in this respect to be assessed by arbitration. See GAME.

4. *Compensation for Disturbance* (ss. 12–14).—If a tenant quits a holding by reason of a notice to quit given by the landlord, compensation for disturbance is payable, unless the tenant was not cultivating according to good husbandry or had failed after notice within a reasonable time to pay rent due or to remedy a breach of a term or condition of good husbandry, or had materially prejudiced the landlord's interests by a breach of the tenancy incapable of remedy, or had become bankrupt or had refused to arbitrate as to rent or had refused to execute an agreement setting out the terms of the existing tenancy, *and* if the notice to quit states that it is given for one or more of the above reasons. The compensation is such loss or expense as is directly attributable to the quitting of the holding as the tenant may unavoidably incur in connection with the sale or removal of household goods, implements, fixtures, farm produce and stock. To avoid disputes this sum is taken to be equivalent to one year's rent unless proved to exceed this sum, but is limited to the equivalent to two years' rent. S. 15 contains provisions as to compensation where a mortgagee takes possession of a holding occupied by a tenant of the mortgagor under a contract of tenancy not binding on the mortgagee.

5. *Arbitration* (ss. 16–19 and Sch. II.)—Any question or difference between landlord and tenant of a holding, arising out of any claim for compensation payable under the Act, or for breach of contract in respect of the holding, or in respect of waste, etc., is to be determined, notwithstanding any agreement to the contrary, by a single arbitrator in accordance with the provisions in Schedule II. Such claims are not enforceable unless particulars thereof have been given within two months of the expiration of the tenancy.

6. *Fixtures and Buildings* (s. 22).—Any engine, machinery, fencing or other fixture affixed to a holding by a tenant, and any building erected by him for which he is not entitled to compensation and which is not fixed or erected in pursuance of an obligation to the landlord, is the property of the tenant and removable by him, provided no rent is owing and he has performed all his obligations in respect of the holding and he does no avoidable damage and makes good damage done by the removal. He must give a month's notice to the landlord, who may elect to purchase the fixture or building.

7. *Notices to Quit* (s. 25).—Notwithstanding anything in a contract of tenancy to the contrary, a notice to quit a holding shall be invalid if it purports to terminate the tenancy before the expiration of twelve months from the end of the then current year of tenancy. There are certain exceptions.

8. *Distress* (ss. 34–37).—A landlord may not distrain for rent which became due more than one year before making the distress, unless by the ordinary course of dealing between the landlord and tenant the payment has been deferred until the expiration of a quarter or half-year after the rent became due, in which case the later date is to be taken as the date when the rent became due. Certain limitations are imposed in respect of things which can be distrained. All disputes arising out of a distress may be determined by a County Court or a Court of Summary Jurisdiction.

9. *Market Gardens* (ss. 48 and 49 and Sch. III.).—Market garden includes part of private premises so treated (*Saunders-Jacob* v. *Yates*, 1933, 2 K. B. 240). In the case of a holding in respect of which it is agreed in writing on or after January 1st, 1896, that the holding shall be treated as a market garden, the Act applies as if the improvements mentioned in the Third Schedule formed part of Part III. of the First Schedule. These improvements are the planting of fruit trees and bushes, strawberry plants and various vegetable crops, and the erection of buildings for the purpose of the trade or business of a market gardener. See MARKET GARDEN; HOLDING. For further provisions consult the Act and the Agricultural Holdings (England) Rules of 1923 (No. 779) and *Spencer's Agricultural Holdings Acts.*

Agricultural Holdings (Scotland) Act, 1923 (13 & 14 Geo. 5, c. 10), a consolidating Act of similar scope to the last title and differing therefrom principally in respect of procedure. Slightly amended by 13 & 14 Geo. 5, c. 25.

Agricultural Land 'means any land used as arable, meadow, or pasture ground only, cottage gardens exceeding one quarter of an acre, market gardens, nursery grounds, orchards or allotments, but does not include land occupied together with a house as a park, gardens other than as aforesaid, pleasure grounds, or any land kept or preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse.'—Agricultural Rates Act, 1896, s. 9.

Compare definition of ' agriculture ' in Small Holdings and Allotments Act, 1908, s. 61, as including ' horticulture, forestry and the use of land for any purpose of husbandry, inclusive of keeping or breeding of live stock, poultry or bees, and the growth of fruit, vegetables and the like.'

Agricultural Marketing Acts, 1931 to 1933. The Act of 1931 (21 & 22 Geo. 5, c. 42) enables schemes to be made for regulating the marketing of agricultural products, foods and drinks made or derived therefrom, and fleeces and skins of animals, to establish marketing boards in connection with such schemes, to establish funds for loans to these boards, and to encourage agricultural co-operation, research and education. The Act of 1933 (23 & 24 Geo. 5, c. 31) amends and extends the 1931 Act by provisions for restrictions on the importation and sale of agricultural products and for the production of such secondary agricultural products wholly or partly manufactured or derived from another agricultural product as may be specified by an order in force under s. 7, Part II., of the Act of 1933. Schemes under the Act of 1931 may be submitted by the Minister of Agriculture and Fisheries after consultation with the Board of Trade by laying a draft before each House of Parliament, and if each House resolves that the scheme be approved, the Minister may make an order in the terms of the draft. Schemes under the 1931 Act must provide *inter alia* for penalties on offences by registered producers and for references to arbitration, for the prohibition of sales by persons who are not registered producers or exempt from the scheme (s. 5). Under the Act of 1933, the Board of Trade after consultation with the Minister of Agriculture and Fisheries may, under similar conditions, make an order regulating the importation into the United Kingdom of agricultural products of kinds which are the subject of schemes under the Acts and cannot be effectively developed without restricting importation, and such restriction may relate either to quantity or description of the product, the interests of consumers being taken into consideration, see s. 1. The Minister of Agriculture and Fisheries may at the same time regulate the sales by producers or Boards in the United Kingdom of products of a kind affected by the importation order. Development Schemes for the production of secondary products (*supra*) may include penalties on every person who produces any article in contravention of such scheme (s. 6 (5) of 1933). Part IV. of the Act of 1933, extending the Agricultural Produce (Grading and Marketing) Act, 1928 (18 & 19 Geo. 5, c. 19), enacts that sales of more than 24 eggs produced in Great Britain must be by weight or under grade designation. The Acts apply to Scotland, with modifications, but not to Northern Ireland. See also the Agricultural Marketing (No. 2) Act, 1933 (24 Geo. 5, c. 1), and the Milk Act, 1934 (24 & 25 Geo. 5, c. 51). Schemes and Orders restricting importation have been made in connection with a variety of agricultural products such as Hops, Pigs, Bacon and Milk.

Agricultural Produce (Grading and Marking) Acts, 1928 and 1931 (18 & 19 Geo. 5, c. 19, and 21 & 22 Geo. 5, c. 40), enable the Minister of Agriculture and Fisheries to make regulations prescribing grade designation marks of statutory definitions as defined in the Regulations for agricultural produce. The Act of 1931 extends these provisions to fish. Regulations affecting meat and many varieties of fruit and vegetables have been issued by the Minister, see also the Agricultural Marketing Act, 1933, as to eggs. The Act applies to Scotland with modifications, but not to Northern Ireland.

Agricultural Rates. The Agricultural Rates Act, 1896, as amended by the Agricultural Rates Act, 1923, provides that the occupier (including the owner if rated in place of the occupier) of agricultural land shall be liable to one quarter only of the rate in the pound payable in respect of buildings and other hereditaments. These exemptions were preserved by the Rating and Valuation Act, 1925, s. 22, but agricultural land and buildings are now entirely derated, see the Rating and Valuation (Apportionment) Act, 1928, and the Local Government Act, 1929, s. 67.

Agricultural Returns Act, 1925 (15 & 16 Geo. 5, c. 39). Under this Act the Minister of Agriculture and Fisheries may by regulation prescribe forms of agricultural returns or persons from whom these returns are required. The Act applies to Scotland with modifications, but not to Northern Ireland.

Agriculture and Fisheries, Ministry of. The Board of Agriculture, created by the Board of Agriculture Act, 1889, to take over the powers of the Privy Council as to the diseases of animals, and of the Land Commissioners under the Copyhold, Inclosure and Tithe Acts, etc., had transferred to it by the Board of Agriculture and Fisheries Act, 1903, the powers of the Board of Trade under the Salmon Fishery Act, 1861, the Sea

Fisheries Regulation Act, 1868, and other Fishery Acts, and took the style of 'The Board of Agriculture and Fisheries.' There is power to appoint two secretaries, who can sit and vote in the House of Commons. The Ministry of Agriculture and Fisheries Act, 1919, replaced the Board and its President by a Minister and Ministry of Agriculture and Fisheries. The Board had in fact never met, but its opinions had been those of its permanent officials and of its President. See Board of Agriculture and Fisheries Act, 1909, the Ministry of Agriculture and Fisheries Act, 1919.

Agriculture, Department of, for Scotland. A department of the Secretary of State for Scotland takes the place of the Board of Agriculture for Scotland which was established by the Small Landholders (Scotland) Act, 1911 (1 & 2 Geo. 5, c. 49), and which was charged with the general duty of promoting the interests of agriculture, forestry, and other rural industries in Scotland.

Agusadura, in ancient customs, a fee, due from the vassals to their lord for sharpening their ploughing tackle. Anciently, the tenants in some manors were not allowed to have their agricultural implements sharpened by any but those whom the lord appointed, for which an acknowledgment was paid, called *agusadura* or *agusage*, which some take to be the same with what was otherwise called *rullage*, from the ancient French, *reille*, a ploughshare.—*Encyc. Londin.*

Agweddi [*ag-gweed*, conjunction], a portion given with a bride.—*Anc. Inst. Wales.*

Aid of the King [*auxilium regis*, Lat.], the king's tenant prays this, when rent is demanded of him by others. A city or borough, holding a fee-farm from the king, if anything be demanded which belongs to such fee-farm, may pray, in 'aid of the king,' and the king's bailiffs, collectors, or accountants shall have aid of the king. The proceedings are then stayed until the Crown counsel are heard, but this aid will not be granted after issue, because the Crown cannot rely upon the defence made by another.—*Termes de la Ley.*

Aid Prayer, formerly made use of in pleading for a petition in Court, praying in aid of the tenant for life, etc., from the reversioner or remainderman, when the title to the inheritance was in question. It was a plea in suspension of the action. —*Com. Dig.* '*Abide*,' B. 5.

Aiders, advocates, abettors. See ACCESSARY.

Aids [fr. *aides*, Fr.; *auxilia*, Lat.], originally mere benevolences granted by a tenant to his lord in times of distress, but at length the lords claimed them as of right. They were principally three: (1) To ransom the lord's person, if taken prisoner; (2) To make the lord's eldest son and heir apparent a knight; (3) To give a suitable portion to the lord's eldest daughter on her marriage. Abolished by 12 Car. 2, c. 24. Also extraordinary grants to the Crown by the House of Commons, and which were the origin of the modern system of taxation. —2 *Bl. Com.* 63, 64.

Aiel, or Aile [fr. *aieul*, Fr.; *avus*, Lat., a grandfather], a writ which lay when a man's grandfather, or great-grandfather (called *besaile*), died seised of lands in fee-simple, and on the day of his death the heir was dispossessed of his inheritance by a stranger.—*Fitz. N. B.* 222.

Aillt [*aill*, other], a villein.—*Anc. Inst. Wales.*

Ainsty, a district on the south-west of the city of York, annexed thereto by 27 Hen. 6, and subject to the Lord Mayor and Corporation under the name of the county of the city of York.—*Gorton's Topographical Dictionary.*

Air. As to the right to the enjoyment of air free and unpolluted, see *Gale on Easements*, and *Goddard on Easements*; but the claim to air is usually made good under a claim to light and air. The nature and extent of the right to air (which is not a subject of prescription within the Prescription Act) is discussed by Fry, J., in *Hall* v. *Lichfield Brewery Co.*, (1880) 49 L. J. Ch. 655, in which damages were given for the obstruction of air to a slaughter-house; and see *Bass* v. *Gregory*, (1890) 25 Q. B. D. 481, and *Chastey* v. *Ackland*, 1897, A. C. 155.

Air Board. The New Ministries and Secretaries Act, 1916, established the Air Board for the purpose of organizing and maintaining the supply of air-craft during the Great War. It was superseded by the Air Council in 1917. See AIR FORCE.

Air Council. See AIR FORCE.

Air-craft. See AERIAL NAVIGATION ACTS.

Air Force. The Air Forces (Constitution) Act, 1917, replaced the Air Board by the Air Council, and provides that it shall consist of a Secretary of State and other persons appointed in accordance with s. 8. The Air Force is subject to the Army Act, and its organization, administration and discipline is further provided for by the Act of 1917 and succeeding Acts. See also Auxiliary

Air Force and Air Force Reserve Act, 1924.

Air Navigation. See AERIAL NAVIGATION.

Airway, a passage for the admission of air into a mine. To maliciously fill up, obstruct, or damage, with intent to destroy, obstruct, or render useless the airway to any mine, is a felony punishable by penal servitude or imprisonment at the discretion of the Court (24 & 25 Vict. c. 97, s. 28).

Al or **Ald** [*eald*, Sax., age]. This syllable prefixed to the names of places denotes antiquity, as Aldborough, i.e., Old Borough, Aldeburgh, Aldworth, Aldgate, etc.—*Blount.*

Alabama, The. See GENEVA ARBITRATION.

Ala Campi, Wingfield.

Alæ ecclesiæ, the wings or side aisles of a church.—*Cowel.*

Alænus, the river Axe, in Devonshire.

Alanerarius, a manager and keeper of dogs for the sport of hawking; from *alanus*, a dog known to the ancients. A falconer.

Alauna, Alnwick in Northumberland; also Alcester in Warwickshire.

Alba firma. When quit-rents payable to the Crown by freeholders of manors were reserved in silver or white money, they were called white-rents or blanch-farms, *reditus albi*, in contradistinction to rents reserved in work, grain, etc., which were called *reditus nigri*, black-mail.—2 *Inst.* 19.

Albinatus, jus, the *droit d'aubaine* in France, whereby the king, at an alien's death, was entitled to all his property, unless he had peculiar exemption. Repealed by the French laws in June, 1791.

Albo Monasterio, De, Whitechurch.

Albom, white-rent paid in silver. See ALBA FIRMA.

Albrea and **Albericus,** Aubrey.

Albus Liber, an ancient book containing a compilation of the law and customs of the City of London. It has lately been reprinted by order of the Master of the Rolls.

Alcalde, a judicial officer in Spain.

Alder, the first, as *alder best* is the best of all; *alder liefest*, the most dear.

Alder Carr, land covered with alders.—*Norfolk phrase.*

Alderman [*ealdorman*, Ang.-Sax., fr. *eald*, old, *ealdor*, a parent]. Originally the word was synonymous with 'elder,' but was also used to designate an earl, and even a king. The word is now confined to the class of municipal officers in a borough next in order to the mayor. The Municipal Corporations Act, 1835 (5 & 6 Wm. 4, c. 76), which gave aldermen no special duties of any importance, enacted that they should be in number one-third of the number of the councillors, should remain six years in office (being twice the length of the councillors' period of office), and be elected by the councillors, but not necessarily from amongst the councillors; and this enactment is repeated by s. 14 of the consolidating Act of 1882; but the Municipal Corporations Amendment Act, 1910, provides that aldermen shall not vote in the election of an alderman or mayor. As to number, qualification and term of office in boroughs, see Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 21. See MUNICIPAL CORPORATION; and as to 'county aldermen,' see COUNTY COUNCIL.

Alderney, see CHANNEL ISLANDS.

Aldithelela, De, Audley.

Ale. See ALE-HOUSE, and see LICENSE.

Alea [a die, Lat.], the chance of gain or loss in a contract.—*Civil Law.*

Aleatory Contract, an agreement of which the effects, with respect both to the advantages and losses, whether to all parties, or to some of them, depend on an uncertain event.—*Ibid.* See WAGERING CONTRACT.

Alecinarium, a hawk, called also a *lanner*.

Ale-conner, or **Ale-founder,** or **Ale-kenner** [*gustator, cerevisiæ* Lat.], one who kens or knows what good ale is; an officer appointed at a court-leet, who is sworn to look at the assize and goodness of ale and beer within the precincts of the lordship.—*Kitch.* 46. There were at one time four ale-conners, chosen by the liverymen of the City of London, in Common hall, on Midsummer-day, whose office it was to inspect the measures used in public-houses.

Ale-house, a place where ale with other intoxicating liquors, as deemed proper by the keeper, is sold by retail to be drunk on the premises where sold. Such a house, commonly called also a public-house, has for a long time, by a series of Acts consolidated in 1828 by 9 Geo. 4, c. 61 (styled 'The Alehouse Act, 1828,' by the Short Titles Act, 1896, but (and more correctly) 'The Intoxicating Liquors Licensing Act, 1828,' by the Licensing Act, 1872), required a license from justices of the peace as well as an excise license; whereas the houses called *beer-houses*, first established in 1830 by 11 Geo. 4 & 1 Wm. 4, c. 64, required an excise license only until the passing of the Wine and Beerhouse Act, 1869. See INTOXICATING LIQUORS.

Aleier. See ADLEGIARE.

Ale Silver, a rent or tribute paid annually to the Lord Mayor of London, by those who

sold ale within the liberty of the City.—*Blount's Law Dict.*

Ale-stake, a maypole or long stake driven into the ground, with a sign on it for the sale of ale.—*Blount.*

Ale-taster. See ALE-CONNER.

Alfet, a cauldron into which boiling water was poured, in which a criminal plunged his arm up to the elbow and there held it for some time, as an ordeal.

Algarum maris, probably a corruption of *Laganum maris, lagan* being a right, in the Middle Ages, like *jetsam* and *flotsam*, by which goods thrown from a vessel in distress became the property of the king or the lord on whose shores they were stranded.—*Jac. Law Dict., Du Cange.*

Alia enormia [Lat.] (other wrongs). A declaration in trespass sometimes concluded thus:—'and other wrongs to the plaintiff then did,' etc. This was technically called an allegation of *alia enormia.*

Allamenta, a liberty of passage, open way, watercourse, etc., for the tenant's accommodation.

Alias (otherwise), a second or further writ, which was issued after a first writ had expired without effect. Abolished by the Common Law Procedure Act, 1852, s. 10. As to concurrent writs, see R. S. C. Ord. VI., rr. 1, 1a, 2 and 2a.

Alias (dictus) (otherwise called), a second name applied to a person where he has been styled or has styled himself by more names than one, as in the case of *Reg.* v. *Thomas Castro,* otherwise *Arthur Orton,* otherwise *Sir Roger Charles Doughty Tichborne, Baronet,* (1873) L. R. 9 Q. B. 219.

Alibi (elsewhere). It is a defence resorted to where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence that he was in a different place at the time the offence was committed.

Alien [fr. *alienigena, alibi natus,* Lat.], a person not born within His Majesty's dominions and allegiance (*q.v.*). See definitions in the British Nationality and Status of Aliens Acts, 1914 and 1933, *infra.* At common law aliens were subject to very many disqualifications, the nature of which is shown by the Act of 1844, 7 & 8 Vict. c. 66, which greatly relaxed the law in their favour. It provided, *inter alia,* that every person born of a British mother should be capable of holding real or personal estate; that alien friends might hold every species of personal property except chattels real; that subjects of a friendly power might hold lands, etc., for the purposes of residence or business for a term not exceeding twenty-one years; and it also provided for aliens becoming naturalized.

The Naturalization Act, 1870 (33 & 34 Vict. c. 14), repealed the above and other Acts, and contained further provisions in favour of aliens, but this Act, together with several others, has been repealed and the statute law on the subject is now contained in the British Nationality and Status of Aliens Act, 1914, as amended by the Acts of the same name of 1918 and 1922. This Act is divided into three parts, the first (s. 1) dealing with natural-born British subjects; the second (ss. 2–9) with the naturalization of aliens; and the third (ss. 10–28) containing certain general and supplemental provisions, relating to the national status of married women and infant children, loss of British nationality, the status of aliens, and procedure and evidence.

The effect of the Act is shortly as follows: By s. 1 the following persons are deemed natural-born British subjects:—

(*a*) Any person born within His Majesty's dominions and allegiance; and

(*b*) Any person born out of His Majesty's dominions, whose father was a British subject at the time of that person's birth and either was born within His Majesty's allegiance or was a person to whom a certificate of naturalization had been granted or had become a British subject by reason of any annexation of territory, or was at the time of that person's birth in the service of the Crown, or his birth was registered at a British Consulate within one year (or with the consent of the Secretary of State two years) after its occurrence, or if born after 31st December, 1914, a person who would have been a British subject if born before 1st January, 1915, and who was born within twelve months after 1st August, 1922; and

(*c*) Any person born on board a British ship whether in foreign territorial waters or not:

Provided that the child of a British subject, whether that child was born before or after the passing of the Act, will be deemed to have been born within His Majesty's allegiance if born in a place where by treaty, capitulation, grant, usage, sufferance, or other lawful means, His Majesty exercises jurisdiction over British subjects. Any person whose British nationality is conditional on registration at a British Consulate shall cease to be a British subject

unless within one year after he attains the age of twenty-one (or some other age authorized by regulation) he asserts his British nationality by a declaration of retention registered in accordance with regulations made under the Act (as amended by the British Nationality and Status of Aliens Act, 1933 (23 & 24 Geo. 5, c. 49)), and divests himself of any other nationality ; and see MARRIED WOMAN.

A person born on board a foreign ship will not be deemed to be a British subject by reason only that the ship was in British territorial waters at the time of his birth.

Except as otherwise expressly provided, nothing in s. 1 is to affect the status of any person born before the commencement of the Act. See *R.* v. *Albany, etc., Superintendent*, 1915, 3 K. B. 716.

By s. 2 the Secretary of State may, on application and in his absolute discretion, grant a certificate of naturalization to an alien who satisfies the Secretary—

(*a*) That he has either resided in His Majesty's dominions for a period of not less than five years in the manner required by the section, or been in the service of the Crown for not less than five years within the last eight years before the application ; and

(*b*) That he is of good character and has an adequate knowledge of the English language ; and

(*c*) That he intends if his application is granted either to reside in His Majesty's dominions or to enter or continue in the service of the Crown.

The residence required is residence in the United Kingdom for not less than one year immediately preceding the application, and previous residence in some part of the King's dominions, here or elsewhere, for four years within the last eight. If the Secretary of State thinks fit, a period spent in the service of the Crown may be treated as equivalent to a period of residence in the United Kingdom. The certificate does not take effect till the applicant has taken the oath of allegiance. The certificate gives the grantee all the rights, powers, and privileges and subjects him to all obligations, duties and liabilities of a natural-born British subject, and gives him the status of such a subject (s. 3).

Section 4 deals with the granting of special certificates in cases of doubt, s. 5 with the case of persons under disability, s. 6 with the case of persons previously naturalized, and s. 7 empowers the Secretary of State to revoke certificates obtained by false representations or in the case of a person who has communicated or traded with an enemy or within specified limits been fined or imprisoned in the Empire, or who was not of good character at the date of the certificate. Section 8 empowers the Governments of British possessions to grant certificates of Imperial naturalization, and s. 9 provides that the provisions of the Act as to naturalization shall not have effect within the Self-Governing Dominions unless the Government of the Dominion adopts them.

The third part of the Act deals with the national status of married women (s. 10) (see below), the status of widows (s. 11), the status of children (s. 12), the loss of British nationality by foreign naturalization (s. 13), and declarations of alienage (s. 14). By s. 15 power is given to naturalized subjects to divest themselves of their status in certain cases, but (s. 16) with a saving of obligations incurred before the loss of nationality.

The Act of 1933 (23 & 24 Geo. 5, c. 44), repealings. 10, *supra*, gave facilities to married women of British nationality to retain that nationality in certain cases.

With certain exceptions, no alien enemy was to be naturalized for ten years after the termination of the Great War.

The important question of the status of aliens is dealt with by ss. 17 and 18, which are as follows :—

17. Real and personal property of every description may be taken, acquired, held and disposed of by an alien in the same manner in all respects as by a natural-born British subject ; and a title to real and personal property of every description may be derived through, from or in succession to an alien in the same manner in all respects as through, from or in succession to a natural-born British subject :

Provided that this section shall not operate so as to—

(1) Confer any right on an alien to hold real property situate out of the United Kingdom ; or

(2) Qualify an alien for any office or for any municipal, parliamentary, or other franchise ; or

(3) Qualify an alien to be the owner of a British ship ; or

(4) Entitle an alien to any right or privilege as a British subject, except such rights and privileges in respect of property as are hereby expressly given to him ; or

(5) Affect any estate in real or personal property to which any person has or may become entitled, either mediately or immediately, in possession or expectancy, in pursuance of any disposition made before the twelfth day of May, 1870, or in pursuance of any devolution by law on the death of any person dying before that day.

18. An alien shall be triable in the same manner as if he were a natural-born British subject.

It should, however, be observed that the right to own land which has been conferred on companies registered under the Companies Act, 1929, notwithstanding the Mortmain Acts, has not been extended to alien companies established outside Great Britain and carrying on business in England (*q.v.*), and see Part XI. of the Act (ss. 343 *et seq.*).

Sections 19 to 24 deal with questions of procedure and evidence, the Secretary of State being empowered to make regulations for carrying into effect the objects of the Act. Section 25 contains a saving for letters of denization, and s. 26 a saving for the powers of Legislatures and Governments of British possessions; and s. 27 defines a 'British subject' as meaning a person who is a natural-born British subject, or a person to whom a certificate of naturalization has been granted, and an 'alien' as a person who is not a British subject.

The Regulations now in force are the Naturalization Regulations, 1933 (S. R. & O. 1933, No. 1141).

Aliens are now controlled by the Aliens Restriction Act, 1914, as amended by the Aliens Restriction Amendment Act, 1919. By an Order in Council aliens may be prohibited from landing or leaving the United Kingdom: may be deported, made to register themselves, and many other provisions may be made. The Act was originally a war measure, but has to date been continued annually. The Secretary of State frequently deports undesirable aliens upon the recommendation of Courts of Summary Jurisdiction. Reference should be made to the above-mentioned Acts.

As to the position of an alien residing within the realm who violates the local allegiance which he owes to the Crown, see *Johnstone* v. *Pedlar*, 1921, A. C. 262, and the cases there cited, and DEPORTATION.

Aliens may be insured persons under the Unemployment Insurance Act, 1935 (25 Geo. 5, c. 8), s. 1, and the National Health Insurance Act, 1936, s. 2.

Alien ami, or **amy,** a subject of a nation which is at peace with this country. See ALIEN.

Alien Enemy, a subject of a nation which is at war with this country. A contract with him is void (*Brandon* v. *Nesbitt*, (1794) 6 T. R. 23) unless he have a safe conduct or be living in this country by licence of the Crown; and so is a contract with his wife (*De Wahl* v. *Braune*, (1856) 25 L. J. Ex. 343). Further, not only commercial intercourse but all intercourse with an alien enemy is prohibited by the common law; see *The Hoop*, (1799) 1 C. Rob. 196, where Sir William Scott described an alien enemy as 'totally ex lege'; *The Cosmopolite*, (1801) 4 C. Rob. 8: *The Panariellos*, (1915) 138 L. T. Journ. 484. Nor can an alien enemy exercise a right of voting in respect of shares in an English company (*Robson* v. *Premier Oil Co.*, 1915, 2 Ch. 124), nor (unless within the realm by the King's licence) can he sue here during the war, though he remains liable to be sued (*Porter* v. *Freudenberg*, 1915, 1 K. B. 857). As to the Crown's right at common law to forfeit the private property of subjects of an enemy state, see *In re Ferdinand, Ex-Tzar of Bulgaria*, 1931, 1 Ch. 107. The test of a person being an alien enemy is not his nationality but the place in which he resides or carries on business (*Janson* v. *Driefontein, etc., Mines*, 1902, A. C. at p. 505). See the Trading with Enemy Acts, 1914 to 1918, and the Former Enemy Aliens (Disabilities Removal) Act, 1925 (15 & 16 Geo. 5, c. 43).

Alien nee, a man born an alien.

Alienage, the state of an alien.

Alienate, or **Aliene,** to transfer property.

Alienation, a transferring property to another.—*Co. Litt.* 118.

Alienation Office, a place to which all writs of covenants and entries were carried for the recovery of fines levied thereon.

Alienee, one to whom a transfer of property is made.

Alieni juris, a form of status; under potestas or authority of another, opposed to *sui juris*; the term is not used in English law. See *Irish Just.* i. 8.

Alienor, one who transfers property.

Aliment [fr. *alimentum*, Lat.], a fund for maintenance—alimony.—*Scots Law.*

Alimony [fr. *alimonia*. Lat.], the allowance made to a wife out of her husband's estate for her support, either during a matrimonial suit or at its termination, when she proves herself entitled to a separate maintenance, and the fact of a marriage is established. But she is not entitled to it if she elope with an adulterer, or wilfully leave her husband without any just cause for so doing.

It is of two kinds: (a) *In causes between husband and wife.* The husband is obliged to allow his wife alimony during the suit, and this whether the suit be commenced by or against him, and whatever its nature may be. It is usually such a sum as will provide the wife with one-fifth of the joint incomes, and will be reduced according to fluctuations of income. The wife may apply for an

increase if his means have improved. (b) *Permanent alimony*, which is allotted to a wife after final decree. Alimony is within the exclusive jurisdiction of the Probate and Divorce Division. The Court may direct its payment either to the wife herself or to a trustee on her behalf. The Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 190, provides that on any decree for dissolution or nullity of marriage, the Court may order the husband to secure to the wife such gross sum or such annual sum for any term not exceeding her life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it may deem reasonable, and for that purpose may refer the matter to one of the conveyancing counsel of the Court to settle a proper deed to be executed by all necessary parties, and the Court may suspend pronouncing its decree until such deed shall have been executed.

The Court may order monthly or weekly payments, and may discharge the order, or increase, modify, or temporarily suspend the payments. In default of agreement it is usually one-third of the joint incomes for the wife alone, further provision being made if she has to support a child of the marriage. See *Browne and Latey*, or *Dixon on Divorce*; and as to allowance of a reasonable weekly sum, not exceeding 2*l.*, by a Court of Summary Jurisdiction to a wife forced by cruelty to leave her husband or deserted by him, see the Married Women (Maintenance) Acts, 1895 and 1920, and *Stone's Justices Manual*. The same practice and principles as apply in the High Court will govern the allotment of such alimony (*Cobb* v. *Cobb*, 1900 P. 294).

Alio intuitu, with a collateral motive, a motive other than the professed one: e.g., when a man brings an action by way of advertising his goods.

Aliter (otherwise).

Aliud est celare, aliud tacere.—(To conceal is one thing, to be silent another.) See *Broom's Legal Maxims*.

Aliunde, from another place or person.

Alkali Works. The Acts regulating alkali works, 26 & 27 Vict. c. 120—a temporary Act, made perpetual by 31 & 32 Vict. c. 36—and 37 & 38 Vict. c. 43, were consolidated and amended by the Alkali, etc., Works Regulation Act, 1881 (44 & 45 Vict. c. 37), s. 29 of which defined 'alkali work' as 'every work for the manufacture of alkali, sulphate of soda, or sulphate of potash in which muriatic acid gas is evolved,' and recently after further amendment in 1892, again consolidated with additional amendments by the Alkali, etc., Works Regulation Act, 1906 (6 Edw. 7, c. 14), by s. 27 of which the expression 'alkali work' means every work for—(*a*) the manufacture of sulphate of soda or sulphate of potash, or (*b*) the treatment of copper ores by common salt or other chlorides whereby any sulphate is formed, in which muriatic acid gas is evolved.

Allaunds [fr. *alanis, Scythiæ gente*, Lat.], hare-hounds.—*Cowel.*

Allegans contraria non est audiendus. *Jenk. Cent.* 16.—(A person making contradictory allegations is not to be heard.) See *Broom's Legal Maxims*, and *Buckland* v. *Johnson*, (1854) 23 L. J. C. P. 204, where it was held that a plaintiff having sued one of two joint feasors in tort could not afterwards sue the other for money had and received. See also ELECTION.

Allegans suam turpitudinem non est audiendus. 4 *Inst.* 279.—(A person alleging his own infamy is not to be heard.)—This maxim of the civil law is no part of the law of evidence in England; and it is doubtful whether it ever was. See *Best on Evidence*. But a person cannot take advantage of his own wrong, and in equity, the maxim holds good that he who comes into equity must come with clean hands.

Allegata, a word anciently subscribed at the bottom of rescripts and constitutions of the Roman Emperors, as *signata* or *testata* under other instruments. It is synonymous with *verificata*, verified.—*Encyc. Londin.*

Allegata et probata, matters alleged and proved.

Allegation [fr. *alleguer*, Fr.; *allegare*, Lat., to allege], an asserted fact; the adduction of reasons or witnesses in support of an argument.

Allegation of Faculties, the statement of a person's means. A term formerly used in the Ecclesiastical Courts in proceedings for alimony.

Allegiance [fr. *ligo*, Lat.], the natural, lawful, and faithful obedience which every subject owes to the supreme magistrate who oversteps not his prerogatives. It is either natural or perpetual, where one is a subject born, or has been naturalized; or local and temporary, where one is merely a resident in the British dominions.—*Co. Litt.* 129 *a*. It is also either implied, so soon as the relationship of sovereign and subject is created; or express, which is the formal declaration of it. An alien resident within British territory

owes allegiance to the Crown, and may be indicted for high treason, though not a subject (*De Jager* v. *A.-G. of Natal*, 1907, A. C. 326). It seems that the subject of a friendly state residing within the realm who violates the local allegiance which he owes to the Crown does not lose the rights of an *alien amy* until the Crown withdraws its protection (*Johnstone* v. *Pedlar*, 1921, A. C. 262). See *Broom's Const. Law, Calvin's Case.*

Allegiance, Oath of. A new form of this oath was substituted for the older form by 21 & 22 Vict. c. 48. A new form was again provided by 30 & 31 Vict. c. 75, s. 5, and this has in its turn been superseded by the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), which provides as follows: 'I, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successors, according to law. So help me God.'

The 10th section of the Act provides that 'where in any oath under the Act the name of Her present Majesty is expressed, the name of the Sovereign of this Kingdom shall be substituted from time to time.'

See also Irish Free State (Agreement) Act, 1922, Sch., art. 4.

The oath, or an affirmation in similar terms, must be taken by certain high officers of State, by judges of the Supreme Court and justices of the peace on their appointment, by Members of Parliament on taking their seats, and by clergymen before their ordination. A like oath must be taken by an alien on obtaining a certificate of naturalization; see British Nationality and Status of Aliens Act, 1914.

Allegiare, to defend or justify by due course of law.

Aller, superlatively, as *aller good* is the greatest good.—*Blount.*

Aller san jour, to go without day, i.e., to be finally dismissed from the Court, because there is no further day assigned for appearance.

Alleviare, to levy or pay an accustomed fine.—*Cowel.*

All Fours, a case agreeing in all its circumstances with another case is sometimes said to be 'on all fours' with it. *Nullum simile est idem, nisi quatuor pedibus currit.*—*Co. Litt.* 3. (Nothing similar is the same, unless it runs on all fours with it.)

Alliance [fr. *alleanga*, It.; *alianca*, Sp.; *alliance*, or *allier*, Fr.; *alligo*, Lat., to tie or unite together], the state of connection with another by confederacy; a league. In this sense our histories mention the Grand Alliance, the Holy Alliance, and others. Also relation by marriage; relation by any form of kindred.

Allision, the running of one vessel against another. See COLLISION.

Allocation, an allowance made upon accounts in the Exchequer; also, the act of allotting or appropriating.

Allocatione facienda, a writ allowing to an accountant such sums of money as he had lawfully expended in his office; it was addressed to the Lord Treasurer and the Barons of the Exchequer.—*Reg. Brev.* 206.

Allocato comitatu, in proceedings in outlawry, when there were but two County Courts holden between the delivery of the writ of *exigi facias* to the sheriff and its return, a special *exigi facias*, with an *allocato comitatu*, issued to the sheriff in order to complete the proceedings. See *Bac. Abr.*, '*Outlawry.*'

Allocatur (it is allowed), the certificate of the allowance of costs by the master on taxation.

Allocatur exigent, a writ which was issued when an outlaw had not been exacted five times under the *exigi facias*, in order to complete the number of exactions.

Allocutus. In cases of treason and felony, if the defendant is found guilty, the Court is bound to ask him what he has to say why the Court should not proceed to judgment against him. This demand is called the **allocutus** and is entered on the record.

Allodarii, tenants having as great an estate as subjects can enjoy.

Allodial. See ALODIAL.

Allograph, a document not written by any of the parties thereto: opposed to autograph.

Allonge. If there be not room on the back of a bill of exchange to write all the indorsements, the supernumerary indorsements may be written on a slip of paper annexed to the bill and called an *allonge*, and are then 'deemed to be written on the bill itself.' Bills of Exchange Act, 1882, s. 32, sub-s. 1. It requires no additional stamp.

Allotment, partition, the distribution of land under an inclosure Act, or shares in a public undertaking. See COMPANY. By Companies Act, 1929, ss. 39–42, reproducing and amending s. 85 of the Companies (Consolidation) Act, 1908, no allotment of the share capital of a company can be made unless the conditions therein contained have been complied with.

Allotment Notes, as to the payment of seamen's wages during absence by means

of allotment notes, see Merchant Shipping Act, 1894, ss. 140–144; Merchant Shipping Act, 1906, s. 62; and Merchant Shipping (Seamen's Allotment) Act, 1911, s. 1.

Allotments. Many Acts (see *Chit. Stat.*, tit. '*Allotments*') have been passed authorizing parish officers to let out to poor persons small quantities of parish land or land originally allotted under inclosure Acts for the benefit of the poor. The Small Holdings and Allotments Act, 1908 (Part II.), empowers parish, urban, borough or county councils to provide plots of land for persons belonging to the labouring population of the locality to cultivate as farms or gardens. Land for allotments may be acquired compulsorily by the above bodies (ss. 12 and 27, Land Settlement (Facilities) Act, 1919) (as amended by the 1925 Act, s. 1). This Act as amended by the Allotments Act, 1922, necessitates a six months' or longer notice to quit (but see s. 30 (2) of the Act, 1908, and s. 1 of the Act of 1922), and provides, notwithstanding any agreement to the contrary, for compensation to an outgoing tenant by the landlord for growing crops, manure, improvement, etc. (s. 47 of the Act of 1908, and ss. 2–7 of the Act of 1922). A simple method of determining the amount of compensation by arbitration is provided.

'Allotment garden' was defined by the Act of 1922, s. 22 (6) (repealed by the Agricultural Holdings Act, 1923), as meaning an allotment not exceeding 40 poles in extent which is wholly or mainly cultivated by the occupier for the production of vegetable or fruit crops for consumption by himself or his family. The Allotments Act, 1925, defined 'allotment' as an allotment garden as defined by the Allotments Act of 1922, as any parcel of land not more than five acres in extent cultivated as intended to be cultivated as a garden or farm, or partly as a garden and partly as a farm.

A special department of the Board (now Ministry) of Agriculture and Fisheries (*q.v.*) has been created to deal with small holdings and allotment matters, and Small Holdings Commissioners have been appointed.

See '*Spencer's Small Holdings and Allotments*' and '*Aggs on Agricultural Holdings.*'

Allottee, a person to whom land under an inclosure Act or shares in a public undertaking are allotted. See COMPANY.

Allowance [fr. *locare*, Lat.; *allocare, allogare*, It.; *alogar*, Prov.; *louer, allouer*, Fr., to place or assign], a deduction, an average payment, a portion.

Also in selling goods, or in paying duties upon them, certain deductions are made from their weights, depending on the nature of the packages in which they are inclosed, and which are regulated in most instances by the custom of merchants, and the rules laid down by public offices. These allowances, as they are termed, are distinguished by the epithets *draft, tare, tret*, and *cloff*.

Draft is a deduction from the original or gross weight of goods, and is subtracted before the tare is taken off.

Tare is an allowance for the weight of the bag, box, cask, or other package in which goods are weighed.

Real, or *open tare*, is the actual weight of the package.

Customary tare is, as its name implies, an established allowance for the weight of the package.

Computed tare is an estimated allowance agreed upon at the time.

Average tare is when a few packages only among several are weighed, their mean or average taken, and the rest tared accordingly.

Super-tare is an additional allowance or tare where the commodity or package exceeds a certain weight.

The remainder, after the allowance of tare, is called the suttle weight; but if tret be allowed, the remainder is called the net weight.

Tret is a deduction of 4 lb. from every 104 lb. of suttle weight. This allowance, which is said to be for dust or sand, or for the waste or wear of the commodity, was formerly made on most foreign articles sold by the pound avoirdupois; but it is now nearly discontinued by merchants, or else allowed in the price. It is wholly abolished at the East India warehouses in London, and neither tret nor draft is allowed at the Custom-house.

Cloff, or *Clough*, is another allowance that is nearly obsolete. It is stated in arithmetical books to be a deduction of 2 lb. from every 3 cwt. of the *second suttle*, that is, the remainder when tret is subtracted; but merchants, at present, know cloff only as a small deduction, like draft, from the original weight, and this only in the case of two or three articles. See *Kelley's Cambist*, art. '*London*,' and *McCull. Comm. Dict.*

Allowances. — Deductions or payments allowed by law or in equity to persons such as trustees, personal representatives, tenants for life, mortgagees in possession, receivers, and others liable to account, also the admis-

sion of claims or items in an account, also payments of a non-obligatory nature by persons *sui juris* or the Court acting in the exercise of its discretion; and see DEATH DUTIES and FINANCE ACTS.

Allowances to Agricultural Tenants.—The term 'allowances' is also used to designate the payments made, under custom of the country or agreement, by landlord to tenant on the determination of agricultural tenancy, to compensate the tenant for outlay on seed, labour, or crops, of which he cannot reap the benefit in kind. See AGRICULTURAL HOLDINGS.

Allowances to Witnesses in Prosecutions.—The term 'allowances' is also used to designate payments to witnesses for both prosecution and defence in criminal matters. These are now provided for by the Costs in Criminal Cases Act, 1908 (8 Edw. 7, c. 15), and the regulations made thereunder. For allowances to witnesses in Civil Proceedings in the High Court, see *Annual Practice;* in the County Courts, see *County Court Rules.*

All Saints, Feast of, 1st of November.

Alltud [*all-tud*, other land], a person either from foreign parts or from another part of the island, in villenage under the king or freeholder.—*Anc. Inst. Wales.*

Alluminor, one who anciently illuminated, coloured, or painted upon paper or parchment, particularly the initial letters of charters and deeds. The word is used in 1 Rich. 3, c. 9.

Alluvion or **Alluvio** [fr. *alluo*, Lat.], land imperceptibly gained from the sea or the river by the washing up of sand and soil so as to form *terra firma.*—2 *Bl. Com.* 261; *Res. Cotidianæ Dig.* 40, tit. 1, s. 7. See ACCRETION, and *Hindson* v. *Ashby*, 1896, 2 Ch. 1.

Ally. See ALLIANCE.

Almanack [fr. the Arabic particle *al*, and *manach*, to count or reckon], a publication in which is recounted the days of the week, month, and year, both common and particular, distinguishing the fasts, feasts, terms, etc., from the common days by proper marks, pointing out also the several changes of the moon, tides, eclipses, etc. It is a part of the law of England, of which the Courts must take notice in the returns of writs, etc., but the almanack to go by is that annexed to the Book of Common Prayer. It is not evidence of the time of sunrise on a particular day (*Tutton* v. *Darke*, (1860) 5 H. & N. 647).

Almaria, the archives or muniments of a church or library.—*Blount.*

Almner, or **Almoner,** an officer of the Royal household, whose business it is to distribute the royal arms. The lord almoner, who is usually now a bishop, had the disposition of the sovereign's dish of meat, after it came from the table, which he might give to whom he pleased. The Marquis of Exeter is hereditary Grand Almoner.—*Fleta*, lib. ii. c. 22; *Co. Litt.* 94 *a.* A collector or treasurer of a benevolent institution.

Almodrail, the lords of free manors, lords paramount.

Almoin, a tenure of lands by divine service. See FRANKALMOIGNE.

Almonarium, a kind of safe or cupboard in which broken victuals were laid up to be distributed among the poor.—*Old Records.*

Almonarius [corruption of *eleemosynarius*], a distributer of alms.

Alms. Charitable contributions. The receipt of parochial relief or other alms was a disqualification for the parliamentary franchise in boroughs by s. 36 of the Reform Act, 1832 (2 & 3 Will. 4, c. 45), and in counties by s. 40 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), while by s. 9 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), it was also a disqualification for the municipal franchise; but s. 9 (1) of the Representation of the People Act, 1918, provides that a person shall not be disqualified from voting at a parliamentary or local government election because he or his dependants have received poor relief or other alms.

Alms-houses. Houses given by charitable persons for poor persons to live in free of charge are very numerous in this country. They are exempt from property tax, see Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), s. 37, and subsequent Finance Acts, and in respect of revenues payable to them before 1693 from land tax, by the Land Tax Act, 1797 (38 Geo. 3, c. 5).

Almsfeoh or **Almesfeoh** [Sax.], alms-money. It has been taken for *Peter-pence*, first given to the Pope by Ina, King of the West Saxons, and anciently paid in England on the first of August. It was likewise called *romefeoh*, *romescot*, and *heorthpening.*—*Selden's Hist. Tithes*, 217.

Almutium, a cap made of goat's or lamb's skin, the part covering the head being square, and the other part hanging behind to cover the neck and shoulders; worn by priests.—*Dugd. Mon.* tom. iii. 36.

Alnage, or **Aulnage** [fr. *aune*, Fr., an ell], a measure, particularly the measuring with an ell.—*Cowel.*

Alnager, or **Aulnager,** formerly a public sworn officer of the king, who examined into the assize of cloth, and fixed seals to it, and also collected a subsidiary or *aulnage* duty on all cloths sold (25 Edw. 3, st. 4, c. 1). There were afterwards three officers belonging to the regulation of clothing, viz., searcher, measurer, and aulnager.—4 *Inst.* 31. Alnage duties were abolished in England by 11 & 12 Wm. 3, c. 20, and in Ireland by 57 Geo. 3, c. 109.

Alnet, De, D'Auney.

Alnetum, a place where alders grow, or a grove of alder trees.—*Co. Litt.* 4 *b.*

Alodial, or **Allodial,** or **Allodium** [perhaps fr. *odal,* Icel.; *odel,* Dan. Sw., a patrimonial estate. See *Wedgw.*], a holding of lands in absolute possession without acknowledging any superior lord, contradistinguished from *Feudal* lands, which are held of superiors.—There are not any alodial lands in England, according to Coke.—*Co. Litt.* 93 *a*; 1 *Hall. Mid. Ages,* ch. 2, pt. i.

Alody, inheritable land.

Aloverium, a purse.—*Fleta,* lib. ii. c. 82, p. 2.

Alsatia, formerly a cant name for Whitefriars, a district in London between the Thames and Fleet Street, and adjoining the Temple, which, possessing certain privileges of sanctuary, became for that reason a nest of those mischievous characters who were generally obnoxious to the law; see *Scott's Fortunes of Nigel,* ch. 17. These privileges were derived from its having been an establishment of the Carmelites, or White Friars, founded in 1241. In the time of the Reformation the place retained its immunities as a sanctuary, and James I. confirmed and added to them by a charter in 1608, but all privileges of sanctuary were shortly afterwards abolished in 1624 by 21 Jac. 1, c. 28.

Alta, De, ripa, Dantry.

Alta proditio, high treason; now simply called treason.

Altar. The table for the celebration of the Holy Communion, which in the Church of England should be covered during the communion service with 'a fair white linen cloth,' and at other times with 'silk or other decent stuff.'

Altarage, offering made upon the altar; the profit arising to the priest by reason of the altar.—*Termes de la Ley.*

Alteration. An alteration vitiates a deed or other instrument, if made in a material part after execution. In the case of deeds, an unexplained alteration is presumed to have been made at the time of execution; but it is otherwise with wills. See Wills Act, 1837 (7 Wm. 4 & 1 Vict. c. 26), s. 21.

As to alteration of a bill of exchange, see s. 64 of the Bills of Exchange Act, 1882, by which, where a bill is materially altered without the assent of all parties liable on it, the bill is avoided, except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers. But if the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor. In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent. See also *Slingsby* v. *Westminster Bank Ltd.* (*No.* 2), 1931, 2 K. B. 583 (alteration of payee by adding words 'per C. & P.'), *Knock* v. *Dicks,* 1933, 1 K. B. 307 (inland bill turned into foreign bill).

A lease sometimes contains a covenant by the lessee not to make 'alterations.' For the meaning of such a covenant, see *Bickmore* v. *Dimmer,* 1903, 1 Ch. 158, and see L. P. Act, 1925, s. 84, as to restrictions in leases, and Landlord and Tenant Act, 1927 (17 & 18 Geo. 5, c. 36), s. 19, also Landlord and Tenant.

Alteration of Share Capital. Under the Companies Act, 1929, the share capital of a company may be altered by increase (s. 53), consolidation or division, conversion of shares into stock and reconversion or cancellation of unissued capital (s. 50), or redemption of redeemable preference shares (s. 46). The alteration must be authorized by the articles, and the memorandum modified. A company cannot make an original issue of stock (*Home & Foreign Investment and Agency Co.,* 1912, 1 Ch. 72, and subject to confirmation by the Court a company may reduce its capital by special resolution for reducing share capital and consequential alteration of the memorandum. The words 'and reduced' need not be added to the name of the company unless the Court so orders (ss. 55–60). As a rule in all these cases the alteration must be notified to the Registrar of Joint Stock Companies (s. 5), and, in the case of reduction, registered by him (s. 58).

Alternat, a usage amongst diplomatists by which the rank and places of different

powers, who have the same rights and pretensions to precedence, are changed from time to time, either in a certain regular order, or one determined by lot. In preparing treaties and conventions, it is the usage of certain powers to alternate both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place.—*Wheaton, Int. Law*, pt. ii., c. 3, s. 4.

Alternative, the one or the other of two things. Where a new remedy is created in addition to an existing one, they are called alternative if only one can be enforced; but, if both, cumulative.

As to alternative pleading, see R. S. C. Ord. XIX., r. 24; Ord. XX., r. 6.

Altius non tollendi, a servitude due by the owner of a house, by which he is restrained from building beyond a certain height.—*Dig.* 8, 2, 4; *Sand. Just.*

Altius tollendi, a servitude which consists in the right, to him who is entitled to it, to build his house as high as he may think proper. In general, however, every one enjoys this privilege, unless he is restrained by some contrary title.—*Civil Law*; *Sand. Just.*

Alto et basso (high and low), an absolute submission of all differences.—*Blount.*

Altum mare (the high sea).

Alumnus, a child which one has nursed; a foster-child.—*Dig.* 40, 2, 14; *Civil Law.* One educated at a college or seminary is called an *alumnus* thereof.

Always Afloat. Charter-parties often require that a ship shall discharge her cargo 'always afloat.' This means that the port to which she is sent to discharge must be one in which she can lie safely with her full cargo and discharge it without touching the ground (*Halsb. Laws of England*).

Amabyr, or **Amvabyr,** a custom in the honour of Clun, belonging to the Earls of Arundel.—*Pretium virginitatis domino solvendum.* Abolished.—*Cowel.*

Amalphitan Code, a collection of sea-laws, compiled about the end of the eleventh century by the people of Amalphi. It consists of the laws of maritime subjects which were or had been in force in countries bordering on the Mediterranean, and was for a long time received as authority in those countries.

Amanuensis [*a manu*, Lat.], one who writes on behalf of another that which he dictates.

Ambactus, a servant or client.—*Cowel.*

Ambassador [*legatus*, Lat.], a representative minister sent by one sovereign power to another, with authority conferred on him by letters of credence to treat on affairs of state.—4 *Inst.* 153. Ambassadors are either *ordinary*, who reside in the place whither they are sent; or *extraordinary*, who are employed upon special matters. An ambassador during the period of his residence here is entirely exempt from the jurisdiction of the courts of this country (*Magdalena Steam Navigation Co.* v. *Martin*, (1859) 2 E. & E. 94; *Musurus Bey* v. *Gadban*, 1894, 2 Q. B. 352). Ambassadors and their domestic servants are protected from civil arrest and their goods from seizure under distress or execution by the Diplomatic Privileges Act, 1708 (7 Anne, c. 12), which is declaratory of the Common Law, but imposes severe penalties, including corporal punishment, on persons violating its provisions. The King can veto the appointment of an ambassador, and this constitutional right was last exercised by William IV. in 1835, in the case of Lord Durham as ambassador to St. Petersburg. The Sovereign can also refuse to receive an ambassador accredited to him. See *Chit. Stat.*, tit. '*Ambassadors.*'

Ambassy, an embassy.

Amber, or **Ambra,** a measure of four bushels.—*Introd. Domesd.*, vol. i., 133.

Ambidexter, one who plays on both sides. A juror or embraceror, who takes bribes from both parties to influence his verdict.—*Termes de la Ley.*

Ambiguity, doubtfulness, double-meaning, obscurity. There are two species of ambiguity—'latent' and 'patent.' Where the words of a document as they stand are quite clear and intelligible but it turns out that they can apply equally well to two or more persons, or to two or more things, that is a 'latent ambiguity,' and parol evidence is admissible to shew which was really meant. This is not contradicting the document, because each answers the written words equally well. A 'patent ambiguity,' on the other hand, is one which appears on the face of the document and renders it unintelligible, e.g., a legacy of 100*l.* to ——. No parol evidence is admissible to supply the missing name; but see *Watcham* v. *A.-G. of East Africa*, 1919, A. C. 533 (*Powell on Evidence*). The rule is expressed accordingly in the two following Latin maxims:

Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur. Bacon.—(A hidden ambiguity of the words may be sup-

plied by evidence ; for whatever ambiguity arises from an extrinsic fact may be removed by extrinsic evidence.)

Ambiguitas verborum patens nullâ verificatione excluditur. Lofft, 249.—(A patent ambiguity cannot be cleared up by extrinsic evidence.)

Ambiguum placitum interpretari debet contra proferentem. *Co. Litt.* 303 *b.*—(An ambiguous plea ought to be interpreted against the party delivering it.)

Ambit [*metaph.*], the limits or circumference of a power or jurisdiction, the line circumscribing any subject-matter.

Amboglanna, Ambleside in Westmoreland, and Burdoswold in Cumberland.

Ambra, a Saxon vessel or measure for salt, butter, meal, or beer. See AMBER.

Ambrosii Burgus, Amesbury in Wilts.

Ambulance. An ambulance service can be established and maintained in the County of London by virtue of the Metropolitan Ambulance Act, 1909 (9 Edw. 7, c. 17).

Ambulatoria est voluntas defuncti usque ad vitæ supremum exitum. *Dig.* 34, 4, 4.—(The will of a deceased person is ambulatory until the latest moment of life.)

Ameliorating Waste, acts which though technically amounting to what the law calls 'waste,' yet, so far from injuring the inheritance, improve it ; see *Doherty* v. *Allman,* (1878) 3 App. Cas. 709 ; *Meux* v. *Cobley,* 1892, 2 Ch. 253 ; and see Settled Land Act, 1925, ss. 88 and 89, as to improvements involving impeachment for waste.

Amenable [fr. *amener,* Fr., to lead unto]. 1. Tractable, that may be easily led or governed ; formerly applied to a wife who is governable by her husband.—*Blount.*

2. Responsible or subject to answer, etc., in a Court of justice.

Amende honorable [Fr.], an adequate reparation, an apology (see that title). In French law a species of punishment to which offenders against public decency or morality were anciently condemned.

Amendment, a correction of any errors in the writ or pleadings in actions, suits, or prosecutions. The power of allowing amendments has been much extended by modern statutes and rules, but it will not be exercised to the prejudice of a party to the proceeding ; apart from this, it is in general a mere matter of costs.

1. Amendment of proceedings in the Supreme Court. By R. S. C. Ord. XXVIII., r. 1, the Court or a judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. This is the general principle. The remaining rules of the Order prescribe the practice in detail ; they allow the plaintiff to amend his statement of claim once without leave, and the defendant similarly to amend a counterclaim or set-off. But a defence cannot be amended without leave unless the plaintiff has amended his statement of claim.

2. Proceedings in County Courts. Ample powers of amendment, in equitable as in all other proceedings, are possessed by these Courts ; and provided for by County Court Rules, 1936, Ord. XV., under County Courts Act, 1934.

3. Criminal Proceedings. Under the Indictments Act, 1915, the Court may amend a defective indictment unless such amendment cannot be made without injustice. Quarter Sessions can amend the statement of grounds of appeal to them from Courts of Summary Jurisdiction upon such terms as to costs and postponement as they may think fit.

As regards Courts of Summary Jurisdiction the King's Bench Division can amend an order bad for want of form upon the return of a writ of certiorari. In these Courts no objection to any information, complaint or summons for any defect in substance or form is allowed, but if the party summoned has been deceived or misled by a defect, the justices may adjourn the hearing.

Amends, satisfaction.

Amends, Tender of, was by many particular statutes made a defence in an action for a wrong, especially in cases where the wrong had been done by some public authority or person acting in pursuance of an Act of Parliament, as the Highway Act, 1835 (see s. 105), or the Larceny Act, 1861 (see s. 113), in apprehending, for instance, a person found committing an offence against that Act. These are repealed by the Public Authorities Protection Act, 1893, which provides, amongst other things, for the pleading of tender of amends, and for taxation of the defendant's costs between solicitor and client in event of the plaintiff not recovering more than the sum tendered, etc. As to tender upon distress (*q.v.*), whether before or after impounding but before sale, see *Johnson* v. *Upham,* (1859) 2 E. & E. 250. For wrongful distress, see Distress for Rent Act, 1737, and for

trespass on land with disclaimer of title, Limitation Act, 1623 (21 Jac. 1, c. 16), s. 5, the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 135, and Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 139, and Acts incorporated with either of these statutes, and PUBLIC AUTHORITIES PROTECTION.

A mensâ et thoro (from table and bed). A term used to describe a partial divorce, in cases in which the marriage was just and lawful, but for some supervenient cause, such as the commission of adultery or cruelty by the husband or wife, it became improper or impossible for them to live together. This divorce was effected by sentence of the Ecclesiastical Court. It caused the separation of the husband and wife, but did not dissolve the marriage, so that neither of them could marry during the life of the other.

A decree of judicial separation has been substituted for this kind of divorce by the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 7, now repealed and replaced by the Judicature Act, 1925, s. 85. See MATRIMONIAL CAUSES ; DIVORCE.

Amentia, insanity, idiotcy.

Amercement or **Amerciament,** a pecuniary punishment or penalty assessed by the peers or equals of the party amerced for an offence, by the commission of which he had placed himself at the mercy of the lord. The difference between *amercements* and *fines* is as follows : The latter are certain, and are created by some statute ; they can only be imposed and assessed by Courts of record ; the former are arbitrarily imposed by Courts not of record, as Courts-leet.—*Termes de la Ley.*

American Law. A term generally applied to the law of the United States of America which is based, in the main, on the common law of England. The law of Louisiana, however, is derived from the Code Napoleon. Though the decisions of the Courts of the United States are often helpful in elucidating analogous questions, and accordingly are frequently quoted in text-books by English writers and sometimes cited in argument, they have no binding effect upon any English Court. America, however, it need scarcely be said, has produced lawyers and text-writers of the highest eminence, and such works as those of Wheaton, Story, and Professor Gray are in constant use in this country.

Amhinlogau tir (land borderers), witnesses in a Court in suits respecting landed property, whose lands bordered on that in dispute.—*Anc. Inst. Wales.*

Ami. See AMY.

Amicia, a cap made of goat's or lamb's skin. See ALMUTIUM.

Amictus, or **Amesse,** the uppermost of the six garments worn by priests of the Roman Catholic Church. It is tied round the neck, and covers the breast and heart. The other five garments are alba, cingulum, stola, manipulus, and planeta.

Amicus curiæ (Lat., friend of the Court), a member of the bar or other stander by, who informs the Court when doubtful or mistaken of any fact or decided case.

Amita, a paternal aunt ; the sister of one's father.

Amita magna, a great aunt.

Amittere legem terræ, or **liberam legem,** to lose the liberty of being sworn in any Court. But by 6 & 7 Vict. c. 85, persons who were previously excluded from giving evidence by incapacity arising from crime or interest are made competent witnesses, their credibility being left to the jury. A person outlawed was (see OUTLAW) said to lose his law ; i.e., to be put without its protection, so that he could not sue, although he could be sued.—*Glanvil,* lib. ii.

Ammobragium, a service, or poll-money, like chevage.—*Spel.*

Ammodwr [*am-bod-wr*], a compactor, one before whom a compact is made, and who is therefore admissible as a witness to prove the terms of it.—*Anc. Inst. Wales.*

Amnery, an almshouse.

Amnesty [fr. *ἀμνηστία,* Gk., non-remembrance], an act of pardon or ' oblivion ' (see, e.g., the Act of Oblivion, 12 Car. 2, c. 11, and 20 Geo. 2, c. 52), by which crimes against the Government up to a certain date are so obliterated that they can never be brought into charge. All acts of amnesty originate with the Crown.

Amnitum insulæ, isles upon the west coast of Britain.—*Blount.*

Amobh [fr. *am-gobr,* fee], the fee paid to a lord on the marriage of a female.—*Anc. Inst. Wales.*

Amortization, or **Amortizement.** See ADMORTIZATION.

Amortize, to alienate lands in mortmain.

Amotion, a putting away, a removing, deprivation or ouster of possession. In municipal boroughs, a removal from his office of a councillor by his fellow-councillors, frequently exercised before the Municipal Corporations Act, 1835, and not expressly abolished either by that Act or by the

Municipal Corporations Act, 1882. The power of amotion is implied or may be conferred by charter. Under the old law it has been said that offences justifying amotion must either be committed in the official character, infamous, or indictable (*Kyd on Corporations*); but habitual drunkenness was held a sufficient cause in *Reg.* v. *Taylor*, (1694) 3 Salk. 231, where also a bye-law giving power to amove for just cause was held good; nor does there seem to be any means except amotion of getting rid of a clearly unfit councillor who refuses to resign. See *Halsbury's L. of E.*, 2nd ed., Vol. 8, pp. 38 *et seq.*

Amove, to remove from a post or station.

Amoveas manus, or **Ouster le main,** a livery of land to be amoved out of the king's hands on a judgment obtained upon a *monstrans de droit*, to restore the land, its effect being the same as a judgment that the party should have his land again. Abolished by 12 Car. 2, c. 24.

Ampliation, an enlargement, a deferring of judgment till the cause be further examined.

Amputation of right hand, an ancient punishment for a blow given in a Superior Court; or for assaulting a judge sitting in the Court. It was also inflicted by the Star Chamber for duelling or striking a blow within the precincts of a royal palace.

Amrygoll [*am-rhy-coll*, total loss], loss of property.—*Anc. Inst. Wales.*

Amy, or **Ami** [fr. *amicus*, Lat.], usually called *prochein amy*, the next friend (as distinguished from the guardian) suing on behalf of an infant. Infants sue by a next friend and defend by a guardian *ad litem*; see R. S. C. Ord. XVI. r. 16; also *alien amy*, a friendly alien.

An, Jour, et Waste, year, day, and waste. A forfeiture of the lands to the Crown incurred by the felony of the tenant, after which time the land escheats to thel ord.—*Termes de la Ley.*

Anacoenosis [fr. ἀνακοινώσις, Gk.], a rhetorical figure, whereby we seem to deliberate and argue the case with others upon any matter of moment.—*Encyc. Londin.*

Anacoluthon, or **Anacoluthus** [fr. ἀνακόλούθος, Gk.], a rhetorical figure, when a word is to answer another is not expressed.—*Ibid.*

Anacrisis [fr. ἀνάκρισις, Gk.], an investigation of truth, interrogation of witnesses, and inquiry made into any fact, especially by torture.—*Ibid.*; *Civil Law.*

Anagraph, a register or inventory.

Analogism, an argument from the cause to the effect.

Analogy, identity or similarity of proportion: where there is no precedent in point, in cases on the same subject, lawyers have recourse to cases in a different subject-matter but governed by the same general principle. This is reasoning by analogy. See COMMON LAW, and remarks of Parke, J., in *Mirehouse* v. *Rennell*, (1830) 8 Bing. at p. 515.

Analysis, the resolution of a thing into its elements or component parts. By the Food and Drugs (Adulteration) Act, 1928 (18 & 19 Geo. 5, c. 31) (see ADULTERATION), provision is made for the appointment in every district by the local authorities of one or more persons possessing competent medical, chemical, and microscopical knowledge as analysts of all articles of food and drink. An article purchased for analysis under this Act must be divided into three parts (s. 18), each sufficiently large to afford reasonable facilities for analysis: see *Lowery* v. *Hallard*, 1906, 1 K. B. 398. The Fertilisers and Feeding Stuffs Act, 1926 (16 & 17 Geo. 5, c. 45), contains analogous provisions for securing to agriculturists the purity of artificial manures and feeding stuffs for cattle, etc.

Anarchy, absence of government. See SEDITION.

Anathematize, to pronounce accursed by ecclesiastical authority, to excommunicate.

Anatocism [fr. ἀνά and τοκος, Gk.], taking compound interest for the loan of money.

Anatomy Act, 1832 (2 & 3 Wm. 4, c. 75), by which the practice of dissecting human corpses is regulated, and a license required for it.

Ancestor, one that has gone before in a family; it differs from predecessor, in that it is applied to a natural person and his progenitors, while the latter is applied also to a corporation, and those who have held offices before those who now fill them.—*Co. Litt.* 78 *b.*

Ancestral, or **Ancestrel,** that which has relation to ancestors.—*Blount's Law Dict.*

Anchor. The Anchors and Chain Cables Act, 1899 (62 & 63 Vict. c. 23), consolidating, with small amendments, three Acts of 1864, 1871, and 1874, provides that unproved anchors are not to be sold or bought for a British ship, and regulates the mode of testing by testing establishments licensed by the Board of Trade. See also Merchant Shipping Act, 1894, ss. 290, 538–40. As to

recovering the value of an anchor which has been slipped to avoid a collision, see *The Port Victoria*, 1902, P. 25.

Anchorage, a duty taken from the owners of ships for the use of the havens where they cast anchor.

Ancient Demesne, a tenure now abolished by s. 128 of the L. P. Act, 1922 (12 & 13 Geo. 5, c. 16), see COPYHOLDS, but formerly existing in certain manors, which, though now granted to private persons, were in the actual possession of the Crown in the times of Edward the Confessor and William the Conqueror, and appear to have been so by the great survey in the Exchequer called Domesday Book, and, therefore, whether lands are ancient demesne or not, is to be tried only by this book, called in consequence *Liber Judicatorius;* but the question must be tried by a jury whether lands be parcel of a manor which is ancient demesne, being a question of fact. There is great confusion in the books respecting this tenure. It is only the freeholders of the manor who are truly tenants in ancient demesne, and land held in ancient demesne, passes by common law conveyance without the instrumentality of the lord. The copyholders in an ancient demesne manor are merely to be considered as occupying a part of the lord's demesne and do not hold of the manor. They form the customary Court. The Court of Ancient Demesne, which is analogous to the Court Baron, is constituted by those who hold in socage of the lord of the manor. The tenants in ancient demesne, properly so called, were made subject to certain restraints and entitled to certain immunities. They were forbidden to bring or to defend any real action, touching their tenements, except in the lord's Court. In ancient demesne there are no subdivided and conflicting interests in the soil. The timber and minerals belong to the tenant, and the rents, fines and services due to the lord are certain. See Third Report of the Real Property Commissioners; *Merttens* v. *Hill*, 1901, 1 Ch. 853.

Ancient Lights, windows, glazed or unglazed, through which the access of light has been enjoyed otherwise than by consent or permission for twenty years and upwards.—See LIGHT; *Gale* or *Goddard on Easements;* and Prescription Act, 1832 (2 & 3 Wm. 4, c. 71).

Ancient Monuments. See Ancient Monuments Consolidation and Amendment Act, 1913 (3 & 4 Geo. 5, c. 32), and Advertisements Regulation Act, 1925 (15 & 16 Geo. 5, c. 52); Ancient Monuments (Ireland) Act, 1892; and *post*, MONUMENTS.

Ancients, gentlemen of the Inns of Court and Chancery. In Gray's Inn the Society consists of benchers, ancients, barristers, and students under the bar; and here the ancients are of the oldest barristers. In the Middle Temple, those who had passed their readings used to be termed ancients. The Inns of Chancery consisted of ancients and students or clerks; from the ancients a principal or treasurer was chosen yearly.

Ancient Serjeant, the eldest of the Queen's Serjeants.—See *Manning's Serviens ad legem*, 19-20, and SERJEANT.

Ancient Writings, documents upwards of 30 years old. These are presumed to be genuine without express proof, when coming from the proper custody. The judge decides in each case whether the custody is proper.—*Taylor on Evidence.*

Ancienty, eldership or seniority.

Anciliary [fr. *ancilla*, a maid servant, Lat.], that which works out, or assists, or is subordinate to, some other decision.—*Encyc. Londin.*

Ancwyn, a stated allowance of provision allotted to the officers of the Court in their lodgings; the term appears to be put in opposition to *cwynos* (*cœna*), supper, as being a privileged *private* allowance for that meal; the *cwynos* being the *public* evening meal. *Ancwyn* is translated *cœna* in some Latin copies of the ancient Welsh laws.—*Anc. Inst. Wales.*

Andaga, or **Andæg,** a day or term appointed for hearing a cause; hence *Andagian,* to appoint the day.—*Anc. Inst. England.*

Andena, a swath or line of grass or corn in mowing, or as much ground as a man can stride over at once.—*Jac. Law Dict.*

Anderida, Newenden in Kent.

Andreapolis, St. Andrews in Scotland.

Androgynus [fr. *ἀνηρ ανδρὸς*, Gk., man, and *γυνη*, woman], a hermaphrodite.

Androlepsy, the taking by one nation of the citizens or subjects of another, in order to compel the latter to do justice to the former.

Anfeldtyhde, or **Anfealtihle,** a simple accusation.—*Saxon.*

Angaria [fr. *ἀγγαρεία*, Gk.], personal service, which tenants were obliged to pay to their lords. Impressing of ships.—*Blount's Law Dict.*

Angel, an ancient English coin of the value of 10 shillings.—*Jac. Law Dict.*

Angelica vestis, a monkish garment which laymen put on a little before death, in order

to have the benefit of the monks' prayers.—*Dugd. Mon.*, tom. i. 632.

Anghyvarch [fr. *an*, *cyvarch*, unquestionable], a term used for the articles which were exclusively the property of a man or woman, and not subject to a division upon a separation ensuing. A fine for committing certain actions without permission.—*Anc. Inst. Wales.*

Angildlarianum, monasterium, the city of Ely in Cambridgeshire.

Angild [fr. *an*, one, and *gild*, payment, mulct, or fine, Sax.], the single valuation or compensation of a criminal. *Twigild* was the double and *trigild* the treble, mulct or fine.—*Laws of Ina*, c. 20; *Spelm.* See ANGYLDE.

Angliæ jura in omni casu libertati dant favorem. *Co. Litt.* 124 *b*; *Fortesc.* c. 42.- (The laws of England in every case are favourable to liberty.)

Anglo-French Convention Act, 1904 (4 Edw. 7, c. 33), ratifies the Convention between His Majesty the King and the President of the French Republic dealing with disputes which had arisen respecting rights of fishing off Newfoundland. The Convention is scheduled to the Act.

Angylde, the rate by law at which certain injuries to person or property were to be paid for; in injuries to the person, equivalent to the 'wer,' i.e., the price at which every man was valued. It seems also to have been the fixed price at which cattle and other goods were received as currency, and to have been much higher than the market price, or *ceap-gild.*—*Anc. Inst. Eng.*

Anhlote, a single tribute or tax, paid according to the custom of the country as scot and lot.—*Leges Wm. I.* c. 64.

Anichiled, cancelled, or made void.

Aniens, or **Anient,** void, of no force or effect.—*Fitz. N. B.* 214.

Animals may be divided into—

(1) Domestic animals, such as dogs, horses, cows, etc., sometimes called animals *mansuetæ naturæ*. See *White* v. *Fox*, 48 T. L. R. 641.

(2) Animals that are naturally dangerous, i.e., wild beasts, such as lions, bears, etc.

(3) Animals *feræ naturæ*, but harmless, such as hares, pheasants, partridges, etc. See FERÆ NATURÆ and GAME.

Animals of the first or second class are ordinary subjects of property in this country. But there is no property in those of the third class until they are caught or reclaimed. As to the liability of the owner for mischief done by a wild beast, or by a vicious domestic animal, see MISCHIEVOUS ANIMAL.

Dogs. As to injury by dogs and seizure of stray dogs, see DOG.

Malicious Damage. By the Malicious Damage Act, 1861, s. 40, the unlawful and malicious killing, maiming, or wounding of cattle is made a felony. And by s. 41, the unlawful and malicious killing or wounding any animal not being cattle, but being the subject of larceny at Common Law, or being ordinarily kept in a state of confinement, or for any domestic purpose, is punishable by imprisonment and fine (Larceny Acts, 1861, s. 21 (unrepealed) and 1916, s. 1 (3)). See POACHING, GAME.

Cruelty. By the Protection of Animals Act, 1911 (1 & 2 Geo. 5, c. 27), amended by the Acts of 1912 (2 & 3 Geo. 5, c. 17), 1921 (11 & 12 Geo. 5, c. 14), and 1927 (17 & 18 Geo. 5, c. 27), various earlier statutes are repealed and further provision made for the punishment of persons guilty of cruelty to domestic or captive animals, and the Court is empowered to order the destruction of the animal where necessary, and to deprive any person convicted of cruelty of the ownership of the animal.

And by the Protection of Animals (Cruelty to Dogs) Act, 1933 (23 & 24 Geo. 5, c. 17), the Court is empowered to disqualify from keeping dogs persons convicted of cruelty to them. The Performance of Animals Acts, 1925 and 1934 (24 & 25 Geo. 5, c. 21), prohibit certain contests, performances and exhibitions with animals. As to poultry, see the Poultry Act, 1911 (1 & 2 Geo. 5, c. 11). The Animals (Anæsthetic) Act, 1919, makes the administration of an anæsthetic to horses, dogs, cats and bovines compulsory when specified operations are performed; but see VIVISECTION and the provisions of the Diseases of Animals Acts, 1894–1935. As to Scotland see the Protection of Animals (Scotland), Act, 1912 (2 & 3 Geo. 5, c. 14).

Diseases. The subject of the diseases, including exportation, importation, quarantine, of animals, is dealt with in a series of statutes known together as the 'Diseases of Animals Acts, 1894 to 1935.' The principal Act is that of 1894. The Acts are amended in respect of the exportation of horses by the Diseases of Animals Act, 1910, and the Exportation of Horses Act, 1914. The importation of cattle from Canada is regulated by the Importation of Animals Act, 1922, as amended and extended by 17 & 18 Geo. 5, c. 13; the Ottawa Agreements Act, 1932 (22 & 23 Geo. 5, c. 53), and see S. R. & O., 1933, and the Diseases of Animals Acts; see 25 & 26 Geo. 5, c. 31, including poultry.

Noisy Animals. The London County Council, by bye-law made in July, 1898, in pursuance of s. 23 of the Municipal Corporations Act, 1882, and s. 16 of the Local Government Act, 1888, for the Good Rule and Government of the Administrative County of London, has provided that no person shall keep any noisy animal which shall be or cause a serious nuisance to residents in the neighbourhood, but no proceeding can be taken until after the expiration of a fortnight from the date of the service of a notice, alleging a nuisance, signed by not less than three householders residing within hearing of the animal. The Public Health Act, 1936, s. 81 (6), provides that local authorities may make bye-laws preventing the keeping of animals so as to be injurious to health.

Performing Animals. Restrictions on exhibition and training of performing animals is dealt with in the Performing Animals (Regulation) Act, 1925 (15 & 16 Geo. 5, c. 38).

As to destructive animals (musk rats), see 22 & 23 Geo. 5, c. 12, and S. R. & O., 1933, No. 106.

See HORSES.

Animus, an intent.

Animus ad se omne ducit.—(Intention attracts all law to itself.)

Animus cancellandi, the intention of destroying or cancelling (applied to wills).

Animus et factum, the intention and the deed.

Animus furandi, the intention of stealing.

Animus manendi, the intention of remaining (applied to domicile).

Animus morandi, the intention of remaining.

Animus quo, the intent with which.

Animus recipiendi, the intention of receiving.

Animus revertendi, the intention of returning.

Animus revocandi, the intention of revoking (viz., a will).

Animus testandi, the intention of making a will.

Anker, a liquid measure chiefly used at Amsterdam, containing about 32 gallons English measure.—*Encyc. Londin.*

Ann, or **Annat,** half a year's stipend, over and above what is owing for the incumbency, due to a minister's relict, child, or nearest of kin, after his decease.—*Scots Law.*

Anna, a piece of money, the sixteenth part of a rupee.—*Indian.*

Annales, yearlings or young cattle from one to two years old.—*Cowel.*

Annat, or **Annates,** first fruits (being one year's whole profits) of a spiritual living.—*Termes de la Ley.* See BOUNTY OF QUEEN ANNE.

Anne, Queen, Bounty of. See BOUNTY OF QUEEN ANNE.

Annealing of Tile [fr. *onælan*, Sax., or *niello*, It.; *nigellum*, M. Lat.; a kind of black enamel on gold and silver], burning or hardening tiles, which are made of burnt clay and are used for covering houses.—17 Edw. 4, c. 4. Also a tempering of glass or metal ware.

Annexation, the union of lands to the Crown, and declaring them inalienable. Also the appropriation of the church lands by the Crown, and the union of land lying at a distance from the parish church to which they belong, to the church of another parish to which they are contiguous. The permanent occupation by a sovereign state of the territory formerly belonging to another, and see RES NULLIUS. As to concessions granted by the former sovereign prior to annexation, see *Cook* v. *Sprig*, 1899, A. C. 572. The financial liabilities of a conquered state are not after annexation binding on the conquering state. See *West Rand Gold Mining Co.* v. *R.*, 1905, 2 K. B. 391.

Anniented [Low Fr.], abrogated, frustrated, brought to nothing or taken away.—*Co. Litt.* 388 *a.*

Anni nubiles, marriageable years of woman, i.e., 12 years.—*Co. Litt.* 79 *a.*

Anniversary Days, solemn days appointed to be celebrated yearly in commemoration of the death of a saint or other event.

The death of Charles I., 30th January, the Restoration of Charles II., 29th May, and the discovery of the Gunpowder Plot, November 5th, gave rise to 'anniversaries' and special church services, abolished by 22 Vict. c. 2. The anniversary of the accession of the sovereign is still observed by an Accession Service, and the signing of the Armistice on the 11th November, 1918, by Remembrance Day.

Anno Domini (abbreviated A.D.), in the year of the Lord. The Christian computation of time is from the incarnation of our Saviour Jesus Christ. It is called the 'Vulgar Era.'

Annoisance, or **Annoyance** [fr. *annoiare*, It.; *ennuter*, Fr.], any hurt done to a place, public or private, by placing anything thereon that may breed infection, or by encroachment, or such-like means. It is

the same as *noisance* or *nuisance*.—22 Hen. 8, c. 5.

Annonæ civiles, rents paid to monasteries.

Annotation, the designation of a place of deportation ; the citing of an absentee ; the prince's answer on a doubtful point of law.

Annua pensione, an ancient writ to provide the king's chaplain, if he had no preferment, with a pension.—*Reg. Brev.* 165, 307.

Annuale, the yearly rent or income of a prebendary.

Annualia, a yearly stipend assigned to a priest for celebrating an anniversary, or for saying continued masses for the soul of a deceased person.

Annuity. An annuity is a fixed sum payable annually either in perpetuity or for any less period. When charged upon land either freehold or leasehold or both, exclusively of purely personal estate, it is strictly a rent charge ; see Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 27), s. 21, and RENT CHARGE. But if the annual sum is payable either under a personal obligation only or out of funds which consist of personal estate exclusively, it is an annuity. If the source of payment is mixed and consists of real and personal estate, its nature will depend upon the construction which the Court will give to the grant. In a will an annuity of this kind is *prima facie* personalty, but the word annuity may also be construed as a charge upon lands out of which the payment is to be made exclusively of the personal estate, see *Turner* v. *Turner*, (1783) Amb. 776 ; *Re Trenchard*, 1905, 1 Ch. 82. Annuities as a rule are held to be comprised in the word 'legacies,' see *Hawkins on Wills*, 3rd ed., p. 346. But although annuities which are not charged on real estate are personal estate if bequeathed or granted before 1926 to A. and his heirs, they were for the purposes of intestate succession but not for any purpose other than descent, considered to be heritable and descended to the heir. On the other hand, a limitation of a personal annuity to A. and the heirs of his body was ineffectual to create an estate tail, and passed an absolute interest conditional only upon an heir of the body being born. But now under s. 130 of the L. P. Act, 1925, an equitable estate tail may be created after 1925 in respect of an annuity or any other personal estate if the technical words 'heirs of the body' or 'in tail' are used. Testamentary annuities are *prima facie* considered to be payable out of income and for the life of the annuitant only, but the source and order and duration of payment depend upon the meaning and intention of the will. In general it may be said that an annuitant is entitled to payment in cash of the capital sum where there is a direction to purchase or to invest a definite amount in the purchase of an annuity. If there is only a power as distinguished from a trust to purchase an annuity, the annuitant's right to the capital value only arises upon or after the trustees have actually provided money for the purpose of the purchase. Until then, as well as in the cases where there is a simple bequest of an annuity, or even where trustees are directed or authorized to set apart a fund for an annuity, the annuitant cannot claim the capital value of the annuity from the personal representatives. As to the power of the personal representative to set aside a fund to answer an annuity, see s. 41 of the A. E. Act, 1925.

A perpetual annuity, if charged upon land, is redeemable under the provisions of s. 45 of the Conveyancing Act, 1881, reproduced by the Law of Property Act, 1925, s. 191.

An annuity for life or years is not redeemable in the same manner ; but it may be agreed by the parties to the contract that it shall be redeemable on certain terms.

An annuity may be bequeathed. It may be either created, or, if already existing, may be transmitted, by will. A created annuity is a general legacy, and will abate with the other legacies upon a deficiency of assets. It commences, as a rule, from the death of the testator (*Re Robbins*, 1907, 2 Ch. 13), but arrears of it do not carry interest (*Re Hiscoe*, (1902) 71 L. J. Ch. 347). A personal annuity of inheritance will pass under a general bequest (*Aubin* v. *Daly*, (1820) 4 B. & A. 59 ; *In re Trenchard*, 1905, 1 Ch. 82).

An annuity is frequently resorted to as a means of borrowing money, where the borrower has not any available security, the borrower undertaking to pay an annuity during his own life, instead of interest and the return of the loan. The borrower is the grantor, and the lender is the grantee, of such annuity.

Government annuities may be purchased by persons wishing to exhaust all or part of their capital in exchange for an annual provision for life. See Government Annuities Act of 1929 (19 & 20 Geo. 5, c. 29), and see other statutes under title '*Saving-Banks*' in *Chitty's Statutes* as to the purchase of annuities through savings banks. Before 1926 an annuity not created by marriage settlement or will did not affect lands or

hereditaments as against purchasers, mortgagees or creditors without notice unless it was registered, 18 & 19 Vict. c. 15, ss. 12, 13; *Greaves* v. *Tofield*, (1880) 14 Ch. D. 563. This register has now been closed, see Land Charges Act, 1925; LAND CHARGES; SETTLED LAND.

For the recovery of arrears of annuities charged on land, i.e., rent charges, see RENT CHARGE, and for apportionment of annuities generally see the Apportionment Acts, 1834 and 1870 (4 & 5 Wm. 4, c. 22 and 33 & 34 Vict. c. 35); also *Michael Bowles on Testamentary Annuities*.

Annulus et baculum, ring and pastoral staff or crosier, the delivery of which by the prince was the ancient mode of granting investitures to bishoprics.—1 *Bl. Com.* 366.

Annunciation, Feast of. 25th March, known as Lady Day, see QUARTER DAYS.

Annus deliberandi, the year allowed by Scots law for the heir to deliberate whether he will enter upon his ancestor's land and represent him. By 21 & 22 Vict. c. 76, s. 27, the period of deliberation was reduced to six months.—*Scots Law.*

Annus, dies, et vastum [Lat.] (year, day, and waste). See AN, JOUR, ET WASTE.

Annus luctus, the year of mourning, during which the widow, by the ordinances of the Civil Law, could not marry, to prevent the inconvenience of a widow bearing a child which, by the period of gestation, might be the child either of her deceased or her present husband.—*Cod.* 5, 9, 2.

Anomy [fr. *ἀνομία*, Gk.], lawlessness, breach of law.

Anon., An., A., abbreviation for anonymous. *Anon.* is frequently in the older Reports used as the title of a case where the reporter for some reason or other was unable or unwilling to state the names of the parties. In modern times the names of the parties in nullity suits in the Divorce Court are generally concealed under initials, and this has been also done in Bankruptcy cases, which have been often styled '*A Debtor, In re,*' to the considerable confusion of references.

Anrhaith [*anrhaith*, lawless], spoil.—*Anc. Inst. Wales.*

Anrhaith-grbiddail, pilfering, spoliation. A term for the graver spoliation to be exercised towards a homicide.—*Ibid.*

Anrhaith-oddev, spoliation, sufferance. A term used when a person's goods were confiscated and seized by the lord.—*Ibid.*

Ansel, Ansul, or **Auncel,** an ancient mode of weighing by hanging scales or hooks at either end of a beam or staff, which, being lifted with one's finger or hand by the middle, showed the equality or difference between the weight at one end and the thing weighed at the other.—*Termes de la Ley.*

Answer [fr. *andswarian*, A.-S.; *andswer*, Goth.; *antwoord*, Belg.], reply, counter-speech.

Answer in Chancery. The statement of the defendant's case, in answer to the plaintiff's bill of complaint. It was sworn to by the defendant.

'Statement of Defence' is now substituted for the 'Answer.'—See STATEMENT OF EFENCE and R. S. C. Ord. XIX.

Ante, occurring in a report or a text-book, is used to refer the reader to a previous part of the book.

Antedate, to date a document before the day of its execution.

Antejuramentum, or **Præjuramentum,** an oath taken by the accuser and accused before any trial or purgation.—*Leg. Athelstan apud Lambard,* 23.

Ante litem motam [Lat.] (before litigation commenced).

Antenati, those born before a certain period, e.g., before marriage. In Scotland marriage removes the illegitimacy of *antenati* who inherit as heirs; but in England a child legitimated *per subsequens matrimonium* could not, before 1926, inherit real estate (*Doe* v. *Vardill,* (1835) 2 Cl. & F. 571; 7 *ib.* 895); but he could take as devisee under a devise to children (*Re Grey's Trusts,* 1892, 3 Ch. 88). See Legitimacy Act, 1926 (16 & 17 Geo. 5, c. 60), and LEGITIMATION.

Ante-nuptial, before marriage.

Anthrax, a splenic fever of sheep and cattle; a malignant boil or pustule caused in man by infection from animals either directly or through articles manufactured from their hair, skin, etc. See The Anthrax Prevention Act, 1919, and the orders made thereunder.

Anthrax is scheduled as an industrial disease by the Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), 3rd Sched.

Antichresis [fr. *ἀντίχρησις*, Gk.], in the Civil Law, a covenant or convention whereby a person borrowing money of another engages or makes over his lands or goods to the creditor, with the use and occupation thereof, for the interest of the money lent. This covenant was allowed by the Romans, among whom usury was prohibited; it was afterwards called MORT-*gage* to distinguish it from a simple engagement, where the fruits of the ground were not alienated,

which was called VIF-*gage*, i.e., *vivum vadium*. The obsolete Welsh mortgage bears a resemblance to this kind of pledge.—I *Domat*, b. iii. tit. I. s. i. art. 28; *Story on Bailments*, 307, par. 344.

Anticipation, doing or taking a thing before the appointed time. For Anticipation of an invention see PATENTS. A married woman may be restrained by the terms of a will or settlement from aliening, by way of anticipation, property settled to her separate use during coverture. Such a clause absolutely disables her from selling, mortgaging or dealing with the property in anticipation, but it does not apply to income actually accrued due (*Hood Barrs* v. *Heriot*, 1896, A. C. 174), and on the determination of the coverture the restraint is at an end (*Tullett* v. *Armstrong*, (1839) 4 My. & Cr. 377; 1 Beav. 1). Such a provision is only effective during coverture; it cannot affect dispositions in favour of a man (*Brandon* v. *Robinson*, (1871) 18 Ves. 429, or a *feme sole*. The restraint may be applied either to corpus or income, usually only to the latter; in a marriage settlement the wife's income is almost invariably directed to be paid to her, without power of anticipation.' The L.P. Act, 1925, s. 169, repeating and extending the Conveyancing Act, 1911, s. 7, empowers the Court to bind the interest of a married woman, notwithstanding that she is so restrained. And see Trustee Act, 1925, s. 62, and Bankruptcy Act, 1914, s. 52.

The Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), s. 2, allows the costs of the opposite party in any action or proceeding instituted by a married woman to be paid by order of the Court out of property subject to restraint on anticipation, and the Trustee Act, 1925, s. 62, enables the court to impound the interest, although restrained to indemnify a trustee for a breach of trust instigated or consented to by a married woman.

Property acquired by a married woman who has obtained a judicial separation or protection order while in force is not affected by the restraint, see Jud. Act, 1925, s. 1, and the Law Reform (Married Women and Tortfeasors) Act, 1935 (25 & 26 Geo. 5, c. 30). The Act of 1935 has abolished the doctrine of restraint upon anticipation in the case of all instruments executed on or after the 1st January, 1936, and wills of persons dying after that date or appointments after that date of powers conferred at any time; but see Trustee Act, 1925, s. 33, and RESTRAINT UPON ALIENATION.

Antigraphy, copy or counterpart of a deed.

Anti-manifesto, the declaration of a belligerent, as a reply to the manifesto of the other belligerent, showing that the war, as far as he is concerned, is defensive.

Antinomy [fr. *ἀντὶ* against, and *νόμος*, law, Gk.], a contradiction between two laws or an opposition to an express law, by disobedience or by a directly contrary practice.—*Encyc. Londin.*

Antipelargia, an ancient law whereby children were obliged to furnish necessaries to their aged parents. The *ciconia*, or stork, is a bird famous for the care it takes of its parents when grown old. Hence, in some Latin writers, this is rendered *lex ciconiaria*, or the stork's law.—*Encyc. Londin.*

Antiqua customa, a duty which was collected on wool, wool-felts, and leather.

Antiqua statuta, the Acts of Parliament from Richard I. to Edward III.

Antistitium, a monastery.—*Blount.*

Antithetarius, or **Anthetarius,** the recriminating upon the accuser of the same crime which he has charged against the accused.—*Canutus*, c. 47.

Antivestæum, the Land's End.

Antona, the River Avon, in Warwickshire.

Anstrustions, among the Franks, who were the personal vassals or dependents of the kings and counts.

Apatisatio, an agreement or compact.

Apertura testamenti, a form of proving a will in the Civil Law by the witnesses acknowledging before a magistrate their having sealed it.—1 *Wm. Exors.*, 6th ed., p. 312.

Apiacum, Pap Castle, in Cumberland.

Apices juris non sunt jura.—(Fine points of laws are not laws.)—'An excellent and a profitable law, concurring with the wisedome and judgement of ancient and latter times, that have disallowed curious and nice exceptions tending to the overthrow or delay of justice': *Co. Litt.* 304 *b.*—See *Broom's Legal Max.*

Apograph, a copy, an inventory.

Apology. By the Libel Act, 1843 (6 & 7 Vict. c. 96), s. 1, (commonly called Lord Campbell's Act), a defendant in an action of libel may in some cases plead the offer of an apology in mitigation of damages. And by s. 2, in any action for damages for a libel contained in a newspaper or other periodical publication, the defendant may plead an apology and pay money into Court. See LIBEL.

Aporiare, to bring to poverty, to shun or avoid. *Walsingham in Ric.* 2. See APPORIATUS.

Apostacy, a total renunciation of Christianity, by embracing either a false religion or no religion at all (4 *Bl. Com.* 43). A person educated as a Christian who denies the truth of Christianity, or the Divine authority of the Holy Scriptures, is liable to heavy penalties under the 'Blasphemy Act.' See BLASPHEMY.

Apostare, to violate, break, or transgress.—*Blount; Leg. Edw. Conf.* c. 35.

Apostata capiendo, a writ that formerly lay against one who, having entered and professed some order of religion, broke out again and wandered up and down the country, contrary to the rules of his order. It was addressed to the sheriff to apprehend the offender and deliver him into the possession of his abbot or prior.—*Reg. Brev.* 71, 267.

A posteriori. See A PRIORI.

Apostolæ, brief letters of dismission given to an appellant. They state the case and declare that the record will be transmitted.—*Civil Law.* See *Coloquhoun's Roman Civil Law,* vol. iii., par. 2370.

Apothecaries [fr. *apothicaire,* Fr.; fr. *αποθηκη,* Gk.], persons who combine the giving of medical advice with the supply of medicines prepared by themselves. Their practice in England and Wales is mainly regulated by the Apothecaries Act, 1815 (55 Geo. 3, c. 194) (which recites and partly repeals but otherwise confirms the charter of James the First to the Apothecaries Company), and the Apothecaries Act Amendment Act, 1874, (37 & 38 Vict. c. 34). To 'act or practise as an apothecary' without a certificate which under the earlier Act is an offence, indicates an habitual or continuous course of conduct, and consequently an offender is only liable to one penalty though several persons may have been attended to (*Apothecaries Co.* v. *Jones,* 1893, 1 Q. B. 89). An apothecary, as such, may sell drugs prescribed by another as well as drugs prescribed by himself: a chemist may not prescribe but only sell drugs: a medical practitioner, as such, may only sell drugs prescribed by himself. See MEDICAL PRACTITIONERS and CHEMIST.

Appanage, or **Apanage** [fr. *panis,* Lat., bread, whence *panar, apanar,* Prov., to nourish], (1) the provision of lands or feudal superiorities assigned by the Kings of France for the maintenance of their younger sons. (2) The allowance assigned to the prince of a reigning house for a proper maintenance out of the public chest.—1 *Hall. Mid. Ages,* c. 1. And see *Spelm.*

Apparator, or **Apparitor,** a messenger who cites and arrests offenders, and executes the decrees of the judges of the Spiritual Courts. He holds his office at the pleasure of Parliament, and does not possess a vested interest in it. See the Ecclesiastical Fees Act, 1875 (38 & 39 Vict. c. 76).

Apparator comitatus, an officer formerly so called, for whom the sheriffs of Buckinghamshire had a considerable yearly allowance.—*Jac. Law Dict.*

Apparel. The penal laws against excess in this luxury were repealed by 1 Jac. 1, c. 25.

Apparent Heir. See HEIR. In *Scots Law,* he is the person to whom the succession to heritable property has actually opened. He is so called until his regular entry on the lands. The term is now of little practical importance.

Apparlement [fr. *pareillement,* Fr., in like manner], a resemblance or likelihood.—2 Rich. 2, st. 1, c. 6.

Apparura, furniture, etc.—*Blount.*

Appeach, to accuse or bewray.

Appeal [fr. *appellatio,* Lat.; *appeller,* Fr.]. The judicial examination of the decision by a higher Court of the decision of an inferior Court. Thus there is an appeal from the High Court to the Court of Appeal (see Judicature Act, 1925, s. 27), from the Court of Appeal to the House of Lords (see s. 3 of the Appellate Jurisdiction Act, 1876, c. 59), from the Petty Sessions to Quarter Sessions, where the appeal is by way of retrial (see s. 19 of the Summary Jurisdiction Act, 1879, also Summary Jurisdiction (Appeals) Act, 1933, and SESSIONS OF THE PEACE), from the County Courts to the Court of Appeal (see s. 105 of the County Courts Act, 1934, and next title), and in criminal matters, to the Court of Criminal Appeal under the Criminal Appeal Act, 1907, or under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78). Appeals to the House of Lords *in forma pauperis* are checked by the Appeal (Forma Pauperis) Act, 1893 (56 & 57 Vict. c. 22), which gives the House of Lords power to refuse these appeals. See CRIMINAL APPEAL; CROWN CASES RESERVED; NEW TRIAL; PRIZE COURT; PRIVY COUNCIL.

Appeal, Court of. This Court, which was constituted under the Judicature Act, 1873, the Appellate Jurisdiction Act, 1876, and the Judicature Act, 1881, has, by Judicature (Consolidation) Act, 1925, s. 26, vested in it the appellate jurisdiction and powers of the Lord Chancellor and of the Court of

Appeal in Chancery, and of the same Court as the Court of Appeal in Bankruptcy and from the County Palatine of Lancaster; of the Exchequer Chamber; and of the Judicial Committee of the Privy Council in appeals in Admiralty causes other than in the Prize Court, or in matters of lunacy. The Court (which usually sits in two divisions) consists of (*ex officio*) the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, and five Lords Justices.

The judges may not sit on appeal from judgments to which they themselves were parties.

A *puisne* judge is occasionally summoned to sit as an additional judge (s. 7).

An appeal to this Court lies as of right from any order or judgment of the High Court, s. 27, except in criminal matters and as to costs, and by leave of the High Court from any judgment on appeal from an inferior Court. As to appeals from jury cases, see *Mechanical etc. Co. Ltd.* v. *Austin Motor Co. Ltd.*, 1935, A. C. 346; and from non-jury cases, *Powell* v. *Streatham Manor Nursing Home*, 1935, A. C. 243. As to restrictions on appeals, see s. 31. By Administration of Justice (Appeals) Act, 1934 (24 & 25 Geo. 5, c. 40) and by s. 105 of the County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), appeals from the County Court lie to the Court of Appeal. For further appeal to the House of Lords, see APPELLATE JURISDICTION ACT.

Appeal of Death, of Felony. See *Ashford* v. *Thornton*, (1818) 1 B. & Ald. 405, and 59 Geo. 3, c. 46, abolishing this kind of appeal.

Appeal to Rome, abolished by 24 Hen. 8, c. 12, commonly called the Act of Appeals, and 25 Hen. 8, cc. 19, 21.

Appearance. When a person is served with a summoning process from a Court he generally comes into such Court to defend himself by entering an appearance with the proper officer.

Appearance to actions in the High Court of Justice must be entered within eight days from the service of the writ of summons, that being the time limited by the writ; but by r. 22 of R. S. C. Ord. XII., he may appear at any time before judgment, and by r. 5 if an action is commenced in a district registry there is an option to enter appearance in London, and if appearance is entered in London the action proceeds there (r. 7).

Formerly in indictments for felony, the accused had always to appear and plead in person, and likewise in appeal or on attachment; but in indictments or informations for misdemeanours, the accused might appear by attorney; and in misdemeanours generally after the accused had once appeared, the trial might proceed in his absence.—2 *Hawk. P. C.* c. 22, s. 1; *Cro. Jac.* 462; 4 *Steph. Comm.* See ACCEPTANCE OF SERVICE.

Appearance sec. stat. (i.e., *Secundum statutum*), which was entered at law by a plaintiff for a defaulting defendant under 12 Geo. 1, c. 29, and 2 Wm. 4, c. 39, was abolished by 15 & 16 Vict. c. 76, s. 26.

Appellant, the party appealing; the party resisting the appeal is called the respondent.

Appellate Jurisdiction, the power of a superior Court to review the decision of an inferior Court. See APPEAL.

Appellate Jurisdiction Acts, 1876, 1887, 1913 and 1929 (19 Geo. 5, c. 8). These Acts modernize the procedure of the House of Lords as a Court of Appeal. An appeal lies to the House of Lords from any judgment or order of the Court of Appeal in England, and also from certain Courts in Scotland and Ireland. But Administration of Justice (Appeals) Act, 1934 (24 & 25 Geo. 5, c. 40) provides that no appeal shall lie from the Court of Appeal to the House of Lords except with the leave of that Court or the House of Lords. Three members of the House, having held high judicial office, form a quorum, but any member of the House, whether having held high judicial office or not, has still a technical right to take part in a judgment; but peers not being law lords have not taken such part since 1783 (in *Bishop of London* v. *Fytche*, (1783) 1 East, 487), except in *Bradlaugh* v. *Clarke*, (1883) 48 L. T. 681, in which Lord Denman took part in a hearing and voted with Lord Blackburn against three other peers. See *O'Connell* v. *The Queen*, (1844) 11 Cl. & F. 155, in which, after considerable discussion, all the lay lords withdrew; *Sugd. Law of Prop.*, pp. 1, *et seq.*

The Crown may appoint salaried 'Lords of Appeal in ordinary,' and an additional Lord of Appeal in Ordinary may be created who also sits on the Judicial Committee of the Privy Council. By the Act of 1929, Indian judges or lawyers may be appointed as additional members of the Judicial Committee. Appeals may be heard during a prorogation or dissolution of Parliament. As to Irish appeals to the House of Lords, see Government of Ireland Act, 1920, s. 49. See LORDS OF APPEAL; LORDS OF APPEAL IN ORDINARY; HOUSE OF LORDS.

Appellee, one who is appealed against or accused.

Appellor, an accuser; a criminal who accuses his accomplices, one who challenges a jury, etc.

Appenage, Apennage, or **Appanage,** a child's part or portion. It is properly the portion of the king's younger children in France. See APPANAGE.—*Cowel.*

Appendant, a thing of inheritance belonging to another inheritance which is more worthy: as an advowson, common, etc., which may be appendant to a manor, common of fishing to a freehold, a seat in a church to a house, etc. It differs from appurtenance, in that appendant must ever be by prescription, i.e., a personal usage for a considerable time, while an appurtenance may be created at this day, for if a grant be made to a man and his heirs of common in such a moor for his beasts levant or couchant upon his manor, the commons are appurtenant to the manor, and the grant will pass them. *Co. Litt.* 121 *b.* See APPURTENANCES, COMMON.

Appenditia, the appendages or pertinances of an estate.—*Cowel.*

Appensura, the payment of money at the scale or by weight.—*Spelm.*

Applicatio est vita regulæ. 2 *Buls.* 79.—(Application is the life of a rule.)

Application, a request, a motion to a Court or judge; the disposal of a thing.

Application for Shares. Under the Companies Act, 1929, s. 35, the issue of forms of applications for shares in a public company must be accompanied by the prospectus, and the amount payable on such application must not be less than five per cent. of the nominal amount of the share (s. 39).

Appodiare, to lean on or prop up anything.—*Jacob.*

Appointed Day. A day fixed by an Act of Parliament for some purpose of the statute; see, e.g., the Local Government Act, 1894, s. 84; Merchant Shipping Act, 1906, s. 5.

Appointee, a person selected for a particular purpose; also the person in whose favour a power of appointment is executed.

Appointment of New Trustees. See TRUSTEES. It was formerly necessary to insert a full power in instruments creating a trust providing a succession of trustees and nominating the person or persons by whom the power was to be exercised and specifying the various contingencies, as death, resignation, incapacity, etc., of the trustee, in which the power was to arise; otherwise application had to be made to the Court of Chancery. Latterly, however, a power for this purpose has been supplied by various Acts of Parliament, the statute at present in force being the Trustee Act, 1925, ss. 36 and 37 replacing and extending the 10th section of the Trustee Act, 1893 (56 & 57 Vict. c. 53), and s. 36 of the Act of 1925 also provides for the appointment of additional trustees. Section 40 provides for the vesting of the trust property in the new trustees by a declaration in the deed of appointment or, if in deeds of appointment executed after 1925, no express vesting declaration appears, by implication. The declaration express or implied will not transfer lands constituting a security for trust moneys, except lands securing debentures or debenture stock; it will not pass certain leaseholds or shares or other property which are only transferable in the books of a company or other body or otherwise as directed by Statute. Accordingly it is not usual in modern deeds and wills to do more than nominate the person or persons who are to have the power of appointing new trustees

Sections 41, 42 and 43 of the Trustee Act, 1925, enable the Court, whenever it is expedient in cases of difficulty and impracticable otherwise, to appoint a new trustee or trustees and, if necessary (s. 44), to make an order vesting the trust estate in the new trustees, or the continuing and new trustees, as the case may require. Under s. 42 the Court may authorise remuneration for a Trust Corporation. As to appointment of new trustees on trust for sale, and trustees for the purposes of the Settled Land Act, 1925, see s. 35 of the T. A. Act, 1925, and s. 35 of the Settled Land Act, 1925.

Appointment in Exercise of a Power. In the case of freeholds an instrument which alters, abridges, or suspends a use limited by a prior assurance or trust creating the power which sanctions such appointment. In the case of appointments of uses of freeholds effected under the Statute of Uses the seisin to serve the appointed use was transferred by the prior assurance; the appointment vested the legal estate in the appointee, who took as though he were named in such prior assurance. After the 31st December, 1925, a power of appointment of land can only operate in equity, Law of Property Act, 1925, s. 1 (7).

Powers may also be reserved over personal estate, and in that case also only the equitable estate now passes; a common instance is the power of appointment among the issue usually given by a marriage settlement, by virtue of which the parents can distribute the settled funds amongst the issue in such

shares as the donees of the power think fit, and the trustees will then hold the funds in trust for the appointees accordingly. A deed of appointment should recite or refer to the power, and be expressed to be in exercise of it, as manifesting the intention of the appointor, or person executing the power, and also of every other authority enabling him in that behalf, so as to guard against any misrecital of the assurance creating the power. It should likewise state than any formalities required for the execution of the power are complied with, and the attestation should set forth that such formalities were observed.

The formalities required by the creator of a power should be few and simple, for many an appointment has failed because they have not been precisely attended to. When the consent of any person is required to the exercise of a power, it is generally a condition precedent, and an execution of the power without such consent is not cured by subsequent acquisition. In all cases, legal or equitable, an appointment is deemed to be part of the instrument conferring the power for the purposes of construing the appointed limitation or trust. *Sugden on Powers*, 8th ed., p. 472. See Preston's Act (54 Geo. 3, c. 168), as to the attestation of appointments made prior to the 30th July, 1814; and also see the Wills Act, 1837 (7 Wm. 4 & 1 Vict. c. 26), s. 10, and the Wills (Soldiers and Sailors) Act, 1918 (7 & 8 Geo. 5, c. 58), as to appointments exercisable by will; and see the Law of Property Act, 1925, s. 159, replacing the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35) s. 12, as to appointments by deed. For frauds on Powers see FRAUD and *Farwell on Powers*.

Illusory Appointments, by s. 158 of the L. P. Act, 1925, replacing and extending the Illusory Appointments Act, 1830 (11 Geo. 4, and 1 Wm. 4, c. 46), and the Powers of Appointments Act, 1874 (37 & 38 Vict. c. 37), appointments of nominal shares are to be valid in equity as well as in law and are not to be invalidated on the ground that any object of the power is thereby excluded or takes an illusory share. See also FRAUDS ON POWERS.

Frauds on powers of appointment.—Where a limited power is executed for a corrupt purpose as by a bargain with any of the proper objects of the power to benefit the appointor, *Hinchinbroke* (*Lord*) v. *Seymour* (1784), 1 Bro. C. C. 395 (unless the appointor actually buys the interest of the person entitled, see *Brownlow* v. *Meath* (*Earl*) (1840) 2 Dr. and Wal. 674), or where the appointment includes a purpose or condition not contained in the power by the donor, see *Hay* v. *Watkins* (1843), 3 Dr. and War. 339, the exercise of the power is void. The Law of Property Act, 1925, s. 157, protects purchasers in good faith and making reasonable inquiry when dealing after 1925 with an appointee who is not less than 25 years of age, to the extent of the appointee's own interest as provided by the section. See *Farwell*, or *Sugden on Powers*. And see POWER.

Appointor, a donee of a power after he has executed it; also a person who nominates another for an office.

Apponere, to pledge or pawn.—*Jac. Law Dict.*

Apporiatus, impoverished.—*Annales de Dunstaplin, an.* 1269.

Apportionment, a division of a whole into parts (usually unequal) proportioned to the rights of more claimants than one. It is either (1) Apportionment in respect of time, or (2) Apportionment in respect of estate.

Apportionment in respect of Time.—At Common Law there is no apportionment in respect of time. When a successor in interest succeeds just before a rent or other periodical payment falls due, he takes, at Common Law, the whole, and the executors of his predecessor take nothing (*Clun's Case*, 1 *Rep.* 127). This was remedied by 11 Geo. 2, c. 19, s. 25, which apportioned rent between the representatives of a deceased tenant for life, and the person succeeding in remainder, and by 4 & 5 Wm. 4, c. 22, passed to obviate doubts which had arisen upon the earlier Act.

The 'Apportionment Act, 1870' (33 & 34 Vict. c. 35) now provides (but without repealing the above Acts) that all rents, annuities, and dividends, and other periodical payments in the nature of income shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly (s. 1). This Act has been held in and since *Swansea Bank* v. *Thomas*, (1879) 4 Ex. D. 94, to apply not only, as the former Acts did, between two classes of receivers, as the executors of tenants for life and remaindermen, but between receiver and payer, as between a landlord and a tenant, so that if a tenancy be determined in the middle of a quarter, the landlord gets rent up to the day of determination, whereas before the Act the whole of the quarter's rent was lost to him. The Act does not apply to rent payable in advance, annuities, dividends, and other

payments in the nature of income which have accrued due before the happening of the event by reason of which it is proposed to apply the Act (*Ellis* v. *Rowbotham*, 1900, 1 Q. B. 740).

Apportionment in respect of Estate means the attribution of benefits and burdens according to their nature to each part of an estate or other property upon severance, by conveyance, surrender or otherwise. At Common Law *rent* was apportionable upon severance by act of law, e.g., upon the devolution on intestacy of freeholds, and leaseholds which were comprised in one lease, or upon partition, or upon eviction from part of the land by title paramount, or where part of the demised premises became lost to the tenant by irruption of the sea, also by act of parties, e.g., upon surrender, release, grant or devise of part of demised land. The right to apportionment is a question of law, the apportionment may be by consent or by judicial process or, under the Landlord and Tenant Act, 1927 (17 & 18 Geo. 5, c. 34), s. 20, by the Minister of Agriculture and Fisheries, and neither the reversioner nor the lessee is bound unless he consents or is a party to the proceedings, see *Bliss* v. *Collins*, (1822) 5 B. & Ald. 876; *Swansea Corporation* v. *Thomas*, (1882) 10 Q. B. D. 48.

Covenants if implied by law were apportionable but express covenants were not, until the 32 Hen. 8, c. 34, see *Twynam* v. *Pickard*, 2 B. & Ald. 105, and *Swansea Corporation* v. *Thomas ubi supra*.

Conditions in leases were not apportionable at all even after the Statute 34 Hen. 8, c. 34, except upon severance by act of law, e.g., upon a partition or intestacy as between the heir and personal representative, *Dumpor's Case*, Sm. L. C.

Apportionment of Rent and Covenants is now provided for by ss. 140, 141 and 142 of the Law of Property Act, 1925. Previously to that Act the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 3, provided that where the reversion upon a lease is severed, and the rent is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent allotted to him, be entitled to the benefit of all conditions of re-entry for non-payment of the original rent, and the Conveyancing Act, 1881, s. 12, applies the principle of this enactment in case of leases made after that Act to conditions *generally* in leases executed after 1881; and as to conditions already broken, see Conveyancing Act, 1911, s. 2. The Law of Property Act, 1925, ss. 141 and 142, reproduces with amendments 32 Hen. 8, c. 34, ss. 10 and 11 of the Conveyancing Act, 1881, and s. 2 of the Act of 1911, as to conditions irrespectively of the date of the lease. A further extension creating a new right upon severance is to be found in s. 140 of the 1925 Act. Assignees of a part of a reversion may give notice to quit that part and the lessee has the right to give a counter notice as to the rest of the land demised. As to agricultural holdings, see L. P. Amendment Act, 1926. The Lands Clauses Act, 1845, s. 119, provides for an apportionment of rent where part only of lands subject to a lease is taken under the Act.

Rentcharges.—A rentcharge issues out of every part of the land charged and, as a rule, the burden is not apportionable unless the owner of the charge consents, or is a party to the proceedings for apportionment, and until the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35) s. 10, was passed, a release of part of the land released the whole charge. See now the Law of Property Act, 1925, s. 70, which releases the part discharged only. To obviate these difficulties it became usual to insert mutual covenants and cross powers of distress and entry upon severance of land subject to an entire rent charge. These powers have now become statutory and certain covenants are implied in a conveyance (other than a mortgage) or lease (other than a mortgage) of the land charged with or without legal apportionment of which the rent has or has not been legally apportioned. See Law of Property Act, 1925, s. 77 and s. 190; and TITHE RENT CHARGE.

Apportum, the revenue or profit which a thing brings to the owner. It is commonly applied to a corody or pension.—*Blount.*

Apposal of Sheriffs, charging them with money received upon the account of the Exchequer.—22 & 23 Car. 2, c. 22, repealed by Stat. Law Rev. Act, 1863, except s. 5, which penalises officers of Courts withholding or concealing or miscertifying fines.

Apposer, an officer of the Exchequer.

Apposition. A word is said to be used in apposition to another in contradistinction to be used disjunctively; thus, if two nouns occur with the word 'or' between them, if the word 'or' be taken to mean 'otherwise called' the second noun is used *in apposition.* But if it be taken to show that the two words mean two different things, the words are said to be used *disjunctively.*

Appostille [Fr.], an addition or annotation to a document.

Appraisement [fr. *apprécier prix*, Fr., *pretium*, Lat.], the act of valuing property, goods, furniture, etc. As to appraisement, if required by tenant or by owner of the goods, before selling under a distress for rent, see DISTRESS. Appraisement of a ship is sometimes ordered by the Admiralty Division of the High Court, see R. S. C. Ord. LI., Part III., and also generally before sale of any property by order of the Court.

Appraiser [fr. *appréciateurs*, Fr.], persons employed to value goods, repairs, labour, etc. By 46 Geo. 3, c. 43, and 8 & 9 Vict. c. 76, they are required to take out an annual license. According to an old statute, 11 Edw. 1, stat. Acton Burnel, appraisers valuing goods too highly were compelled to take them at their own valuation.

Apprehension [fr. *appréhendere*, Lat., to seize], the capture of a person upon a criminal charge. See ARREST.

Apprendre [Fr.]. A fee or profit *apprendre* is fee or profit to be taken or received, such as exercising the right of common. *Jac. Law Dict.*

Apprentice [fr. *apprendre*, Fr., to learn], a person bound by indentures of apprenticeship to a tradesman or artificer, who covenants to teach him his trade or mystery. The master is bound to instruct his apprentice, and to make him master of the art so far as his capacity to learn will permit. If the master die, or become bankrupt, or abandon the trade, the obligation of the apprentice is at an end. Conversely, that the apprentice has done anything incompatible with faithful service, is a just cause of dismissal (*Pearce* v. *Foster*, (1886) 17 Q. B. D. 536—C. A., and see *Learoyd* v. *Brooks*, 1891, 1 Q. B. 431). An infant can bind himself by a deed of apprenticeship (*Green* v. *Thompson*, 1899, 2 Q. B. 1). With regard to apprentices for the mercantile marine, see The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60). Apprentices are within the Workmen's Compensation Act, 1925, ss. 3 and 35. Justices of the peace have jurisdiction in many questions between master and apprentice. For instance, the Conspiracy and Protection of Property Act, 1875, s. 6, makes it an offence, punishable on summary conviction by fine or imprisonment with or without hard labour, for a master to neglect to provide food, etc., for his apprentice. See *Chitty's Statutes*, tits. *Master and Servant* ' and ' *Poor* (*Apprentices*).'

Apprenticeships were altogether unknown to the ancients. The Roman Law is perfectly silent with regard to them.

Apprentice en la ley. See last title.

Apprenticii ad legem. Apprentices to the law—i.e., not *servientes ad legem* (serjeants-at-law)—barristers. See *Fleta*, lib. ii. c. 37.

Approbate or **Reprobate.** A person is said to approbate and reprobate where he takes advantage of one part of a document and rejects the rest.—*Scots Law.* The maxim runs, *Qui approbat non reprobat:* One who approbates cannot reprobate. The doctrine is the same as the English law of election (*Douglas-Menzies* v. *Umphelby*, 1908, A. C. 224). See ELECTION.

Appropriare communiam, to discommon and enclose any parcel of land which was before open common.—*Paroch. Antiq.* 336.

Appropriation, the annexing of some ecclesiastical benefice to the proper and perpetual use of some religious house, etc., just as *impropriation* is the annexing a benefice to the use of a lay person or corporation. Appropriation may be severed and the church become disappropriate, if a patron or appropriator present a clerk who is properly instituted and inducted, for he would then become complete parson; also, if a corporation possessing the benefice is dissolved, the parsonage becomes disappropriate at Common Law.—*Phill. Eccl. Law.*

Appropriation, Powers of. The Administration of Estates Act, 1925, s. 41, has conferred on personal representatives a general power to appropriate any part of the real or personal estate (including things in action) of the deceased in its actual condition or state of investment at the time of appropriation in or towards satisfaction of any legacy or interest or share in his property as to the personal representative may seem just or reasonable having regard to the rights of the persons interested in that property subject to the consent of the person entitled to that part, or to the income (if the share is settled), or of his parent, guardian, committee or receiver if he is under incapacity owing to infancy or otherwise. No other consents are required and provision is made for dispensing with any consent. Any property when duly appropriated is to be treated as an authorized investment. An appropriation with consent under this Act is subjected to an *ad valorem* duty as a conveyance. *Aliter* if the consent is dispensed with by the will.

Appropriation Act. An Act so named is passed every year for the purpose of applying sums out of the Consolidated Fund (see that title) to the service of the year, and for

appropriating the supplies granted by Parliament.

Appropriation of Goods. Upon a contract for sale of unascertained or future goods is an act identifying goods specifically with the contract. The appropriation may be made by either party with the express or implied consent of the other absolutely or conditionally or revocably. delivery to the buyer or a bailee without any reservation of the right of disposal transfers the property. See Sale of Goods Act, 1893 (56 & 57 Vict. c. 71) s. 21.

Appropriation of Payments, the application to one of several debts of a sum of money paid by a debtor on a general account. The general rule as to appropriation of payments is this: The debtor may in the first instance appropriate the payment, *solvitur in modum solventis;* if he omit to do so, the creditor may make the appropriation, *recipitur in modum recipientis;* if neither debtor nor creditor make any appropriation, the law appropriates the payment upon equitable principles and *primâ facie* to the earlier debt (*Mills* v. *Fowkes*, (1839) 5 Bing. N. C. 461; *Clayton's Case*, (1816) 1 Mer. 605; *The Mecca*, 1897, A. C. 286). A creditor can appropriate a general payment to a statute-barred debt, but he cannot appropriate such a payment made before judgment, after a judgment deciding that such a debt is statute barred (*Smith* v. *Betty*, 1903, 2 K. B. 317). See CLAYTON'S CASE.

Appropriator, a spiritual corporation entitled to the profits of a benefice.

Approve, to augment a thing to the utmost.—2 *Inst.* 474.

Approved Schools. These schools are schools intended for the education and training of persons to be sent there in pursuance of the Children and Young Persons Act, 1933 (see s. 79 (1)) and approved by the Secretary of State. They are regulated by ss. 79–83 of that Act. Local authorities may under certain circumstances undertake the purchase, establishment, building, alteration, enlargement, rebuilding or management of an approved school (s. 80). The Secretary of State may classify approved schools as he thinks best calculated to secure that a person sent to an approved school is sent to the school appropriate to his case. With certain exceptions the managers of an approved school are bound to accept any person sent there in pursuance of the Act (s. 81). The expression 'approved school' was first used in the Children and Young Persons Act, 1932, which was declared to apply in relation to a school which at the commencement of this Act is a certified reformatory school or a certified industrial school as if the certificate for the school were a certificate of approval issued under this Act.

Approved Society. Any body of persons, corporate or unincorporate (not being a branch of another such body), registered or established under any Act of Parliament, or by Royal Charter, or having a certain 'prescribed' character, which complies with the provisions of the National Insurance Act, 1936 (a consolidating and amending Act), and has been approved by the Minister of Health under s. 73 of the National Insurance Act, 1936; and see NATIONAL HEALTH INSURANCE.

Approvement, improvement, as where there exists a right of common of pasture on a lord's waste, and the lord encloses part of such waste, leaving sufficient common of pasture, as he is bound to do by the Statute of Merton, 20 Hen. 3, c. 4, which prescribes in what cases lords may 'approve' against tenants; and see 13 Edw. 1, st. 2, c. 46; and INCLOSURE.

Approver, or **Prover** [fr. *approver*, Fr., to consent unto], an accomplice in crime who accuses others of the same offence, and is admitted as a witness at the discretion of the Court to give evidence against his companions in guilt. He is vulgarly called 'King's evidence.' This testimony must necessarily be of an unsatisfactory nature, and the practice is for judges to leave it to juries with the direction not to believe it unless corroborated in some material particular by independent untainted testimony (*In re Meunier*, 1894, 2 Q. B. 415).

Approvers, bailiffs of lords in their franchises. Sheriffs were called the king's approvers in 1 Edw. 3, st. 1, c. 1.—*Termes de la Ley.*

Appruare, to take to one's use or profit. 'Appruare se possint' in 13 Edw. 1, st. 1, c. 46, is translated 'may make approvement.'

Appurtenances, belonging to another thing, as hamlets to a manor, and common of pasture, turbary, etc.; liberties and services, outhouses, yards, orchards, and gardens are appurtenant to a messuage, but lands cannot properly be said to be appurtenant to a messuage.—*Com. Dig.*, tit. '*Appendant and Appurtenant.*' The word 'appurtenances' will be construed strictly (*Re Peck*, 1893, 2 Ch. 315), but it has a secondary meaning equivalent to 'usually occupied with'; see *Roe* v. *Siddons*, (1888) 22 Q. B. D., at p. 236, per Fry, L.J.

A right of common 'appurtenant' must be the subject of a grant, express or implied by prescription; 'appendant,' is a right by common law incident to certain grants made before the Statute '*Quia Emptores*' 1290 (18 Edw. 1, c. 1).

The right to compensation upon extinguishment of manorial incidents is a right appertaining to a manor; L. P. Act, 1925, s. 52, replacing and extending the Conveyancing Act, 1881, s. 6.

Appurtenant, pertaining or belonging to. See APPENDANT.

A priori. All arguments may be divided, according to the relation of the subject-matter of the premises to that of the conclusion, into (*a*) *a priori* (from the antecedent to the consequence), or those of such a nature that the premises would account for the conclusion, were that conclusion granted, which is the Aristotelian method of reasoning; and (*β*) *a posteriori* (from the consequence to the antecedent), or those whose premises could not have been used to account for the conclusion, which is the Baconian method of reasoning. The former class is manifestly argument from cause to effect, since to account for anything signifies to assign the *cause* of it. The latter class comprehends all other arguments.

Apta viro (of a woman), marriageable, i.e., in strict law at 12 years of age. Also used in the sense of ability on the part of the woman to consummate the marriage.

Apt Words, words proper to produce the legal effect for which they are intended; sound technical phrases.

Aqua pontana, Bridgewater in Somersetshire.

Aquatic Rights, those exercisable in running or still water. See WATERCOURSE.

Aquæ Calidæ, Aquæ Solis, Akemancester, Bath in Somersetshire.

Aquæ ductus, a right to carry a watercourse through another's ground.—*Civil Law.*

Aquæ haustus, a servitude which consists in the right to draw water from the fountain, pool, or spring of another.—*Civil Law.*

Aquæ immittendæ, a servitude which the owner of a house, surrounded by other buildings, so that it has no outlet for its waters, has, to allow them to run upon and over his neighbour's land.—*Civil Law.*

Aquage, or **Aquagium,** a watercourse, or toll paid for water carriage.—*Blount.*

Aquilædunum, Hoxton.

Aquitania, Aquitain, afterwards containing Guienne and Gascony.

A.R., *anno regni,* the year of the reign, as A. R. V. R. 22 (*Anno Regni Victoriæ Reginæ vicesimo secundo*); in the twenty-second year of the reign of Queen Victoria.

Arabant, applied to those who held by the tenure of ploughing and tilling the lord's lands within the manor.—*Cowel.*

Arable Land. The Agricultural Holdings Act, 1923 (13 & 14 Geo. 5, c. 9), s. 30, allows freedom of cropping of arable land, which expression 'shall not include land in grass, which by the terms of any contract of tenancy is to be retained in the same condition throughout the tenancy.'

Arace, to rase or erase.—*Blount.*

Araho, to make oath in the church or some other holy place. All oaths were made in the church upon the relics of saints, according to the Ripuarian Laws.—*Spelm; Blount.*

Aralia, arable grounds.—*Blount; Cowel.*

Aratrum terræ, as much land as can be tilled by one plough. A term applied to a service rendered by a tenant to his lord.—*Blount.*

Arbeia, Ireby in Cumberland.

Arbiter, a private extrajudicial judge; an arbitrator or referee; a witness. See ARBITRATOR.

Arbitrament, the award or decision of arbitrators upon a matter of dispute, which has been submitted to them.—*Termes de la Ley.*

Arbitrary Punishment, such as is left entirely to the discretion of a judge.

Arbitration, the determination of a matter in dispute by the judgment of one or more persons, called arbitrators, who in case of difference usually call in an 'umpire' to decide between them.

An arbitrator is a disinterested person, to whose judgment and decision matters in dispute are referred.—*Termes de la Ley.*

The civilians make a difference between *arbiter* and *arbitrator,* though both found their power in the compromise of the parties; the former being obliged to judge according to the customs of the law: whereas the latter is at liberty to use his own discretion, and accommodate the difference in that manner which appears most just and equitable.

An arbitrator ought to be an indifferent person between the disputants, and should be incorrupt and impartial.

Generally speaking, almost all matters in dispute, not being of a criminal nature, may be referred to arbitration; but at Common Law there was no mode of making the award binding.

This defect was first cured by the statute

9 & 10 Wm. 3, c. 15, which enabled parties to agree that a submission to arbitration might be made a rule of Court, and consequently binding. This and five subsequent amending enactments were further amended by the Arbitration Act, 1889 (52 & 53 Vict. c. 49).

By s. 1 of the Arbitration Act, 1889, a "submission" (which term by s. 27, *ibid.*, means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not), 'unless a contrary intention is expressed, shall be irrevocable, except by leave of the Court or a judge, and shall have the same effect in all respects, as if it had been made an order of Court.' By s. 2 certain scheduled provisions as to appointment of umpire, time for making award, etc., are *primâ facie* included in every submission, and by s. 4 if any party to a submission (including an agreement to refer disputes to a foreign tribunal, *Kirchner* v. *Gruban*, 1909, 1 Ch. 413), commences any legal proceedings (including those by counterclaim, *Chappell* v. *North*, 1891, 2 Q. B. 225), against any other party to the submission, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before taking any step in the proceedings (e.g., attending a summons for directions, *Ochs* v. *Ochs Brothers*, 1909, 2 Ch. 121; see also *Ives & Barker* v. *Williams*, 1894, 2 Ch. 484), apply to that Court to stay the proceedings, and that Court (including a County Court, *Morriston Tinplate Co.* v. *Brooker*, 1908, 1 K. B. 403), if satisfied that there is no sufficient reason why the matter should not be referred and that the applicant was and is ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

The Act applies (s. 24), unless excluded, to every arbitration under any Act passed before or after its commencement as if the arbitration were pursuant to a submission, 'except in so far as this Act is inconsistent with the Act regulating the arbitration or with any rules or procedure authorized or recognized by that Act.'

The chief amendments of the Arbitration Act, 1934, relate to the effect of the death or bankruptcy of a party to the arbitration agreement (ss. 1 and 2), the appointment of an umpire (s. 5), the powers of arbitrators and of the Court (s. 8), the statement of a special case (s. 9). Arbitrators have power to order specific performance (s. 7), an amount will carry interest at the same rate as a judgment debt (s. 11), and an agreement that parties shall pay their own costs in any event is void (s. 12). The Statutes of Limitation apply to arbitration (s. 16), and a charging order for solicitors' costs can be obtained (s. 17). Certain provisions are excluded in the case of statutory arbitrations (s. 20).

Various statutes specifically incorporate the Arbitration Act, others both necessitate arbitration and specify the procedure excluding the Arbitration Act, e.g., Agricultural Holdings Act, 1923; the Industrial Courts Act, 1919; and the Workmen's Compensation Acts, which provide for arbitration in accordance with Sched. II. of the Act of 1906 as amended by the Workmen's Compensation Act, 1925.

Reference by Order of the Court.—The Court can refer matters to arbitration within certain limits for decision or for report. See ss. 13 and 14 of the Act of 1889 as amended.

An arbitrator's powers and duties are conferred and imposed by the submission, or the Arbitration Act, 1889 as amended. He is generally the final judge of law and facts; he is bound by the rules of law, and occupies a judicial position (*Re Enoch*, 1910, 1 K. B. 327), and cannot award anything contrary thereto. It is, however, the recognized practice in commercial arbitrations, where an umpire is appointed, for the arbitrators on either side to act, in effect, as advocates, unless the parties otherwise desire (*French Government* v. *Tsurushima Maru*, (1921) 37 T. L. R. 961). By s. 9 of the 1889 Act, any arbitrator or umpire may at any stage of the proceedings, and shall, if so directed by the Court, state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference. See *Tabernacle Building Society* v. *Knight*, 1892, A. C. 298. There is no appeal from the Court's decision thereon (*Cogstad* v. *Newsum*, 1921, 2 A. C. 528). By s. 7 of the Act of 1889, the arbitrator may make his award in the form of a special case for the decision of the Court. In which event, having made his award, his duties are at an end. An appeal lies from the Court's decision on an award in the form of a special case under this section, and see s. 9 of the Act of 1934. Cases under either section may be remitted to the arbitrator for further findings of fact.

The submission determines the matters which are within an arbitrator's authority (*Re North-Western Rubber Co.*, 1908, 2 K. B. 907). His authority commences from the

time of the agreement to refer being signed by all the parties.

As soon as the award is published, the arbitrator's authority is at an end.

An arbitrator may be removed for misconduct, e.g., for refusing to state a case for the High Court (*Palmer* v. *Hosken*, 1898, 1 Q. B. 131), and his award may be set aside for misconduct, which may be either actual or technical, or because an error in law appears on the face of the award (see that title). An award cannot be set aside for being against the weight of evidence or, generally, for misreception of evidence. An award may always be enforced by action or in certain cases summarily.

Arbitrators under the Judicature Acts are called 'referees.'

Various Chambers of Commerce and professional and trade bodies have instituted courts of arbitration for dealing with disputes arising in connection with their trade or business.

Submissions to arbitration and awards require to be stamped with 6*d*. and 10*s*. stamps respectively.

See AWARD; CONCILIATION; REFEREES, and consult *Russell on Arbitration*.

Arbor consanguinitatis, a tree-shaped table, showing the genealogy of a family.—See the *Arbor civilis* of the civilians and canonists, *Hale's Com. Law*, 335.

Arca cyrographica, a common chest with three locks and keys, kept by certain Christians and Jews, wherein all the contracts, mortgages, and obligations belonging to the Jews were preserved to prevent fraud, by order of Richard I.—*Hov. Ann.* 705.

Archaionomia, a collection of Saxon laws, published during the reign of Queen Elizabeth, in the Saxon language, with a Latin version by Lambard.

Archbishop [fr. ἀρχιεπίσκοπος, Gk., fr. ἄρχων, chief, and ἐπίσκοπος, bishop], the chief of the clergy in his province; he has supreme power under the king in all ecclesiastical causes, and superintends the conduct of other bishops, his suffragans. The archbishops are said to be *enthroned* when they are vested in the archbishopric, whereas bishops are said to be *installed*. An archbishop, if promoted from a bishopric, as is usually the case, does not require any further consecration, but all archbishops require both election and confirmation, similarly to bishops. England has two archbishops, Canterbury and York. The Archbishop of Canterbury, in granting licenses and dispensations, has taken the place of the Pope before 25 Hen. 8, c. 21, by virtue of s. 3 of that Act. He is styled Primate of all England, the Archbishop of York being styled Primate of England. And see BISHOP; CONFIRMATION.

Archdeacon [fr. ἄρχων, chief, and διακονέω, Gk., to minister], a substitute for the bishop, having ecclesiastical dignity and jurisdiction over the clergy and laity next after the bishop, either throughout the diocese or in some part of it only. He visits his jurisdiction once every year, and has a Court where he may hear ecclesiastical causes, subject to an appeal to the bishop, by 24 Hen. 8, c. 12, commonly called the Act of Appeals. He examines candidates for holy orders, and inducts clerks upon receipt of the bishop's mandate.—*Wood's Inst.* 30. The Law styles him the bishop's vicar or vicegerent.

Archdeaconry, a division of a diocese, and the circuit of an archdeacon's jurisdiction. The Act 37 & 38 Vict. c. 63 facilitates the re-arrangement of the boundaries of archdeaconries and rural deaneries.

Archery, a service of keeping a bow for the lord's use in the defence of his castle.—*Co. Litt.* 157.

Arches, Court of [fr. *curia de arcubus*, Lat.], a court of appeal belonging to the Archbishop of Canterbury, the judge of which is called the Dean of the Arches, because his Court was anciently held in the church of Saint Mary-le-Bow (*Sancta Maria de arcubus*), so named from the steeple, which is raised upon pillars, built archwise. It was formerly held, as also were the other principal Spiritual Courts, in the hall belonging to the College of Civilians, commonly called Doctors' Commons. It is now held at the Church House, Westminster. Its proper jurisdiction is only over the 13 peculiar parishes belonging to the Archbishop in London, but the office of Dean of the Arches having been for a long time united to that of the Archbishop's Official Principal, the Dean of the Arches, in right of such added office, receives and determines appeals from the sentences of all Inferior Ecclesiastical Courts within the province. There was formerly an appeal to the king in Chancery, or to a Court of Delegates, appointed under the Great Seal by 25 Hen. 8, c. 19, as supreme head of the English Church, instead of to the Bishop of Rome, who originally exercised the jurisdiction; but the Judicial Committee Acts of 1832 and 1833 (2 & 3 Wm. 4, c. 92, and 3 & 4 Wm. 4, c. 41), *Chitty's Statutes*, tit. '*Privy Council*,' provided that the appeal

should be to the Judicial Committee of the Privy Council (*Wakeford* v. *Bishop of Lincoln*, 1921, 1 A. C. 813). Consult *Phillimore's Ecclesiastical Law; Wheeler's Privy Council Law*. The jurisdiction of the Court in testamentary matters was transferred to the Court of Probate (now the Probate Division) by the Court of Probate Act, 1857 (20 & 21 Vict. c. 77). The Judicature Act, 1925, s. 20, vests the jurisdiction of 1857 in the present Court.

By the Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85), provision was made for the appointment of 'a judge of the Provincial Courts of Canterbury and York,' and it was further provided that whenever a vacancy should occur in the office of Official Principal of the Arches Court of Canterbury, this new judge should become *ex-officio* such Official Principal, and all proceedings thereafter taken before the judge in relation to matters arising within the province of Canterbury should be deemed to be taken (see *Dale's Case*, (1881) 6 Q. B. D. 376) in the Arches Court of Canterbury. See PUBLIC WORSHIP REGULATION ACT, 1874.

Archetype, the original copy.

Archigrapher, a chief secretary.

Archilowe, of unknown derivation, signifies a peace-offering.

Architect, a person who is skilled in the study of architecture, or more generally a person who prepares designs or plans of a building and supervises its erection. The plans of an architect cease to be his property as soon as he has been paid for his work upon them (*Gibbon* v. *Pease*, 1905, 1 K. B. 810). As to the liability of an architect for negligence, see *Columbus Co.* v. *Clowes*, 1903, 1 K. B. 244, and *Chambers* v. *Goldthorpe*, 1901, 1 K. B. 624; with regard to an architect's certificate, see the last-cited case and *Eaglesham* v. *McMaster*, 1920, 2 K. B. 169, also *Hudson on Building Contracts*, 6th ed. 'Architectural works of art,' as defined by the Act, are protected by the Copyright Act, 1911, see s. 35. The Architects (Registration) Act, 1931 (21 & 22 Geo. 5, c. 33), provides for the Registration of Architects.

Archives [fr. *arca*, Lat., a chest; or ἀρχεῖον, Gk., a council-house], a chamber or place where ancient records, charters, and evidences are kept. It is sometimes used for the writings themselves—thus we say the archives of a college, a monastery, etc.

Archivist, a keeper of archives.

Area [Lat., a threshing-floor], (1) an enclosed yard or open place connected with a house; (2) a district for particular purposes, as a school board area, a parliamentary electoral area, a local government district (see Part viii of the Public Health Act, 1875), a Poor Law Union of parishes, as to which, see UNION; (3) *Metaphor*, the region of discussion; (4) In the London Building Act, 1930, s. 5, contains this definition: 'area' in relation to a building means the superficies of a horizontal section thereof made at the point of its greatest surface inclusive of the external walls and of such portions of the party walls as belong to the building.

Arendre [Fr., to render or yield], such as rents and services.

Arentare, to rent or let out at a certain rent.—*Cowel.*

Arepennis or **Arpennis,** probably an acre or furlong of ground; see *Spelm; Ellis's Introduction to Domesday Book*, vol. i., p. 117.

Arereisment, hindrance, surprise, affrightment.—*Rot. Parl.* 21 *Edw.* 3.

A rescriptis valet argumentum, *Co. Litt.* 11.—(An argument drawn from rescripts is sound.) A rescript is a decision of the Pope or Emperor on a doubtful point of law.

Argadia, or **Argathalia,** Argyleshire, in Scotland.

Argent, silver, sometimes called *Luna* in the arms of princes, and *Pearl* in those of peers. As silver soon becomes tarnished it is generally represented in painting by white. In engraving it is known by the natural colour of the paper.—*Herald. Term.*

Argentarius, a money-dealer or banker.

Argentum album, white money, silver coin, or pieces of bullion which anciently passed for money.—*Spelm.*

Argentum Dei, God's money, i.e., money given in earnest upon the making of any bargain, hence *arles*, earnest.—*Blount.*

Argil, or **Argoil** [fr. *argilla*, Lat.], clay, lime, and sometimes gravel, also the lees of wine gathered to a certain hardness.—*Law Fr.*

Arguendo, in the course of the argument.

Argument. In reasoning, Locke observes that men ordinarily use four sorts of arguments. The *first* is to allege the opinions of men, whose parts and learning, eminency, power, or some other cause, have gained a name, and settled their reputation in the common esteem, with some kind of authority; this may be called *argumentum ad verecundiam*. The *second* is to require the adversary to admit what they allege as a proof, or to require a better; this he calls *argumentum ad ignorantiam*. The *third* is to press a man with consequences drawn from his own principles, concessions, or

actions; this is known by the name of *argumentum ad hominem*. The *fourth* the using proofs drawn from any of the foundations of knowledge or probability; this he calls *argumentum ad judicium*, and he observes that it is the only one of all the four that brings true instruction with it, and advances us in our way to knowledge.

Argumentative. A pleading in which the statement on which the pleader relies is implied instead of being expressed, is argumentative. As if B. be sued for converting goods of A., and B. pleads that 'A. never had any goods,' the proper pleading is, that the goods were not the goods of A., and that is to be inferred only from the words used. By R. S. C. Ord. XIX., r. 27, where pleadings prejudice, embarrass, or delay fair trial, they may be struck out or amended, and by R. S. C. Ord. XXXVIII., r. 3, the costs of an affidavit unnecessarily setting forth argumentative matter must be paid by the party filing the same.

Argumentum ab auctoritate est fortissimum in lege. *Co. Litt.* 254.—(An argument from authority is most powerful in Law.)

Argumentum ab impossibili plurimum valet in lege. *Co. Litt.* 92.—(An argument deduced from an impossibility greatly avails in Law.)

Argumentum ab inconvenienti est validum in lege. *Co. Litt.* 258.—(An argument from inconvenience has great force in Law.) See *Broom's Maxims.*

Ariconium, Kenchester, near Hereford.

Arida, Villa de, Drayton, in Shropshire.

Arierban, or **Arriere-Ban** [according to Casseneuve, *ban* denotes the convening of the noblesse or vassals, who held fees immediately of the Crown; and *arriere*, those who only held of the Crown mediately], an edict of the ancient kings of France and Germany, commanding all their vassals, the noblesse, and the vassals' vassals, to enter the army, or forfeit their estates on refusal.—*Spelm.*

Arietum levatio, an old sporting exercise, supposed to be the same with running at the quintain.—*Cowel.*

Aristo-democracy, a form of government composed of nobles and commonalty.

Aries, earnest.

Arm of the Sea, a bay, road, creek, cove, port, or river, where the water, whether salt or fresh, ebbs and flows.—5 *Rep.* 107. In *Coulbert* v. *Troke*, (1875) 1 Q. B. D. 1, it was held that the three-mile distance from the place of lodging which qualified a person to be a *bonâ fide* traveller within the meaning of s. 9 of the Licensing Act, 1874, was rightly calculated across an arm of the sea across which there was a public ferry.

Arma dare, to make a knight. The word '*arma*' is here rendered a sword, though a knight was sometimes made by giving him the whole armour.—*Cowel.*

Arma libera (free arms). When a servant was set free, a sword and lance were usually given to him.—*Cowel; Blount.*

Arma moluta (*arma emolita*), sharp weapons that cut, in contradistinction to such as are blunt, which only break or bruise.—*Fleta*, lib. 1, c. 31, par. 6.

Arma mutare, to change arms, a ceremony observed in confirmation of a league or friendship.—*Blount.*

Arma reversata, reversed arms, a punishment for a traitor or felon.—*Cowel.*

Armaria. See ALMARIA.

Arm. fil. *Armigeri filius*; son of a person bearing arms.

Armiger, an esquire. A title of dignity belonging to gentlemen who bear arms.—*Ken. Paroch. Antiq.* 576.

Armiscara, an ancient mode of punishment, which was to carry a saddle at the back as a token of subjection.—*Spelm.*

Armistice, a suspension of hostilities between belligerents.

Armorial bearings, a device depicted on the (now imaginary) shield of one of the nobility, of which gentry is the lowest degree. The criterion of nobility is the bearing of arms, or armorial bearings, received from ancestry. There is nothing, however, to prevent persons assuming arbitrary insignia and armorial bearings; and all persons entitled to bear arms can register their genealogies and families at the Heralds' College, Benet's Hill, London, on payment of a moderate fee, the heralds being the examiners of these matters and the recorders of genealogies. 43 Geo. 3, c. 161, imposed an assessed tax upon armorial bearings, whether borne on plate, carriages, seals, or in any other way. This Act is now replaced by the Customs and Inland Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 19, by which 'armorial bearings' includes any armorial bearing, crest, or ensign, by whatever name called, and whether registered in the College of Arms or not. This Act, by s. 18, fixes the tax as follows:—If such armorial bearings shall be painted, marked, or affixed on a carriage, 2*l.* 2*s.*; and if not so painted, but otherwise worn or used, 1*l.* 1*s.* See *Planché's Pursuivant of Arms*, and ROYAL ARMS.

Armorum appellatione, non solum scuta et gladii et galeæ, sed et fustes et lapides

continentur. *Co. Litt.* 162.—(Under the name of arms are included, not only shields and swords and helmets, but also clubs and stones.)

Armour and Arms are understood in Law to mean things (see preceding title) which a person wears for defence, or takes in hand, or uses in anger, to strike or cast at another. Arms are also *insignia*, i.e., ensigns of honour, originally badges assumed by commanders in war and painted on their shields to distinguish them, since they could not be distinguished by the ancient coat of mail which covered the whole body. King Richard I., during his crusade, first made arms hereditary. Every subject in this realm has a right to carry arms for defence suitable to his condition and degree, and allowed by law, and this right is embodied in the Bill of Rights, 1 W. & M. c. 2, s. 2. The Statute of Northampton, 2 Edw. 3, c. 3, prohibits persons going armed under circumstances which may tend to terrify the people or indicate any intention of disturbing the public peace (see *R.* v. *Meade*, (1903) 19 T. L. R. 540). The Unlawful Drilling Act, 1819 (60 Geo. 3, c. 1), prohibits the training of persons without lawful authority to the use of arms, and authorizes any justice of the peace to disperse any assembly of persons that he may find engaged in such occupation and to arrest any of the persons present. As to the restriction on carrying and possessing firearms, see Firearms Acts, 1920 and 1934 (10 & 11 Geo. 5, c. 43; 24 & 25 Geo. 5, c. 16), and FIREARMS and GUN.

Army [fr. *armée*, Fr.], the military force of a country. From 1689 to 1879, the army was regulated by Annual Mutiny Acts usually expiring in April, and by the 'Articles of War' which those Acts empowered the sovereign to make. In 1879 the Army Discipline Act (42 & 43 Vict. c. 33) consolidated the provisions of the Mutiny Act with the Articles of War. This Act having been amended by the Army Discipline and Regulation Annual Act, 1881, which substituted 'summary' for corporal punishment, and also by the Regulation of the Forces Act, 1881, a fairly complete military code is now contained in the 'Army Act, 1881' (44 & 45 Vict. c. 58), now styled the 'Army Act' simply, by virtue of s. 4 of the Army (Annual) Act, 1890.

The Army Act requires to be annually renewed by an Act passed for that purpose called the 'Army (Annual) Act.' Such annual Act follows the precedent of the Mutiny Acts in reciting the illegality of a standing army in time of peace without consent of Parliament (as declared by the Bill of Rights, 1 W. & M. c. 2, s. 2), and in specifying the exact number of forces to be employed for the current year; but it is expressly provided that a person subject to military law shall not be exempted from its provisions by reason only that the number of the forces for the time being is either greater or less than that number. The Army Act has been frequently amended, and continues to be amended from year to year. See Army Annual Acts and Army and Air Force Annual Acts.

The Incitement to Disaffection Act, 1934 (24 & 25 Geo. 5, c. 65), makes provision for the prevention and punishment of endeavours to seduce members of His Majesty's Forces from their duty and allegiance. See *Chitty's Statutes*, also TERRITORIAL ARMY.

The administration of the estates of officers or soldiers dying on service is regulated by the Regimental Debts Act, 1893 (56 & 57 Vict. c. 5), repealing and re-enacting the Regimental Debts Act, 1863 (26 & 27 Vict. c. 57). As to their wills, see Wills Act, 1837, s. 11, and Wills (Soldiers and Sailors) Act, 1918; *Re Limond*, 1915, 2 Ch. 240; and Navy and Marines (Wills) Acts, 1865 and 1930 (20 & 21 Geo. 5, c. 38). See NUNCUPATIVE WILLS.

Army Brokerage Acts, 5 & 6 Edw. 6, c. 16; 49 Geo. 3, c. 126, Acts forbidding the purchase of offices; so called by 38 & 39 Vict. c. 16, the Regimental Exchanges Act, 1875.

Army Council. This Council was first established in 1904, when the post of Commander-in-Chief was abolished. The four military members are the Chief of the Staff, the Adjutant-General, the Quarter-Master General, and the Master-General of the Ordnance, and there is also a finance member and a civil member. The respective duties of those members are defined by an Order in Council of 10th August, 1904, and each is responsible to the Secretary of State for War, who is solely responsible to the Crown and Parliament. The Secretary of the War Office acts as secretary to the Army Council. See also the Army (Annual) Act, 1909 (9 Edw. 7, c. 3), s. 4, as to the powers of the Council.

Arnaldia, a disease that makes the hair fall off, otherwise called *alopecia* (Gk.), because foxes are subject to it.

Arnalia, arable grounds.—*Domesday*, tit. '*Essex*.'

Aromatarius, a word formerly used for a grocer.—1 *Vent.* 142.

Arpen, or **Arpent,** an acre or furlong of ground. According to *Domesday Book,* 100 perches make an arpent.—*Cowel.*

Arpentator, a measurer or surveyor of land.—*Cowel.*

Arquebuss, a short handgun, a caliver or pistol mentioned in some of our ancient statutes.

Arraiatio peditum, arraying of foot soldiers.—1 Edw. 2.

Arraiers, officers who had the care of the soldiers' armour, and whose business it was to see them duly accoutred. Commissioners were afterwards appointed for the same purpose.—*Blount.*

Arraign [fr. *arraisonner, aresner, aregnir, arraigner,* Old Fr., i.e., *ad rationem ponere,* Lat., to call one to account], to bring a prisoner to the bar of the Court to answer the matter charged upon him in the indictment. The arraignment of a prisoner consists of calling upon him by name, reading to him the indictment, demanding of him whether he be guilty or not guilty, and entering his plea. The pleas upon arraignment are either the general issue, i.e., not guilty, or a plea in abatement or in bar, or the prisoner may demur to the indictment, or he may confess the fact, upon which the Court proceeds immediately to judgment. But if the prisoner 'shall stand mute of malice, or will not answer directly to the indictment or information,' the Court, if it shall so think fit, may 'order the proper officer to enter a plea of "not guilty" on behalf of such a person, and the plea so entered shall have the same force and effect as if the person had so pleaded the same.'—Crim. Law Act, 1827 (7 & 8 Geo. 4, c. 28). If the person stands mute by visitation of God, he can be treated as though insane (*R.* v. *Stafford Prison* (*Governor*), 1909, 2 K. B. 81).

Arraigns, Clerk of, an assistant to the clerk of assize.

Arrameur, an ancient port-officer, whose business was to load and unload vessels.

Arrangements between Debtors and Creditors. The 125th and 126th sections of the Bankruptcy Act, 1869, which repealed an Act of 1861, allowed liquidation by arrangement and composition with creditors by resolutions passed at similar representative meetings to take the place of proceedings in bankruptcy. The Bankruptcy Act, 1883, having repealed the Act of 1869 without re-enacting these clauses, arrangements with creditors outside the law of bankruptcy became common, and in order to legalize and regulate these arrangements, the Deeds of Arrangement Act, 1887, was passed and amended in 1890 by 53 & 54 Vict. c. 24. The law has now been consolidated by the Deeds of Arrangement Act, 1914 (4 & 5 Geo. 5, c. 47), which repeals the Act of 1887, and also parts of the Bankruptcy and Deeds of Arrangement Act, 1913, and contains practically the whole statute law on the subject. The Act is divided into five parts: (1) defining the deeds of arrangement to which the Act applies; (2) avoiding deeds of arrangement where the statutory provisions have not been complied with; (3) requiring deeds to be registered with the Registrar of Bills of Sale; (4) requiring the trustee of the deed to give security, making provision for auditing his accounts, and prescribing his duties and liabilities generally; (5) making certain general provisions as to Courts, procedure, etc. And see the Deeds of Arrangement Rules, 1925, pursuant to Deeds of Arrangement Act, 1914, and s. 22 of Administration of Trustee Act, 1925.

Arrangements inside the Bankruptcy Act are regulated by s. 16 of the Bankruptcy Act, 1914, which takes the place of earlier enactments. By this section (which contains 20 sub-sections), 'where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs,' he must lodge a proposal embodying the terms with the official receiver, who is required to hold a meeting of creditors before the public examination is held, and send to each creditor a copy of the proposal with a report thereon. If at the meeting (or by letter received not later than the day before it) a majority in number and three-fourths in value of all the creditors who have proved their debts resolve to accept the proposal, it is deemed to be accepted by the creditors, and when approved by the Court of Bankruptcy it is binding on all the creditors. Deeds of arrangement affecting land must be registered under the Land Charges Act, 1925. See LAND CHARGES.

Railway companies unable to meet their engagements with their creditors may, under the Railway Companies Act, 1867, by schemes of arrangement filed in the Chancery Division of the High Court, assented to by three-fourths in value of their creditors, and confirmed by the Court, reorganize their finances.

Under s. 153 of the Companies Act, 1929, a compromise or arrangement between any company liable to be wound up under that Act and its members or creditors (including a reorganization of capital) may be sanctioned by the Court and bind all concerned, and the same Act provides (s. 288) that regard may be had to the wishes of creditors in a winding-up by the Court. The Companies Act, 1929, s. 288, provides and may direct meetings of creditors or contributories to be held for that purpose; and by s. 251 any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors is binding on the creditors under certain conditions, but there is a right of appeal to the Court.

Arras, a marriage portion.—*Spanish.*

Array [fr. *arredare*, It., to get ready], to rank or set forth a jury of men impannelled upon a cause. To challenge the array of the pannel is at once to except against all persons arrayed or impannelled, in respect of partiality or some default in the sheriff.—*Co. Litt.* 156 *a.* If the sheriff be of affinity to any of the parties, or if any one or more of the jurors are returned at the nomination of either party, or for any other partiality, the array shall be quashed.—See *Archbold's Criminal Pleading.*

Array, Military Commission of. Previous to the reign of Henry VIII., in order to protect the kingdom from domestic insurrections or foreign invasions, it was usual from time to time for our princes to issue commissions of array, and send into every county officers in whom they could confide, to muster, array, or set in military order the inhabitants of every district. The form of the commission was settled by 5 Hen. 4, so as to prevent the insertion therein of any new penal clauses.—*Rushworth, Hist. Coll.*, vol. iv., pp. 662, 667.

Arrears, or **Arrearages,** money unpaid at the due time: as rent behind; the remainder due after payment of a part of an account; money in the hands of an accounting party.

Arrectatus, or **Rectatus,** one suspected or accused.—*Spelm.*

Arrected, reckoned, considered.—*Co. Litt.* 173 *b*, and Harg. note (2).

Arrenatus, arraigned, accused.—*Rot. Parl.* 21 Edw. 1.

Arrendare, to let lands yearly.

Arrentation [fr. *arrendar*, Span.], licensing the owner of lands in a forest to enclose them with a low hedge and small ditch according to the assize of the forest, under a yearly rent. *Saving the arrentations* is reserving a power to give such licenses.—*Ordin. Forestæ*, 34 Edw. 1, s. 5.

Arrest [fr. *restare*, Lat.; *arrestare*, It.; *arrester*, Fr., to bring one to stand], the restraining of the liberty of a man's person in order to compel obedience to the order of a Court of Justice, or to prevent the commission of a crime, or to ensure that a person charged or suspected of a crime may be forthcoming to answer it. Arrests are either in civil or (see APPREHENSION) criminal cases; civil arrests must be affected, in order to be legal, by virtue of a precept or writ issued out of some Court. The law of civil arrest (see MESNE PROCESS), so far as it still exists, is regulated by the Debtors Act, 1869 (see that title), which abolished imprisonment for debt except in special cases, as where a debtor has the means to pay his debt but refuses to do so, and s. 218 of the Companies Act, 1929, as to the power to arrest an absconding contributory in case of winding up by the Court. See also CONTEMPT OF COURT. The two great statutes for securing the liberty of the subject against unlawful arrests and suits are *Magna Charta* and the *Habeas Corpus Act* (31 Car. 2, c. 2), which is amended and enforced by 56 Geo. 3, c. 100. A person is privileged from civil arrest whilst in or whilst going to or from a Court of Law on business.

Powers of Arrest under Criminal Process—apart from arrest under a warrant from a magistrate—are as follows:—

1. *At Common Law.*—A peace officer, i.e., a sheriff, coroner, constable, or any justice of the peace, may arrest for felony, attempted felony, or on reasonable suspicion of felony, or for breach of the peace committed in his presence, or on reasonable belief that an affray is about to be renewed. A private person is not only able but bound to arrest any one who commits a felony in his presence or dangerously wounds another. He may arrest any one taking part in an affray while it is continuing or, if he reasonably apprehends, its renewal. He may arrest for felony provided a felony has been committed and he has reasonable grounds for believing that the man arrested has committed that felony.

2. *By Statute.*—Any person found committing an offence under the Larceny Act, 1916 (except against s. 31), or against the Malicious Damage Act, 1861, may be arrested without a warrant. There is a similar provision in respect of s. 6 of the

Vagrancy Act, 1824, and also with regard to a constable in respect of certain minor offences on the highway (s. 78, Highways Act; s. 28, Town Police Clauses Act; s. 74 (2), Public Health Act, 1925 (Geo. 5, c. 71).) For further statutes and for arrest generally see *Archbold's Criminal Pleading. Evidence and Practice.* The Criminal Law Act, 1826, ss. 28 and 30, and the Criminal Justice Administration Act, 1851, s. 8, provide compensation to persons apprehending certain offenders in certain cases.

Arrest of Inquest, pleading in arrest of taking the inquest upon a former issue, and showing cause why an inquest should not be taken.—*Bro. Ab.*, tit. '*Repleader.*'

Arrest of Judgment. Formerly an unsuccessful defendant might move that the judgment for the plaintiff be arrested or withheld, notwithstanding a verdict given, on the ground that there was some substantial error appearing on the face of the record which vitiated the proceedings. (See now R. S. C. Ords. XXVII. and XXXIX.) Judgment may be arrested for good cause in criminal cases, if the indictment be insufficient. See *Archbold's Criminal Pleading.*

Arrest of Ship. The arrest of a ship is the method employed for enforcing an Admiralty process *in rem.* The ship can be released by giving bail to the extent of the claim and costs. See SHIPOWNER, R. S. C. Ord. V., rr. 15 and 16, and *Roscoe's Admiralty Practice.* When the arrest is malicious, an action will lie without proof of actual damage (*The 'Walter D. Wallett,'* 1893, P. 202).

Arrest on Mesne Process. See MESNE PROCESS.

Arrestandis bonis ne dissipentur, a writ which lay for a person whose cattle or goods were taken by another, who during a contest was likely to make away with them, and who had not the ability to render satisfaction.—*Reg. Brev.* 126.

Arrestando ipsum qui pecuniam recepit, a writ which issued for apprehending a person who had taken the king's prest money to serve in the wars, and then hid himself in order to avoid going.—*Ibid.* 24.

Arrestee, the person in whose possession a debt of property has been attached by arrestment.—*Scots Law.*

Arrester, the person who procures an arrestment.—*Ibid.*

Arrestment, a process of attachment prohibiting a person, in whose hands a debtor's movables are, to pay or deliver up the same to such debtor, till a creditor, who has procured an arrestment to be laid on, be satisfied either by caution, i.e., security, or payment according to the grounds of arrestment.—*Ibid.*

Arrestment jurisdictionis fundandæ causa. In Scotland, if a non-Scots Defender is not subject to the jurisdiction of the Court in any other way, but has some moveable property, corporeal or incorporeal, in the hands of a third party within the jurisdiction, that property may be arrested by this process, and then the Defender is subject to the Court's jurisdiction. The value of the property, so long as it has some merchantable value, is immaterial. This process does not prevent the third party from disposing of the property.

Arresto facto super bonis mercatorum alienigenorum, a writ against the goods of aliens found within this kingdom, in recompense of goods taken from a denizen in a foreign country after denial of restitution.—*Reg. Brev.* 129. The ancient civilians called it *clarigatio,* but by the moderns it is termed *reprisalia.*

Arret [Fr.], a judgment, decree or sentence.

Arretted, charged. The convening a person charged with a crime before a judge.—*Staundf. Pl. Cr.* 45. It is used sometimes for *imputed* or *laid unto:* as no folly may be *arretted* to one under age.—*Cowel.*

Arrha, short for *arrhabo* [fr. ἀρράβων, Gk.], earnest, pledge, evidence of a completed bargain.

Arriage and **Carriage,** indefinite services formerly demandable from tenants in Scotland, abolished by the Tenures Abolition Act, 1746 (20 Geo. 2, c. 50), ss. 21, 22.

Arriere Fee, or **Fief,** a fee dependent on a superior fee. These fees originated when dukes and counts, rendering their governments hereditary, distributed to their officers parts of the domain, and permitted those officers to gratify the soldiers under them in the same manner.

Arriere Vassal, the vassal of a vassal.

Arrogatio, a form of adoption in Civil Law. It could not be effected by a mere private juristic act like *adoptio,* but only by a decree of the *comitia curiata* or later by imperial rescript. *Arrogatio* was the form of adopting a paterfamilias or *homo sui juris,* and effected like the *adoptio capitis deminutio minima* of the *arrogatus.* As a rule there could be no *arrogatio* of an impubes or a woman, but on certain conditions *arrogatio* of an impubes was permitted, and since it could be effected by imperial rescript, women also might be arrogated.

Arrura [fr. ἄρουρα, Gk.], a day's ploughing.—*Paroch. Antiq. Gloss.*

Arsenals [fr. *arzana, darzena, tarzana*, It.], dockyards, magazines, and other military stores. It is a felony punishable by death to burn or otherwise destroy a royal arsenal (The Dockyards, etc. Protection Act, 1772, (12 Geo. 3, c. 24)); a felony punishable with penal servitude to be guilty of spying there; and a misdemeanour to disclose official information as to a royal arsenal (Official Secrets Acts, 1911 and 1920).

Arsenic. See POISON.

Arser in le main, burning in the hand. The punishment of criminals who had the benefit of clergy, which benefit was abolished by the Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28).—*Termes de la Ley.*

Arson [fr. *ardeo*, Lat., to burn], the malicious firing of a house or other building. The law upon this subject is to be found in the Malicious Damage Act, 1861, ss. 1–8. As to maliciously setting fire to ships, see ss. 42–44; to crops, etc., ss. 16–18; to coalmines, s. 26.

Arsura, the trial of money by fire, after it was coined.

Art and Part, a term in Scots Law. Signifies the aiding or abetting in the perpetration of a crime.

Art Unions, 'voluntary associations for the purchase of paintings, drawings, and other works of art to be distributed by chance or otherwise amongst the members.' So defined by the Art Union Act, 1846 (9 & 10 Vict. c. 48), which legalizes the distribution by chance (provided a royal charter incorporating the association shall have been obtained), which would otherwise be illegal under the Lottery Act. As to the rules of the Art Union of London, see *Savoy Overseers* v. *The Art Union of London*, 1896, A. C. 296.

Art, Words of, words used in a technical sense; words scientifically fit to carry the sense assigned to them.

Art, Works of. Copyright in works of art now depends on the Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), which, subject to the provisions of the Act, makes the term of protection the life of the author and fifty years after his death. By s. 35 'artistic work' includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural work of art and engravings and photographs.

Arthel, Ardhel, or **Arddello,** to avouch, as if a man were taken with stolen goods in his possession he was allowed a lawful *arthel*, i.e., **vouchee,** to clear him of the felony, but provision was made against it by 28 Hen. 8, c. 6.

Article [*articulus*, Lat.], a complaint exhibited in the Ecclesiastical Court by way of libel. The different parts of a libel, responsive allegation, or counter allegation in the Ecclesiastical Courts.

Articled Clerk, a pupil of a solicitor, who undertakes, by articles of clerkship, containing covenants, mutually binding, to instruct him in the principles and practice of the profession. See SOLICITOR.

Articles, divisions and paragraphs of a document or agreement. It is a common practice for persons to enter into articles of agreement, preparatory to the execution of a formal deed, whereby it is stipulated that one of the parties shall convey to the other certain lands, or release his right to them, or execute some other disposition of them.

Articles are therefore considered as a memorandum or minute of an agreement to make some future disposition or modification of property. Such an instrument will create a trust or equitable estate, and a specific performance of it will be decreed in equity.

Articles are usually entered into for the purchase and sale of lands, for the taking and granting of leases, for making settlements on marriage, and for forming partnerships. And see ASSOCIATION.

And see IMPEACHMENT.

Articles, Marriage. An agreement made in consideration of marriage, generally to secure a provision by conveyance or settlement for the spouses or one of them and the children of the marriage, must, under the Statute of Frauds, 29 Car. 2, c. 3, s. 4, be in writing and will not be enforced unless evidenced in writing, see *Montacute* v. *Maxwell*, 1 P. Wms. 618, and *Butterfield* v. *Heath*, (1852) 15 Beav. 408. In equity the articles are considered as minutes of agreement and to create executory trusts, and the Court will give effect to the intention accordingly without strict or any regard to an improper or informal use of words, see *Stamford* v. *Hobart*, (1710) 3 Br. P. C. (Tomk. Ed.) 31, and *Blandford* v. *Marlborough*, (1743) 2 Atk. 542, and therefore the rule in Shelley's Case (now abolished in regard to instruments coming into operation after 1925, see Law of Property Act, 1925, s. 131) was not applied in construing or executing the articles. See *Norton on Deeds.*

Articles, Lords of the, a committee of the Scottish Parliament, which in the mode of its election, and by the nature of its powers,

was calculated to increase the influence of the Crown, and to confer upon it a power equivalent to that of a negative before debate. This system appeared inconsistent with the freedom of Parliament, and at the Revolution, the Convention of Estates declared it a grievance, and accordingly it was suppressed by the Act of 1690, c. 3. See *Burnet's Hist. of his Own Times.*

Articles of Association. See ASSOCIATION, ARTICLES OF.

Articles of Religion, commonly called the Thirty-nine Articles, a body of divinity drawn up by the convocation in 1562, required of the clergy to be subscribed to by 13 Eliz. c. 12, and confirmed by James I. Consult *Burnet's 'Exposition of the Thirty-nine Articles.'* The Oxford University Act, 1854 (17 & 18 Vict. c. 81), ss. 43, 44, has rendered unnecessary subscription to these articles, or any oath, on matriculating or on taking a degree in the University of Oxford; and the Cambridge University Act, 1856 (19 & 20 Vict. c. 88), ss. 45, 46, contains a similar enactment in regard to the University of Cambridge; a declaration of assent to them is required by the Clerical Subscription Act, 1865 (28 & 29 Vict. c. 122) (see CLERICAL SUBSCRIPTION), to be subscribed by every deacon or priest before ordination, and also by every person about to be instituted to a benefice, or licensed to a perpetual curacy; every such person being also required to read the articles publicly in church on the first Sunday on which he officiates, and again to make the declaration of assent.

The articles are to be construed liberally, as is shown by the *Gorham case* in 1850, the *Wilson case* in 1864, and the *Bennett case* in 1871; but in order to convict a clergyman for impugning them, it is not necessary that they should have been contradicted in so many words, if the opinions promulgated by him were inconsistent with their clear construction or repugnant to it (*Voysey* v. *Noble*, (1871) L. R. 3 P. C. 357).

Articles of Roup, the conditions under which property is exposed to sale by auction.—*Scots Law.*

Articles of the Peace, a complaint exhibited either in the King's Bench Division of the High Court, Court of Oyer and Terminer, or Court of Summary Jurisdiction, when any one has just cause to fear that some one will burn his house, do him some corporal hurt, or procure a third person to perpetrate it. Upon articles setting forth the fact being sworn to by the complainant, sureties of the peace are taken for such a length of time as the Court shall think necessary, not being confined to a twelvemonth. See ss. 25, 26 of the Summary Jurisdiction Act, 1879, and PEACE, and for the procedure to exhibit articles of the peace in the King's Bench Division of the High Court of Justice, see Rules 246–56 of the Crown Office Rules of 1906, and *Short and Mellor on Crown Office Practice.*

Articles of War, a code of laws for the regulation of the land forces, made prior to 1879, in pursuance of the several annual Acts against mutiny and desertion. See ARMY. Formerly there were also *Articles of the Navy*, embodied in 22 Geo. 2, c. 33; but that statute and others amending it were repealed by 23 & 24 Vict. c. 123.

Articuli cleri, statutes containing certain articles relating to the church, clergy, and causes ecclesiastical, made at Lincoln.—9 Edw. 2, st. 1; 1 *Reeves*, c. xii. 290.

Articuli super chartas, the 28 Edw. 1, st. 3, s. 2; *Reeves*, c. xi. 136.

Articulus cleri. A resolution of convocation.

Artificers, persons who are masters of their art, and whose employment consists chiefly in manual labour. See Truck Act, 1831 (1 & 2 Wm. 4, c. 37).

Artificial Person, a corporation (*q.v.*)

Artisans, artificers. The Artisans and Labourers' Dwellings Act, 1868 (31 & 32 Vict. c. 130), repealed and re-enacted with amendments by the Housing of the Working Classes Act, 1890 (since extended and amended), made provision for taking down or improving dwellings occupied by working men and their families, which were unfit for human habitation, and for the building and maintenance of better dwellings for them instead. As amended in 1874, the Act applied to the Metropolis except the City, to municipal boroughs, and urban sanitary districts. See HOUSING OF THE WORKING CLASSES.

A rubro ad nigrum, to proceed to the sense of the text in a statute by looking at the title; the title was written in red, the text in black.

Arundinetum [fr. *arundo*, Lat.], a ground or place where reeds grow.

Arundinis Vadum, the ancient name of Redbridge, in Hampshire.

Aruntina Vallis, the ancient name of Arundel, in Sussex.

Arvil-supper, a feast or entertainment made at a funeral in the north of England; *arvil bread* is bread delivered to the poor at

funeral solemnities, and *arvil*, *arval*, or *arfal* the burial or funeral rites.—*Cowel.*

Arvonica, the ancient name of Carnarvonshire.

As, a pound weight, a unit, the whole of an inheritance. For its divisions, see *Sand. Just.*, 9th ed. 193 ; *Cum. C. L.* 139 n. (1), and *Tayl. C. L.* 491.

As against, as between : these words contrast the relative position of two persons with a tacit reference to a different relationship between one of them and a third person. For instance, the temporary bailee of a chattel is entitled to it, as between himself and a stranger, or as against a stranger ; reference being made by this form of words to the rights of the bailor.

Ascendants, the progenitors of a family.

Asceterium, a monastery.—*Du Cange.*

Ashbourne Act, the Purchase of Land (Ireland) Act, 1885 (48 & 49 Vict. c. 73), to provide greater facilities than those given by part five of the Land Law (Ireland) Act, 1881, for the sale of land to occupying tenants in Ireland ; introduced in the House of Commons by Mr. Gibson as Attorney-General for Ireland, afterwards Lord Ashbourne. Amended by numerous amending acts cited together as the Land Purchase Acts, see Northern Ireland Land Act, 1929. (19 Geo. 5, c. 14), s. 8, and see also Prospective Operation of Northern Ireland Land Purchase (Winding Up) Act, 1935 (25 & 26 Geo. 5, c. 21).

Ashpit. The Public Health Act, 1936, contains provisions as to ashpits and the cleansing of them (see ss. 72 *et seq.*). Section 11 (1) of the (*adoptive*) Public Health Acts Amendment Act, 1890 (53 & 54 Vict. c. 59) (repealed by the P. H. Act, 1936), declared that 'the expression " ashpit " in the Public Health Acts should, for the purpose of those Acts, include any ash tub or other receptacle for the deposit of ashes, fæcal matter, or refuse.'

Asphyxia [fr. *ἀ* not, and *σφύζις*, Gk., pulse], suspended animation, produced by the non-conversion of the venous blood of the lungs into arterial.—*Dunglison.*

Asportation, carrying away or removing goods. In all larcenies there must be both a taking and a carrying away (*cepit et asportavit*).

Assach, or **Assath,** a custom of purgation formerly used in Wales, by which an accused party cleared or purged himself of the accusation by the oaths of 300 men. Abolished by 1 Hen. 5, c. 6.—*Spelman.*

Assart, or **Essart** [fr. *assartum*, Lat.], an offence committed in the forest by pulling up by the roots trees that are thickets and coverts for deer, and making the ground plain as arable land. It differs from waste in that waste is the cutting down of coverts which may grow again, whereas assart is the plucking them up by the roots and utterly destroying them, so that they can never afterwards grow. This is not an offence if done with licence to convert forest into tillage ground. Consult *Manwood's Forest Laws*, ch. 9, s. 1 ; *Williams on Rights of Common*, p. 231.

Assassination, murdering a person by lying in wait. In modern times the term is frequently applied to the open murder of great personages from political motives, as of the King of Italy by Brescia in 1900, and of the President of the United States of America by Czolgosz in 1901. The Offences against the Person Act, 1861, s. 4, makes it a misdemeanour punishable by penal servitude for not more than ten years to solicit any person to murder any other person, whether a subject of the king or not, and whether within the king's dominions or not : and in *Reg.* v. *Most*, (1881) 7 Q. B. D. 244, this enactment was held by the Court for Crown Cases Reserved, constituted under the Crown Cases Act, 1848, to apply to the publication of a newspaper containing an article exulting over the assassination of the Emperor of Russia in 1881, and hoping that it was not the last.

Assault [fr. *salire*, Lat., to leap ; *saillir*, *assaillir*, Fr., to assail ; *insultus*, Lat.], an attempt to offer, with force and violence, to do a corporal hurt to another, as by striking at him with or without a weapon. No words, how provoking soever they be, will amount to an assault. Assault does not always necessarily imply a hitting or blow ; because, in trespass for *assault and battery*, a person may be found guilty of the assault, but not guilty of the battery. But *battery* always includes an assault.—1 *Hawk. P. C.* c. lxii., s. 1.

The various kinds of assault are successively dealt with and made punishable by ss. 36–47 and ss. 52 and 62 (indecent assaults) of the Offences against the Person Act, 1861. By s. 47 an assault occasioning actual bodily harm is punishable on indictment by penal servitude for not less than three, or imprisonment for not more than two years, and a common assault by imprisonment for not more than one year ; but by s. 42 common assaults are summarily triable by two justices, and by them punishable by not

more than two months' imprisonment or by not more than 5*l.* fine. As to 'aggravated' assault on a boy under 14 or any woman, see AGGRAVATED ASSAULTS, and see generally *Chitty's Statutes*, tit. '*Criminal Law* (*Offences against Person*),' and notes.

Assay [fr. *exigere*, Lat., to test] of weights and measures, examining weights and measures by clerks of markets, etc.—*Blount*. Also the testing and proving of coins, metals, etc. By the Gold and Silver Wares Act, 1844 (7 & 8 Vict. c. 22), s. 2, partly repealed by the Forgery Act, 1913 (3 & 4 Geo. 5, c. 27), it is felony to forge or counterfeit any assay mark. As to assay of foreign imported plate, see 46 & 47 Vict. c. 55, s. 10; 4 Edw. 7, c. 6; and 7 Edw. 7, c. 13, s. 5. See PLATE.

Assayer of the King, an officer of the Mint, who tried the silver; he was appointed by the Master of the Mint and the merchants who carried silver thither for exchange.—*Blount*.

Assaysiare, to associate or take as fellow-judges; used in old charters.—*Cowel*.

Assecurate, to secure by pledges, a solemn interposition of faith.—*Hov.* 1174.

Assembly, Church. See NATIONAL ASSEMBLY OF THE CHURCH OF ENGLAND.

Assembly, General (fr. *simul*, Lat., together; hence *ensemble, assembler*, Fr., to draw together], the highest ecclesiastical court in Scotland, composed of a representation of the ministers and elders of the church. Consult *Encyc. of Scots Law*.

Assembly, Unlawful, a meeting of three or more persons to do an unlawful Act.—3 *Inst.* 9; 1 *Hawk.* 155. See OFFENCE; RIOT; ROUT.

Assent, or **Consent,** agreeing to or recognizing a matter, as an executor's assent to a legacy, or the assent of a corporation to bylaws, etc. See ROYAL ASSENT.

Assent of Personal Representatives. At Common Law the personal estate passing by the will of a deceased person, including chattels real vested in the executor, *virtute officii*. The property passed to the legatee as soon as the executors assented to the bequest. The transfer was made not by the mere force of the assent but by virtue of the will (*Attenborough* v. *Solomon*, 1912, A. C. 76), and the assent might be given to one executor. No formalities were required. The assent might be implied, for instance, in the case of leaseholds, by letting the person entitled into possession or the receipt of rent and profits, but the assent was required to be definite and unambiguous. When given it related back to the date of death and as a rule it could not be withdrawn (but see *Whittaker* v. *Kershaw* (1890), 45 C. D. 320). This is still the law in regard to pure personalty, excluding chattels real. Before the Land Transfer Act, 1897 (60 & 61 Vict. c. 65) real estate passed to the heir-at-law of the deceased or to the person entitled in reversion or remainder subject to the personal representatives' legal or equitable powers of sale (if any) and the A. E. Act, 1925, in furtherance of the Property legislation of 1925, and extending the Land Transfer Act, 1897, introduced an important change in the meaning of a personal representative's assent. Under s. 36 of the A. E. Act, 1925, the legal estate which was vested in the deceased in real estate, including chattels real, cannot pass to the person entitled under his will or intestacy unless the personal representative has given his assent in writing (a deed is not required), naming the person in whose favour the assent is given and signed by all the personal representatives, or representatives who have proved the will (s. 2 (2), *ibid.*), or to whom letters of administration have been granted, and since the will of itself can only pass or affect equitable interests an assent which satisfies the requirements referred to or a conveyance to the like effect by the personal representative now forms an essential link in the devolution, after death after 1925, of title to legal estate, the probate or grant of letters of administration (and not the will) being the only relevant link in the chain of title, although persons affected by equitable interests in the land are of course still bound by the terms of the will or of any other instrument creating or affecting the equities. Notice of the assent or conveyance may be required by the transferee thereunder to be stated or annexed to the probate or letters of administration (s. 36 (6), *ibid.*), and the same section provides for the protection of purchasers. Consult *Wolst. and Ch. Conv. Acts*, and *Wms. on Executors*, and see VESTING ASSENT.

Assertory Covenant, an affirming promise under seal.

Assess [fr. *assessum*, Lat., setting a tax], to rate or ascertain.

Assessed Taxes, properly duties varying with the value of the property on which they are charged, as the property tax, house tax, or land tax; but the term is also applied to the duties charged upon persons in respect of articles in their use or keeping, as servants, carriages, or armorial bearings.

Assessment Committee. This is a statutory committee for the purpose of making out the valuation list on which the poor rate is based. See VALUATION LIST and POOR LAWS. The committee is appointed and acts by virtue of the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90). See s. 17 and First Sched. When the valuation list has been published, objection may be taken and relief asked for from the committee. The notice of objection must be in writing and give the general grounds relied on (*R.* v. *London Justices*, 1897, 1 Q. B. 433; *R.* v. *Essex Justices*, 1902, 1 K. B. 180). The committee has no power to administer an oath or to order costs. An appeal lies from the committee to the local Quarter Sessions (*Imperial and Grand Hotels Co.* v. *Christchurch Union*, 1905, 2 K. B. 239).

Assessors, literally those who sit by the side of another: persons appointed to ascertain and fix the value of taxes, rates, etc. Also persons sometimes associated with judges of courts to advise and direct the decisions of such judges.

By the Judicature Act, 1925, s. 98, replacing the Judicature Act, 1873, s. 56, the High Court or the Court of Appeal may, when it may think it expedient other than in a criminal proceeding by the Crown, call in the aid of one or more assessors specially qualified, and try and hear the matter in question wholly or partially with the assistance of such assessors. By the County Courts Act, 1934, s. 88, replacing the County Court Admiralty Jurisdiction Act, 1868, s. 14, provision is made for the appointment of assessors of 'nautical skill and experience' in Admiralty actions, and such assessors frequently sit in county courts under the powers of this Act.

Schedule II. of the Workmen's Compensation Act, 1925, gives a county court judge power to summon a medical referee to sit with him as an assessor upon the hearing of an arbitration under that Act. By virtue of s. 31 of the Patents and Designs Act, 1907, the Court, in an action for infringement or revocation of a patent, 'may, if it think fit, and shall on the request of either of the parties' call in the aid of an assessor specially qualified. The remuneration of assessors in the above instances has not to be borne by either litigant.

Assets [fr. *assetz*, Nor.-Fr., i.e., *satis*, Lat.; *assez*, Fr., sufficient; in Old English it was commonly written *asseth*], the property of a deceased person, which is chargeable with, and applicable to the payment of, his debts and legacies; the property of any person, with reference to bankruptcy, available for division amongst his creditors; the whole property of a person, without any such reference. For purposes of the administration of the estate of a deceased person assets were, before 1925, divided into two classes, legal and equitable. Legal assets comprised all property to which the personal representative became entitled *virtute officii* and for which he would have been answerable in an action at common law brought against him by a creditor; they were administered in accordance with certain rules of priority. Equitable assets, on the other hand, were those which would only be made available for the payment of debts through the operation of a decree or order of a Court of Equity; they were treated as a trust fund, and on the principle of equality being equity are divided *pari passu* among the creditors without regard to the order of priority which obtained in the case of legal assets. It was the remedy of the creditor, therefore, whether legal or equitable, and not the remedy of the executor, or the legal or equitable nature of the property, which determined whether assets were legal or equitable. See ADMINISTRATION.

Sections 32 (1) and 34 of the A. E. Act, 1925, have abolished the distinction and the priorities for debts including Crown debts formerly payable out of legal assets.

Asseveration [fr. *assevero*, Lat., to affirm earnestly, fr. *severus*, serious], positive affirmation or assertion, solemn declaration.

Assewiare, to draw or drain water from marsh grounds.—*Cowel.*

Assidere, or **Assedare**, to tax equally. Sometimes used in the sense of assigning an annual rent to be paid out of a particular farm, etc.—*Mat. Paris, anno* 1232.

Assign, variously applied; generally to transfer property, especially personal estate, or set over a right to another, or appoint a deputy; to set forth, as to assign error, false judgment; to new assign was, under the old practice, a pleading by the plaintiff following the defendant's plea, wherein the plaintiff pointed out the exact grievance meant to be complained of in his declaration, and not met by the defendant in his plea. The judges are said to be assigned to take assizes. See ASSIGNMENT.

Assignation, assignment.—*Scots Law.*

Assignatus utitur jure auctoris. *Halk.* 14.—(The assignee makes use of the right of his assignor.) See *Broom's Leg. Max.*

Assignee, or **Assign,** a person appointed

by another to do any act or perform any business; also a person who takes some right, title, or interest in things by an assignment from an assignor. They are divided into: (1) assignees by *deed*, as when a lessee of a term assigns it to another; and (2) assignees by *law*, as when property devolves upon an executor merely in virtue of his appointment as such. Assignees in bankruptcy (now called trustees, seeBANKRUPTCY) are those persons in whom the property of a bankrupt vests by virtue of their appointment.

Assignment, a transfer of an estate or interest in property. The usual operative verb is 'assign,' but any other word indicating an intention to make a complete transfer, e.g., 'convey,' will amount to an assignment.

Assignment by Lessor or Lessee, Effect of. A lessor, notwithstanding assignment of his reversion, continues liable to his lessee on covenants running with the land (*Stuart* v. *Joy*, 1904, 1 K. B. 362), and so does a lessee to his lessor, notwithstanding assignment of his term (*Barnard* v. *Godscall*, (1613) Cro. Jac. 309). The assignee of a term is liable equally with the lessee (though the lessor cannot recover against both) during his possession, but unless restrained by covenant he can assign over to a pauper or other man of straw (*Fagg* v. *Dobie*, (1838) 3 Y. & C. 96), and thus escape liability on the covenants in the lease, though he is usually made liable, on a covenant of indemnity in the deed of assignment, to his own assignor. As to the liability of the parties in the case of successive assignments of a lease, see *Moule* v. *Garrett*, (1872) L. R. 7 Ex. 101. An assignor of a term remains liable to his lessor for rent, even after an assignment, if he expressly covenanted to pay rent (*Auriol* v. *Mills*, 4 Term Rep. 94, and *Betts* v. *Price*, (1924) 40 T. L. R. 589). Assignments of leases and terms of years must be by deed, see *Harris* v. *Goodwyn*, (1841) 9 Dowl. 409, and the Law of Property Act, 1925, s. 52, replacing the Statute of Frauds, 29 Car. 2, c. 3, s. 4, and Real Property Act, 1845, s. 3, and by s. 40 of the L. P. Act, 1925, all contracts for assignments of such leases and terms must be in writing and signed by the party to be charged or his agent. An assignment of a term must be of the whole term: the grant or conveyance of any lesser term is an underlease, but an underlease for the whole term is in effect an assignment.—*Woodfall, L. & T.*, 23rd ed. p. 320. As to assignment of choses in action, see CHOSE.

Assignment by Tenant for Life.—For a special meaning of the word, see Settled Land Act, 1925, s. 104.

Assignment of Dower, the ascertaining and setting out by metes and bounds of a widow's portion of her deceased husband's realty for her thirds or dower. As to the rights of the widow until 1926, see *Williams* v. *Thomas*, 1909, 1 Ch. 713, and as to the widow's rights where dower has been assigned by metes and bounds, see Settled Land Act, 1925, ss. 1 (1) (3) and 19 (1). Dower in in respect of the real estate of persons dying after 1925 has been abolished, see s. 45 of the A. E. Act, 1925. See DOWER.

Assignment of Errors, the formal statement of the objection or error in the record complained of. See ERROR.

Assignor, a person who transfers or makes over property to another.

Assigns. In regard to land and interests in land this word generally means assigns and all successive assigns (*Spencer's Case*, 1 Sm. L. C.; 13 Ex. 51; and see s. 79 of the L. P. Act, 1925).

Assimulare, to connect highways.—*Leg. Hen. I.* c. 8.

Assisa, a law.—1 *Reeves*, c. iv. 228.

Assisa cadere, to be nonsuited, as when there is such a plain and legal insufficiency in an action that the plaintiff cannot successfully proceed any further in it.—*Fleta*, lib. 4, c. 15; *Bracton*, lib. 2, c. vii.

Assisa cadit in juratum, the controversy is submitted to trial by jury.—*Ibid.*

Assisa continuanda, an ancient writ addressed to the justices of assize for the continuation of a cause, when certain facts put in issue could not have been proved in time by the party alleging them.—*Reg. Brev.* 217; and *Termes de la Ley*, '*Continuance.*'

Assisa panis et cerevisiæ, the power or privilege of assizing or adjusting the weight and measure of bread and beer.—*Cowel's Law Dict.* Repealed by 6 & 7 Wm. 4, c. 37.

Assisa proroganda, an obsolete writ, which was directed to the judges assigned to take assizes, to stay proceedings, by reason of a party to them being employed in the king's business.—*Reg. Brev.* 208.

Assisa Utrum. See ASSISE DE UTRUM.

Assise de Utrum, an obsolete writ, which lay for the parson of a church whose predecessor had alienated the land and rents of it.—*Fitz. N. B.* 48.

Assise. See ASSIZE.

Assise of Arms, 27 Hen. 2, A.D. 1181.

Assise of Bread, the fixed rate for the sale of bread. Long obsolete.

Assise of Darrein Presentment, or last presentation; it lay when a person, or his ancestors, under whom he claims, had presented a clerk to a benefice who was duly instituted, and afterwards, upon the next avoidance, a stranger presents a clerk, thus disturbing the right of the lawful patron; upon this, the patron issued this writ, directed to the sheriff to summon an assize or jury, to inquire who was the last patron that presented to the church now vacant, of which the plaintiff complains that he is deforced by the defendant.—*Termes de la Ley.* It was, however, abolished, and recourse had to the action of *quare impedit* (3 & 4 Wm. 4, c. 27). But since the C. L. P. Act, 1860, s. 26, *quare impedit* cannot be brought, an action in the King's Bench (formerly Common Pleas) Division of the High Court of Justice being substituted for it.

Assise of Mort d'Ancestor, a writ which lay where a person's father, mother, brother, sister, uncle, aunt, etc., died, seised of land, and a stranger abated. Abolished by 3 & 4 Wm. 4, c. 27.

Assise of Novel Disseisin, an action to recover property of which a party had been disseised, i.e., dispossessed, after the last circuit of the judges. Abolished by 3 & 4 Wm. 4, c. 27.

Assise of the Forest, a statute touching orders to be observed in the king's forest.—*Manwood*, 35. See *Com. Dig.*, tit. '*Assise.*'

Assiser, an officer who has the care and oversight of weights and measures.

Assises de Jerusalem, a monument of feudal jurisprudence, compiled by Gottfried or Godfrey of Bouillon, for the government of the Holy City after its conquest by the Crusaders. It was revised in the 13th and 14th centuries for the use of the Latin Kingdom of Cyprus.—1 *Colq. R. C. L.* s. 80, p. 86.

Assistance, Writ of, appears to have been first employed by the Court of Chancery in the reign of James I. It was provided for by the repealed Consolid. Ord. XXIX., r. 5, but has not reappeared in the Rules of the Supreme Court. Writ of possession is in practice substituted for it. R. S. C. Ord. XLVII., r. 2.

Assistant Judge of Middlesex Sessions, appointed by 7 & 8 Vict. c. 71; may appoint a deputy.—14 & 15 Vict. c. 55, s. 14. See 22 & 23 Vict. c. 4.

Assistant Overseers, appointed by 2 & 3 Vict. c. 84, and 7 & 8 Vict. c. 101, ss. 61, 62. The office of Overseers was abolished and their functions transferred to the Rating Authority (except in the Scilly Isles), by the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90).

Assisus, rented or farmed out for such an assize or certain assessed rent in money or provisions.—*Jac. Law Dict.*

Assithment [fr. *ad* and *sithe*, Sax., *vice*], a weregeld or compensation by a pecuniary mulct.—*Cowel.*

Assize, or **Assise** [fr. *assideo*, Lat., to sit together; whence *assire*, O. Fr., to set, *assis*, set, seated, sealed], anciently a statute or ordinance, e.g., Assize of Clarendon; also a jury, who sit together for the purpose of trying a cause, or rather a Court of jurisdiction which summons a jury by a commission of assize to take the assizes. Hence the judicial assemblies, held by the king's commission in every county as well to take indictments as to try causes at Nisi Prius, are commonly termed the assizes. There are two commissions. (I.) *General*, which is issued twice a year to the judges of the High Court of Justice, two judges being usually assigned to every circuit. See CIRCUITS. The judges have four several commissions: (1) of oyer and terminer, directed to them and many other gentlemen of the county, by which they are empowered to try treasons, felonies, etc. This is the largest commission. (2) Of gaol delivery, directed to the judges and the clerk of assize or associate, empowering them to try every prisoner in the gaol committed for any offence whatsoever, so as to clear the prisons. (3) Of Nisi Prius, directed to the judges, the clerks of assize, and others, by which civil causes, in which issue has been joined in one of the Divisions of the High Court of Justice, are tried on circuit by a jury of twelve men of the county in which the venue is laid. See NISI PRIUS. (4) A commission of the peace, by which all justices are bound to be present at their county assizes, besides the sheriffs, to give attendance to the judges or else suffer a fine. There used to be another commission —that of assize, directed to the judges and clerk of assize, to take assizes and do right upon writs of assize brought before them, by such as were wrongfully thrust out of their possessions. These writs are abolished, and recourse is had to an action of ejectment, tried at Nisi Prius. (II.) The other division of commissions is *special*, granted to certain judges to try certain causes and crimes.—*Bracton*, lib. 3. See now the Judicature Act, 1925, ss. 70 *et seq.*, under which, however, no very material alteration is made in the manner of holding the assizes. Section 70 (5) gives power to any commissioner acting

under a commission of assize or any other commission issued under this section, to try and determine matrimonial causes of any class prescribed by the Lord Chancellor with the concurrence of the Lord Chief Justice and the President of the Probate Division. The commissioner has all the powers and duties which are vested in the Probate Division in respect of such causes. Undefended causes and certain others brought or defended by poor persons may be tried at certain circuit towns. See R. S. C., Ord. XXXVIA., r. 8.

The holding of Winter and Spring Assizes is regulated by Orders in Council issued from time to time under Winter and Spring Judicature Act, 1925, s. 72; but if there is no business to be transacted, the holding of assizes may be dispensed with, by virtue of s. 78. Winter Assizes means any court of assize held in September, October, November, December or January.

Spring Assizes means any court of assize held in March, April or May, s. 225.

In the practice of the criminal courts of Scotland, the fifteen men who decide on the conviction or acquittal of an accused person are called the assize, though in popular language, and even in statutes, they are called the jury.

Assizes Relief Act, 1890 (52 & 53 Vict. c. 12), to relieve the Court of Assize from the trial of persons charged with offences triable at Quarter Sessions—by which Act justices of the peace are directed to bind over prosecutors to appear at the next practicable Court of Quarter Sessions, in case of the prisoner being committed on a charge there triable, unless such justices think fit for special reasons otherwise to direct, see Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86), s. 14 (for power to commit to convenient assizes).

Associate, was an officer in each of the Courts of Common Law, appointed by the chief judge of the Court, and holding his office *dum bene se gesserit* (15 & 16 Vict. c. 73); his duties being to superintend the entry of causes; to attend the sittings of Nisi Prius, and there receive and enter verdicts; to draw up the *posteas* (the indorsement of the result on the record), and any orders of Nisi Prius. The associates were made officers of the Supreme Court by the Judicature Act, 1873, and were given the title of 'Masters of the Supreme Court' by the Judicature (Officers) Act, 1879. This latter provision has been repealed. Clerks of the Associates Department of the Crown Office Department of the Central Office of the Supreme Court now perform these duties. See CLERK OF ASSIZE.

Association, a writ or patent sent by the Crown to the justices appointed to take assizes to have others associated with them; it is usual where a judge becomes unable to attend to his circuit duties, or dies.—*Reg. Brev.* 201. Also a company or partnership, *q.v.*, and see SOCIETY.

Association, Articles of (see Companies Act, 1929, ss. 6, 11 and 380). This is the formal contract of the members of a company with each other and with the company embodying its regulations for the conduct of the company and its affairs according to its constitution under the Memorandum of Association. In case of conflict the Memorandum is to prevail (*Ashbury Railway Carriage Co.* v. *Riche*, (1875) 7 H. L. 653). The Articles may be altered or added to by special resolution, Companies Act, 1929, s. 10, but not so as to increase a member's liability without his consent in writing to take more shares than subscribed for by him, or to contribute to the share capital, or to pay money to the company, s. 22. Every member is entitled to a copy of the Memorandum and Articles of the company on payment of one shilling or smaller agreed sum. The Memorandum and Articles must be delivered to and retained and registered by the Registrar of Companies, s. 12, and when registered they bind the company and its members to the same extent as if they respectively had been signed and sealed by each member (s. 20).

The Act (Schedule I.) provides a model set of Articles of Association for a company limited by shares. This is styled 'Table A.' A company is free to make its own articles or it may adopt all or any of the regulations of Table A. and so far as that Table is not excluded or modified it is to apply in the case of companies limited by shares and registered after the 28th November, 1929 (s. 8). Before that date Table A. was given merely by way of sample and was not in any way obligatory, see s. 10 of the Companies (Consolidation) Act, 1908.

Association, Memorandum of. A statement in writing to be stamped as if it were a deed, bearing the attested signatures of not less than seven persons or, if it is a private company, of not less than two persons, each taking at least one share in the company which is the subject of the memorandum, Companies Act, 1929, ss. 1 and 2. The memorandum defines the nature and objects of the company. It constitutes the charter

of the company and is incapable of alteration, (*Ashbury Railway & Co.* v. *Riche*, (1875) L. R. 7 H. L. 653), except under the special provisions of the Act of 1929 (see s. 4). In particular the objects may not be altered unless the alteration has been confirmed by the court (s. 5), and see ss. 19, 49, 50, 53, 55, 147 and 153, and ASSOCIATION, ARTICLES OF. Consult *Palmer's Company Law or Hemmant's Company Law.*

Association not for Profit. By s. 18 of the Companies Act, 1929, an association for promoting commerce and science, religion, charity or other useful object without distributing any dividend to its members may be registered as a company with limited liability by licence by the Board of Trade without the addition of the word 'limited.' The association will then enjoy the privileges and be subject to practically all the obligations of a limited company.

Associations, Unlawful. See SOCIETIES.

Assoile [fr. *absolvere*, Lat.; *obsolver*, *absoiller*, *assoiler*, O. Fr.], to deliver from excommunication: to acquit or absolve.—*Staunf. Pl. Cr.* 72 *a.*

Assoilzie, to acquit a defendant, or to find a person not guilty of a crime.—*Scots Law.*

As soon as possible. Within a reasonable time, the shortest practicable; see *Hydraulic Engineering Co.* v. *McHaffie*, (1878) 4 Q. B. D. p. 673.

Assuetude, custom.

Assumpsit [he undertook] (to pay or perform) as set forth of the defendant by the plaintiff in the ancient pleading. The action of *assumpsit* (which, as a technical name, fell into desuetude with the passing of the Judicature Acts, 1873 and 1875, and is now generally superseded by the term 'action for breach of contract') was an action on the case, grounded originally on damages for breach of a promise; it lies for the recovery of damages for loss or injuries sustained by reason of the breach or non-performance of a promise, either express or implied, not under seal, but founded on a proper consideration. See PLEADING.

The ordinary division of this action was into (1) common or *indebitatus assumpsit*, brought for the most part on an implied promise; and (2) special *assumpsit*, founded on an express promise.—*Steph. Plead.*, 7th ed., 11, 13.

Assurance, a term used exclusively in respect of a risk on the life of a human being. See INSURANCE.

Assurances. The legal evidences of the transfer of property are called the *common assurances* of the kingdom, whereby every man's estate is assured to him, and all controversies, doubts, and difficulties are either prevented or removed.—2 *Bl. Com.* 294. The term, which is usually confined to transfers of land, is defined in the Mortmain and Charitable Uses Act, 1888, which regulates assurances of land to charitable uses, as including 'a gift, conveyance, appointment, lease, transfer, settlement, mortgage charge, incumbrance devise, bequest, and every other assurance by deed, will, or other instrument.' For other definitions see Law of Property Act, 1922, s. 129 (9) and Law of Property Act, 1925, ss. 133 and 205 (1) (ii).

Assured, a person assured and indemnified against certain events. See INSURANCE.

Assurer, an insurer against certain perils and dangers; an underwriter; an indemnifier.

Assythment is an indemnification due to the heirs of a person murdered from the person guilty of the crime. See *Bell's Dict. of the Law of Scotland.*

Aster, or **homo aster,** a resident.—*Brit.* 151.

Astipulation [fr. *astipulor*, Lat.], a mutual agreement, assent, and consent between parties; also a witness or record.

Astrarius hæres [fr. *astre*, Fr., the hearth of a chimney], an heir apparent who has been placed, by conveyance, in possession of his ancestor's estate during such ancestor's lifetime.—*Co. Litt.* 8.

Astriction [fr. *astrictio*, Lat.] **to a mill,** a servitude by which grain growing on certain lands, or brought within them, must be carried to a certain mill to be ground, a certain multure or price being paid for the same.—*Tomlins' Law Dict.*

Astrum, a house or place of habitation.—*Cowel.*

Asyle, a sanctuary or place of refuge for offenders to fly to.

Asylum [fr. *ασυλον*, Gk., a place free from violence], (1) a sanctuary of refuge; (2) (in an obsolete sense) a place set apart for the treatment and habitation of persons of unsound mind. See Lunacy Act, 1890 to 1922, where the term meant an asylum provided by any local authority under those Acts, but by s. 20 of the Mental Treatment Act, 1930 (20 & 21 Geo. 5, c. 23), these asylums are to be called MENTAL HOSPITALS and for any references in any public or local act, order, regulation or other document to 'asylums' references to Mental Hospitals are to be substituted, and see also the Army and Air Force Act, 1931 (21 Geo. 5, c. 14), s. 5.

Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64), deals with detention, etc. of criminal lunatics, e.g., the Broadmoor Criminal Lunatic Asylum.

The Asylum (now the Mental Hospital) Officers Superannuation Act, 1909 (9 Edw. 7, c. 48), makes provision for superannuation allowances for officers and servants, and see the Asylums and Certified Institutions (Officers Pensions) Act, 1918 (8 & 9 Geo. 5, c. 33).

Asylums Board. The Metropolitan Asylums Board, constituted under the Metropolitan Poor Act, 1867, dealt with the administration relating to cases of insanity (*inter alia*) among the poor in London. The Lancashire Asylums Board, established by the Lancashire County Council under statutory powers, carried out similar duties in Lancashire. These boards and their powers were transferred to the London County Council or the respective local authorities by the Local Government Act, 1928 (19 & 20 Geo. 5, c. 17).

Atavia, the mother of a great-great-grandfather or great-great-grandmother.

Atavus, the father of a great-great-grandfather or great-great-grandmother. The ascending line of lineal ancestry runs thus :— Pater, Avus, Proavus, Avabus, Atavus, Tritavus, the seventh generation in the ascending scale will be Tritavi-pater, and the next above it, Proavi-atavus.—*Juv. Sat.* iii. 312.

A tempore cujus contrarii memoria non existet. (From time of which there exists not memory to the contrary.) See Prescription Act, 1832 (2 & 3 Wm. 4, c. 71), s. 5.

Athanation, the ancient name of the island of Thanet, in Kent.

Athe, Atha, or **Ath** [Sax.], an oath.—*Bl. Cowel.*

Athe, or **Adda,** a privilege of administering an oath in cases of right and property.—*Cowel.*

Atheism, disbelief in a God. See OATHS.

Atheling. See ÆTHELING.

Athesis fluvium, the ancient name of the river Tees, in Cumberland.

Atia, illwill. See DE ODIO ET ATIA.

Atilia, utensils, or country implements.—*Blount.*

Atonement, an agreement, union, or reconciliation. The word has been said to be compounded of *at* and *one*, as it were a making at one, and thence to have acquired the meaning of suffering the pains of whatever sacrifice is necessary to bring about a reconciliation.

Atrium, a court before a house, or a churchyard.—*Blount.*

Ats., an abbreviation denoting 'at the suit of.' It is used by a defendant in entitling the cause against him; thus C. D. (defendant), *ats.* A. B. (plaintiff).

Attach [fr. *attaccare*, It., to fasten], to take or apprehend by commandment or a writ or precept. It differs from arrest, because it takes not only the body, but sometimes the goods, whereas an arrest is only against the person; besides, he who attaches keeps the party attached in order to produce him in court on the day named, but he who arrests lodges the person arrested in the custody of a higher power, to be forthwith disposed of.—*Fleta*, lib. 5, c. xxiv. See ATTACHMENT.

Attaché, a person associated with a foreign legation. The privilege of an attaché extends to prevent a distress being levied on his furniture for non-payment of rates (*Macartney* v. *Garbutt*, (1890) 24 Q. B. D. 368).

Attachiamenta bonorum, a distress formerly taken upon goods and chattels, by the legal *attachiators* or bailiffs, as security to answer an action for personal estate or debt.—*Cowel.*

Attachiamenta de spinis et boscis, a privilege granted to the officers of a forest to take to their own use thorns, brush, and windfalls, within their precincts.—*Kenn. Par. Antiq.* 209.

Attachment, a process from a Court of Record, awarded by the judges at their discretion on a bare suggestion, or on their own knowledge, against a person guilty of a contempt, who is punishable in a summary manner. Contempts may be thus classed: (1) Disobedience to the King's writs; (2) Contempt in the face of a Court; (3) Contemptuous words or writings concerning a Court; (4) Refusing to comply with the rules and awards of a Court; (5) Abuse of the process of a Court; and (6) Forgery of writs, or any other deceit tending to impose on a Court.—*Leach's Hawk. P. Cr.*, c. 22, s. 33. The issue of writs of attachment in the High Court is now governed by the provisions of Ord. XLIV., R. S. C. As to the difference between attachment and committal, see *Re Evans*, 1893, 1 Ch. 259 (n.); *D.* v. *A. & Co.*, 1900, 1 Ch. 484. As the liberty of the subject is involved the precise course pointed out by the rules must be strictly followed; 'every subject has a right to say that he ought not to be put in prison unless every iota of the rules has been

satisfied'; per Bowen, L.J., *Re Evans*, (1892) 9 T. L. R. 109.

Attachment of Debts. By R. S. C. 1883, Order XLV., as amended by R. S. C. July, 1902, r. 12, and R. S. C. July, 1905, r. 8, a judgment creditor may apply *ex parte* to the Court or a judge (r. 1), either before or after any oral examination of the debtor, for an order *nisi* (see *Norton* v. *Yates*, 1906, 1 K. B. 112) attaching debts owing or accruing to the debtor in the hands of the parties owing the same who are called garnishees; and by the same or any subsequent order the garnishee may be required to appear before the Court, or a judge, or an officer of the Court, to show cause why he should not pay to the judgment creditor the debt due from him (the garnishee) to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt. See County Court Rules, 1936, Ord. XXVII.

Attachment, Foreign, a process under which the goods of foreigners found in some liberty are taken to satisfy creditors.—*Com. Dig.*, tit. '*Attachment, Foreign.*' Also a judicial proceeding, by means of which a creditor may obtain the security of the moneys, goods, or other personal property of his debtor, in the hands of a third person, for the purpose, in the first instance, of enforcing the appearance of the debtor to answer an action; and afterwards, upon his continued default, of obtaining the goods or property in satisfaction of the demand. It is also called *garnishment*. As to the custom prevailing in the City of London, see FOREIGN ATTACHMENT and consult *Brandon on For. Attach.*

Attachment of the Forest, one of the three Courts formerly held in forests. The highest Court was called Justice in Eyre's seat; the middle, the Swainmote; and the lowest, the Attachment.—*Manwood*, 90, 99.

Attachment of Privilege, is where a man by virtue of his privilege, calls another to that Court, whereto he himself belongs, and in respect thereof is privileged, there to answer some action. It is also a power to apprehend a person in a privileged place.—*Jac. Law Dict.*; 2 Wm. 4, c. 39 (commonly called the Uniformity of Process Act), virtually abolished this proceeding, and 1 & 2 Vict. c. 110, enacted that all personal actions in any of the Superior Courts of Common Law at Westminster should be commenced by writ of summons.

Attainder [fr. *attaindre*, Fr. (*attainder*, O. F.—*Roquef.*); *attingo*, Lat., which signifies the apprehension of the object of a chase], the stain or corruption of the blood of a criminal capitally condemned: it is the immediate inseparable consequence, by the Common Law, of sentence of death being pronounced, or of outlawry for a capital offence. The criminal then becomes dead in law, technically called *civiliter mortuus*. It differs from conviction in that it is *after* judgment, whereas conviction is upon the verdict of guilty but *before* judgment pronounced, and may be quashed upon some point of law reserved, or judgment may be arrested. See *Co. Litt.* 390 *b*, 391 *a*.

A descendant may now trace descent through an attainted ancestor by virtue of the Inheritance Act, 1833 (3 & 4 Wm. 4, c. 106), s. 10; and by the Forfeiture Act, 1870 (32 & 33 Vict. c. 23), it is now provided that no conviction for treason or felony shall cause attainder or forfeiture. See BILL OF ATTAINDER.

Attaindre le meffait, to fix the charge of a crime upon one, to prove a crime.—*Wedgwood's Eng. Etym.*

Attains du fet [Fr.], convicted of the fact, caught by it, having it brought home to one.—*Wedgw.*

Attaint, Writ of, issued to inquire whether a jury of twelve men gave a false verdict, so that the judgment following thereupon might be reversed. This writ was abolished by the County Juries Act, 1825 (6 Geo. 4, c. 50), ss. 60, 61. A corrupt juror is punishable by fine and imprisonment, upon an indictment or information.

Attainture, legal censure.

Attal Sarisin [i.e., the leavings of the *Sarasins*, *Sassins*, or *Saxons*], an old deserted mine, so called by the Cornish miners.—*Cowel.*

Attegia, a little house.—*Jac. Law Dict.*

Attempt [fr. *tentare*, Lat.; *tenter*, *temter*, *tempter*, O. Fr. to try], an endeavour to commit a crime or unlawful act. Persons indicted for a felony or misdemeanour may be found guilty only of an attempt to commit the same (Criminal Procedure Act, 1851, 14 & 15 Vict. c. 100, s. 9).

Attendant, one who owes a duty or service to another, or depends upon another.—*Termes de la Ley.*

Attendant Term. Terms for years in real property are created for many purposes, e.g., to furnish money for the payment of debts, to secure rent charges or jointures, to raise portions for younger children, daughters, etc. Now, although the purpose for which the term was originally created has been satisfied or has failed, yet, not

being surrendered, it continued to exist, the legal interest remaining in the trustees, to whom it was at its creation limited, or, if deceased, in their personal representatives; but the person entitled to the inheritance then became, according to equitable principle, entitled to the beneficial interest in such term, and the termor was held to be such person's trustee. This beneficial interest was subordinate to and merely attendant upon the higher estate possessed by the owner of the inheritance, and yet completely consolidated with it, following the inheritance in all the various modifications and changes to which it might be subjected by act of law or arrangements of the owner. The advantage of preserving these terms and assigning them to trustees (thus preventing the legal presumption of surrender), with an express declaration that they shall attend upon the inheritance, was this: If it had at any time appeared that *prior* to the purchase or mortgage, but *posterior* to the creation of the term, there had been an intermediate alienation or incumbrance of the fee in favour of another person, to which the then trustee of the term had not been a party, and of which the purchaser or mortgagee of the freehold had had no notice when he paid the purchase or mortgage money, he would be protected against it, through the medium of the term so assigned, which being the elder title would have taken the priority in point of legal effect. Hence the expression 'protecting against mesne (middle) incumbrances.'

Consult *Sugden's Vendors and Purchasers*, tit. '*Assignment of Terms*.'

By the Satisfied Terms Act, 1845 (8 & 9 Vict. c. 112), as replaced and extended by the Law of Property Act, 1925, s. 5, and 1st Schedule, Part II., par. 1, attendant terms out of freehold land which have or may become satisfied at any date will merge in the freehold reversion and come to an end, and similar terms out of leasehold land are to merge in the leasehold reversion and cease, but where attendant terms with a leasehold reversion were satisfied on the 1st January, 1926, and were also vested in the owner of the reversion, the merger is not to affect any protection which the owner of the reversion might have had if the term had remained outstanding, and these provisions apply to parts of land comprised in a term which has been satisfied in part.

Attentates, proceedings in a Court of judicature, pending suit, and after an inhibition is decreed and gone out. Those things which are done after an extra-judicial appeal may be styled *Attentates*.—*Ayliffe*.

Attermining, granting time for payment of a debt.—*Blount*.

Attestation, the signing by a witness to the signature of another of a statement that a document was signed in the presence of the witness. The Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), s. 7 (applicable both to civil and criminal cases), renders it unnecessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may now be proved by admission, or otherwise, as if there had been no attesting witness. Wills and codicils (1 Vict. c. 26), warrants of attorney and cognovits (1 & 2 Vict. c. 110), agreements with crews of 'foreign-going' ships (Merchant Shipping Act, 1894, s. 115), and bills of sale (see BILL OF SALE) require attestation.

As to the attestation of deeds in execution of certain powers of appointment, see Law of Property Act, 1925, s. 159, replacing Law of Property Amendment Act, 1859, s. 12.

As to attestation by a justice of the peace of the enlistment of a recruit, the attestation paper to be delivered to the recruiter, and the certified copy thereof to be furnished to a recruit at his request, see s. 80 of the Army Act (44 & 45 Vict. c. 58), *Chit. Stat.*, tit. '*Army*.'

Attestation Clause, the sentence subscribed to a written instrument signed by the witnesses to its execution, stating that they have witnessed it. Such a clause (in very precise terms) is always appended to a *will* formally prepared, the most common form being as follows:—

> Signed by the above-named and acknowledged by him as his will in the presence of us present at the same time, who at his request and in his presence and in the presence of each other, now subscribe our names as witnesses.

It is expressly provided by s. 9 of the Wills Act, 1837 (1 Vict. c. 26), that the signature of the testator, or of some other person by his direction, 'shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time,' and that 'such witnesses shall attest and shall subscribe the will in the presence of the testator'; but it is added that 'no form of attestation shall be *necessary*.' By Rule 4 of the Probate (Non-Contentious) Rules, 1925, however, it is provided, that 'if there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the registrars

must require an affidavit from at least one of the subscribing witnesses, if these or either of them be living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to the execution, were in fact complied with.'

A legacy to an attesting witness or the husband or wife of such is void, but a will containing such a legacy is otherwise good.—Wills Act, 1837, s. 15.

Attested Copy, a verified transcript of a document.

Attesting Witness, a person who has seen a party execute a deed, or sign a written document. He then subscribes his signature for the purpose of identification and proof at any future period. See ATTESTATION.

Attile, Attilamentum, the rigging or furniture of a ship.—*Fleta*, lib. 1, c. xxv., s. 9.

Attinctus, attainted.

Attorn, to make attornment. See ATTORNMENT.

Attornare rem, to turn over money or goods, i.e., to assign or appropriate them to some particular use or service.—*Ken. Par. Antiq.* 283.

Attornato faciendo vel recipiendo, an obsolete writ, which commanded a sheriff or steward of a county court or hundred court to receive and admit an attorney to appear for the person who owed suit of court.—*Fitz. N. B.* 156.

Attorney [fr. *tourné*, Fr., or fr. *attornatus*, Medieval Lat., substituted], one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated. He is of two kinds.

(1) *Attorney at Law* was a public officer belonging to the Superior Courts of Common Law at Westminster, who conducted legal proceedings on behalf of others, called his clients, by whom he was retained: he answered to the Solicitor in the Courts of Chancery, and the Proctor of the Admiralty, Ecclesiastical, Probate, and Divorce Courts. An attorney was almost invariably also a solicitor. The name 'Solicitor' was provided by the Judicature Act, 1873, s. 87. The Judicature Act, 1925, s. 215 (2) provides that references in any enactment to solicitors, attorneys or proctors shall be construed as references to solicitors of the Supreme Court. See SOLICITORS.

(2) *Attorney in Fact*, including all agents employed in any business or to do any act *in pais* for another; also a person acting under a special agency, whose authority must be expressed by deed, commonly called a power of attorney.—1 *Bac. Abr.*, tit. '*Attorney.*' See POWER OF ATTORNEY.

Attorney-General, a great officer of state appointed by letters-patent, and the legal representative of the Crown in the Supreme Court. He is also *ex-officio* head of the bar for the time being. He exhibits informations, prosecutes for the Crown in criminal matters and in revenue causes, and used to grant fiats for writs of error until they were abolished by s. 20 of the Criminal Appeal Act, 1907. His fiat or consent is required before certain proceedings or prosecutions can be commenced (see, e.g., Public Bodies Corrupt Practices Act, 1889, and Prevention of Corruption Act, 1906). In many cases also (see e.g., Lunacy Act, 1890, s. 325; Public Health Act, 1936, s. 298; Public Health (Officers) Act, 1884; Public Health (Members and Officers) Act, 1885; Official Secrets Act, 1911, s. 8), his consent is necessary before penalties can be recovered. His fiat is necessary for certain appeals to the House of Lords. See Appellate Jurisdiction Act, 1876 (c. 59), s. 10. When the House of Lords sits in a committee of privileges, it is the duty of the Attorney-General to attend at the bar in a judicial capacity and report on the claim. As a law officer he can hear applications for and make grants of patents on appeal from the Comptroller, though in practice this work is more usually undertaken by the Solicitor-General (q.v.). See LETTERS-PATENT. The Attorney-General is almost invariably a member of the House of Commons, and is appointed on the advice of the Government, with which he goes out of office. He has charge in the 'House' of Government legal measures, and deals with legal questions there on behalf of the Government. Consult *Termes de la Ley; Norton-Kyshe's Attorney-General* and *Solicitor-General of England; Mews's Digest*, tit. '*Crown Office* (*Law Officers*).' The Prince of Wales appoints his own Attorney-General.

Attorney of the Wards and Liveries was the third officer of the Duchy Court.—1 *Bac. Abr.*, tit. '*Attorney.*'

Attorneyship, the office of an agent or attorney.—4 *Reeves*, c. xxxii., p. 574.

Attornment [fr. *tourner*, Fr., to turn], the acknowledgment of a new lord on the alienation of land, and the assent or agreement of the tenant to attorn, as 'I become tenant to the purchaser.'—*Co. Litt.* 309. By s. 151 of the Law of Property Act, 1925, replacing 4 Anne, c. 16, ss. 9, 10, all grants and conveyances of lands, rents, reversions,

etc., are good without the attornment of the tenants, but notice of the grants must be given to the tenants, before which they are not prejudiced by the payment of any rent to the grantor, or breach of the condition for non-payment, and by the same section of the Act of 1925, replacing the Distress for Rent Act, 1737 (11 Geo. 2, c. 19), s. 11, attornments made by tenants to strangers claiming title to the estate of their landlord are null and void, and their landlord's possession is not affected thereby, except as provided by s. 151, *ibid.*

The 'Attornment Clause' in a deed of mortgage is a clause whereby, for better securing the payment of the interest on the mortgage, the mortgagor attorns tenant to the mortgagee at a yearly rent equal to the interest on the mortgage, thus giving the mortgagee the right to distrain (see DISTRESS) for the interest, but such attornment clauses, inasmuch as they require registration as bills of sale under the Bills of Sale Act, 1882, s. 6, are generally considered unsatisfactory.

Attrappe, taken or seized.

Attrebati, the ancient name of the inhabitants of Berkshire.

Aubaine. See DROIT D'AUBAINE.

Au besoin (in case of need).

Auction, signifies generally an increasing, an enhancement, and hence is applied to a public sale of property usually conducted by biddings, which augment the price. A spear used to be raised by the Romans, as the sign of a public auction.—*Livy*, xxiii. 37; *Smith's Dict. of Antiq.* The Sale of Land by Auction Act, 1867 (30 & 31 Vict. c. 48), by s. 5 enacts that the particulars of sale of land by auction 'shall state whether such land will be sold without reserve, or subject to a reserved price, or whether a right to bid is reserved,' and that 'if it is stated that such land will be sold without reserve, it shall not be lawful for the seller to employ any person to bid at such sale, or for the auctioneer to take knowingly any bidding from any such person.' As to auction without reserve, see *Rainbow* v. *Howkins*, 1904, 2 K. B. 322. See DUTCH AUCTION; KNOCK-OUTS.

The Auctions (Bidding Agreements) Act, 1927 (17 & 18 Geo. 5, c. 12), was designed to make it illegal for a dealer to give any consideration or reward to any person, whether a dealer or not, for abstaining or having abstained from bidding at an auction. Such an agreement was not illegal before the Act. See *Cohen* v. *Roche*, 1927, 1. K. B. 169. By s. 2 when such a transaction has been the subject of a prosecution and conviction, the sale may, as against a purchaser who has been party to the transaction, be treated by the vendor as a sale induced by fraud; provided that notice that the vendor intends to exercise such power in relation to any sale at the auction shall not affect the obligation of the auctioneer to deliver the goods to the purchaser. By s. 3 a copy of the Act must be exhibited at sale. See also Sale of Goods Act, 1893, s. 58.

Auctionariæ, catalogues of goods for public sale or auction.

Auctionarii, sellers, retailers, brokers.

Auctioneers, licensed agents appointed to sell property and to conduct sales or auctions. They differ from brokers, in that the latter may both buy and sell, whereas auctioneers can only sell; also brokers sell by private contract, and auctioneers by public auction.

An auctioneer is deemed the agent of both parties; he can bind *virtute officii* the seller and the purchaser of realty by his memorandum of the sale under s. 40 of the L. P. Act, 1925, replacing in part s. 4 of the Statute of Frauds; but he is only the agent of the seller before the fall of the hammer at the sale. He may sue the purchaser in his own name. An auctioneer is generally remunerated by a commission on the amount realised by the sale, or, if no sale has been effected, on the reserve.

As to the right to specific performance when a mistake has been made by the auctioneer, see *Re Hare and O'Moore's Contract*, 1901, 1 Ch. 93; *McManus* v. *Fortescue*, 1907, 2 K. B. 1. It has been held in Scotland that an auctioneer warrants his authority to sell (*Anderson* v. *Croall*, (1904) 6 F. 153). An auctioneer requires an annual licence (Auctioneers Act, 1845 (8 & 9 Vict. c. 15), ss. 2 and 4), and see the Sale of Land by Auction Act, 1867 (30 & 31 Vict. c. 48), and Sale of Goods Act, 1893, s. 58.

Auctor, a seller, or vendor.

Audi alteram partem. (Hear the other side—i.e., no man should be condemned unheard.)—See *Cooper* v. *Wandsworth Board of Works*, (1863) 32 L. J. C. P. 185, and the reference therein, at p. 188, by Byles, J., to *Dr. Bentley's case*, (1723) 1 Str. 557, and Mr. Justice Fortescue's quaint reason for the Common Law supplying the omission in a statute to direct a hearing; *Hopkins* v. *Smethwick Local Board*, (1890) 24 Q. B. D. 712; *Broom's Leg. Max.*

Similarly, *Qui aliquid statuerit parte inauditâ alterâ, æquum licet dixerit, haud æquum fecerit*—6 *Rep.* 52 (taken from

Seneca's Medea). (He who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right).

Audience, a hearing ; an interview.

Audience Court, belonging to the Archbishop of Canterbury, having the same authority with the Court of Arches, but inferior to it in dignity and antiquity. The Dean of the Arches is the official auditor of the Audience. The Archbishop of York has also his Audience Court.— *Termes de la Ley.*

Audiendo et terminando, a writ or commission to certain persons to appease and punish any insurrection or great riot.—*Fitz. N. B.* 110.

Audit, an examining of accounts. An audit may be either detailed or administrative, and is usually both. A detailed audit is a comparison of vouchers with entries of payment, in order that the party whose accounts are audited may not debit his employer with payments not in fact made. An administrative audit is a comparison of payments with authorities to pay, in order that the party whose accounts are audited may not debit his employer with payments not authorized. If in either branch of audit an improper entry is discovered, the auditor *surcharges* the party whose accounts are audited ; whereby the payment must be made by such party out of his own pocket. Where no fraud is suspected, however, and when there has been no negligence, it is common for the surcharge to be remitted (see, e.g., Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 230), especially where the party whose accounts are audited has given his service gratuitously.

The public accounts are audited under the Exchequer and Audit Act, 1866 (repealing twenty-two prior Acts).

The most important of the many enactments as to audit of accounts of local authorities were the Poor Law Audit Act, 1848 ; District Auditors Act, 1879 ; Municipal Corporations Act, 1882, s. 25 ; and the Public Health Act, 1875, ss. 246, 247. These have been repealed and the Local Government Act, 1933, ss. 219 *et seq.* now govern the subject.

The Court can, however, review the auditor's findings on fact as well as law (*R.* v. *Roberts*, 1907, 2 K. B. 878).

The accounts of public companies incorporated by special Act of Parliament are audited under ss. 101–108 of the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), by s. 11 dispensing in the case of a railway company with the necessity, under s. 101 of the Act of 1845, of the auditors being shareholders, and by s. 12 providing for the appointment of an auditor by the Board of Trade, upon application made in pursuance of a resolution passed at a meeting of the directors or at a general meeting. The principle of compulsory audit was first applied to companies generally by the Companies Act, 1900, although certain companies, e.g., banking companies, had been the subject of similar legislation for many years. The Companies Act, 1929, ss. 132 to 134 now provide for annual appointment of auditors and sets out their duties. Sections 122–131 contain express provisions for compulsory annual accounts, whereas in the 1908 Act no express provision was made for it, but such an annual audit was by implication required (*Newton* v. *Birmingham Small Arms Co.*, 1906, 2 Ch. 378). By s. 34 of the Companies Act, 1929, auditors must make a report on the accounts submitted to them and on every balance sheet laid before the company in general meeting. In *Re City Equitable Fire Insurance Co., Ltd.*, 1925, Ch. 407, the duties of auditors were fully discussed, though this case has been overruled in part by s. 152. Auditors may not be protected by articles against liability for loss except by their own default.

As to an auditor's personal liability for failure of duty, see *Leeds Estate Building & Investment Co.* v. *Shepherd*, (1887) 36 C. D. 787 ; *Re Republic of Bolivia, etc., Ltd.*, 1914, 1 Ch. 139 ; and as to setting aside his certificate, *Thacker* v. *Elder*, 1899, A. C. 451. See COMPANY.

The accounts of friendly societies are audited under the Friendly Societies Act, 1896, s. 26, and these regulations are applied to shop clubs by the Shop Clubs Act, 1902 (2 Edw. 7, c. 21) ; those of industrial societies are audited under the Industrial Societies Act, 1893, s. 13 ; the accounts of incorporated building societies under the Building Societies Act, 1874, as amended by the Building Societies Act, 1894, which requires that one at least of the auditors shall be 'a person who publicly carries on the business of an accountant' ; those of unincorporated building societies under s. 33 of the Friendly Societies Act, 1829 (10 Geo. 4, c. 56) ; and those of Savings Banks under s. 4, par. 6, of the Trustee Savings Banks Act, 1863, and s. 1 of the Savings Banks Act, 1904.

By s. 13 of the Public Trustee Act, 1906, the accounts of any trust may be audited by the Public Trustee or some person appointed by him; as to such an audit and the costs of it, see *Re Oddy*, 1911, 1 Ch. 532.

By s. 22 (4), Trustee Act, 1925 (15 & 16 Geo. 5, c. 19), trustees may, but not more than once in three years unless special circumstances arise, cause the accounts of the trust property to be audited by an independent accountant. Consult *Pixley on Auditors; Dicksee on Auditing.*

Auditâ querelâ [defendentis] [Lat.] (so called because a plaintiff cannot have it) was an equitable action which lay for a person against whom judgment had been given, and who was therefore in danger of execution, or perhaps actually in execution, when he had matter to show that such execution ought not to have issued or should not issue against him. It was invented lest, in any case, there should be an oppressive defect of justice, where the party had a good defence, but had not any other means to take advantage of it. By the indulgence of the Courts, a summary relief upon motion has in most cases of evident oppression been granted, and this occasioned the remedy by *auditâ querelâ* to be seldom resorted to.—By *Rules H. T.* 1853, r. 79, no writ of *auditâ querelâ* was allowed unless by Rule of Court or order of a judge, and the Rules of Court under the Judicature Acts have abolished this form of proceeding altogether, R. S. C. 1883, Ord. XLII., r. 27.

Auditor [Lat.], one who examines accounts and evidences of expenditure. See AUDIT.

Auditor of the Receipts, an officer of the Exchequer.—4 *Inst.* 107; 46 Geo. 3, c. 1 (repealed by 4 & 5 Wm. 4, c. 15, s. 36).

Auditors of the Imprest, officers of the Exchequer, who formerly had the charge of auditing the accounts of the customs, naval and military expenses, etc., now performed by the commissioners for auditing public accounts.—*Jac. Law Dict.*

Augea, a cistern for water.—*Cowel.*

Augmentation, the name of a court (now abolished) erected by 27 Hen. 8, c. 27, to determine suits and controversies relating to monasteries and abbey-lands.—*Termes de la Ley.*

Augusta, the ancient name of London.

Augusta legibus soluta non est.—(The wife of the emperor is not exempted from the laws.) The queen is the king's subject and not his equal, and as a general rule is on the same footing with other subjects.—1 *Bl. Com.* 219.

Aula, a Court Baron.

Aula ecclesiæ, a nave or body of a church where temporal courts were anciently held.—*Eadm.* lib. 6, p. 141.

Aula Regis, or **Regia,** a court established by William the Conqueror in his own hall; it was composed of the great officers of state resident in the palace, and followed the king's household in all his expeditions. The trial of common causes in it was, on this account, very burdensome to the people, and accordingly the 11th chapter of *Magna Charta* thus enacted:—'*communia placita non sequantur curiam nostram sed teneantur in aliquo loco certo.*' This 'certain place' was established in Westminster Hall, where until the Judicature Act it continued under the name of the Court of Common Pleas, or Common Bench.—*Brac. L.* 3, tr. 1, c. 7. See ROYAL COURTS OF JUSTICE.

Aulnager [fr. *ulna*, Lat., an ell], an ancient officer appointed by the king, whose business it was to measure all woollen-cloth made for sale, that the Crown might not be defrauded of customs and duties.—*Termes de la Ley;* 2 *Steph. Com.*

Aumbry, Aumber [fr. *armoire*, Fr.; *armario, almario*, Sp.; *almer*, Germ.; *armaria, almaria*, M. Lat.; a cupboard], a place where the arms, plates, vessels, and everything belonging to housekeeping were kept.

Aumeen, trustee, commissioner; a temporary collector or supervisor, appointed to the charge of a country on the removal of a zemindar, or for any other particular purpose of local investigation of arrangement.—*Indian.*

Aumil, agent, officer, native collector of revenue; superintendent of a district or division of a country, either on the part of the government zemindar or renter.—*Ibid.*

Aumildar, agent, the holder of an office; an intendant and collector of the revenue, uniting civil, military, and financial powers under the Mohammedan government.—*Ibid.*

Aumone, Tenure in, where lands are given in alms to some church or religious house, upon condition that a service or prayers shall be offered at certain times for the repose of the donor's soul.—*Brit.* 164.

Auncel weight, an ancient manner of weighing by the hanging of scales or hooks at either end of a beam or staff. See ANSEL. What were called *stilliards,* a sort of hand-weighing among butchers, which show the

pounds by certain notches on a beam, were similar to the *auncel weight*.—*Jac. Law Dict.*

Aunciatus, antiquated.—*Blount.*

Auncient Demesn. See ANCIENT DEMESNE.

Aureney, Aurney, Aurigny, the ancient name of Alderney.

Aureo Vado, de, the ancient name of Guldeford, or Guildford, in Surrey.

Aures, a Saxon punishment by cutting off the ears, inflicted on those who robbed churches, or were guilty of any other theft.—*Fleta*, lib. 1, c. xxxviii., par. 10.

Auricular Confession. Confession to the private ear of a priest, as distinguished from public confession to a congregation. As to its privilege in a Court of Law, see CONFESSION TO A PRIEST.

Auricularius, a secretary.—*Dugd. Mon.* 10.

Aurum Reginæ, queen-gold. A royal revenue belonging to every queen consort during her marriage with the king, and due from every person who has made a voluntary offering or fine to the king amounting to ten marks or upwards, for and in consideration of any privileges, grants, licenses, pardons, or other matters of royal favour conferred upon him by the king. It is due in the proportion of one-tenth part more, over and above the entire offering or fine made to the king, and becomes an actual debt of record to the queen's majesty by the mere recording of the fine.—1 *Bl. Com.* 214.

Australasia, the inclusive name given to Australia, Tasmania (or Van Diemen's Land), New Zealand, Fiji, and other islands in the Pacific Ocean forming part of the British Dominions. The Federal Council of Australasia Act, 1885 (48 & 49 Vict. c. 60) (repealed by Commonwealth of Australia Constitution Act, 1900 (c. 12)), constituted a Federal Council of Australasia 'for the purpose' (as set forth in the preamble) 'of dealing with such matters of common Australasian interest in respect to which united action is desirable.' See next title.

Australia, an island in the British Dominions, consisting before the Commonwealth of Australia Constitution Act of 1900 (63 & 64 Vict. c. 12), of the separately governed (see, e.g., the New South Wales Constitution Act, 1855 (18 & 19 Vict. c. 54), and the Victoria Constitution Act, 1855 (18 & 19 Vict. c. 55)) colonies of New South Wales, Victoria, Queensland, Western Australia, and South Australia. See next title.

Australia, Commonwealth of. The association of the people of New South Wales, Victoria, South Australia, Queensland, Tasmania, and Western Australia in a federal Commonwealth comprising also Papua, the Northern Territory, and Norfolk, Ashmore and Cantier Islands in the Pacific (and see MANDATED TERRITORIES), with a Constitution enabling its Parliament, consisting of the Sovereign of the British Empire, a Senate, and a House of Representatives, to legislate for the whole of Australia. The legislative powers of the Parliament, which may be found under 39 heads in the 51st paragraph of the Constitution, extend to trade, taxation, defence, coinage, bankruptcy, copyright, marriage, 'the people of any race other than certain aborigines,' immigrants and emigration, 'external affairs,' railway construction, and other matters too numerous to particularize; see Commonwealth of Australia Constitution Act, 1900 (Imperial, 63 & 64 Vict. c. 12); *A.-G. for Commonwealth of Australia* v. *Colonial Sugar Refining Co.*, 1914, A. C. 237.

The judicial powers of the Commonwealth are vested in a High Court of Australia, consisting of a Chief Justice and not less than two puisne Judges (no qualification being named), appointed by the Governor-General in Council, and removable by him only on an address from both the Senate and the House of Representatives, in the same session. To this High Court there is an appeal, concurrent with that to the Privy Council, from the Supreme Court of every Australian State (*Webb* v. *Outrim*, 1907, A. C. 81); and from this High Court there is an appeal by its leave (but not otherwise) on any constitutional questions between the States themselves, or between the States and the Commonwealth, to the Privy Council, and, on other questions, an appeal to the Privy Council by special leave of the Sovereign. By the Statute of Westminster, 1931 (22 & 23 Geo. 5, c. 4) (*q.v.*), the Commonwealth of Australia became a Dominion; the powers of the Dominion Parliament were increased and those of the Imperial Parliament at Westminster were defined and restricted. But by s. 10 certain sections are not to apply unless adopted. See the Act.

Austurcus and **Osturcus,** a goshawk, whence a falconer keeping such kind of hawks is called *ostringer*. *Unus austurcus* used to be reserved as a rent to the lord, as may be seen in some ancient deeds.—*Blount.*

Auter, or **Autre.** Of another. See AUTRE.

Auterfois. See AUTREFOIS.

Authentic, an undoubted original.

Authentic Act, that which has been executed before a notary or other public officer, duly authorized, or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register.—*Civil Law.*

Authentication, an attestation made by a proper officer by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed so to do.

Authentics, a collection of the Novels of Justinian, made by an anonymous author. So called on account of its authority.—*Civil Law.*

There is another collection so called, compiled by Irnier, of incorrect extracts from the Novels and inserted by him in the Code, in the places to which they refer.

Author. This word has not been defined by statute, though the Copyright Act, 1911, says (s. 24 (2)), that for the purposes of that section the word shall include the personal representatives of a deceased author. A translator of a literary work is the 'author' of his translation (*Byrne* v. *Statist Co.*, 1914, 1 K. B. 622). As to who is the 'author' of the report of a speech, see *Walter* v. *Lane*, 1900, A. C. 539. The agreement between an author and his publisher is a personal one and is not assignable (*Griffith* v. *Tower Publishing Co.*, 1897, 1 Ch. 21). See *Nisbet & Co.* v. *Golf Agency*, (1907), 23 T. L. R. 370, and *Evans* v. *Hulton & Co.*, (1924), 121 L. T. 534.

Authorities, the citations which are made of laws, acts of the legislature, precedents, decided cases, and opinions of text writers. See PRECEDENT.

Authority, a right; an official or judicial command; also a legal power to do an act given by one man to another. Consult *Vin. Abr.*, tit. '*Authority*,' and *Sugden on Powers*, and see WARRANTY.

Autocracy, an irresponsible monarchy.

Autograph, the handwriting of any one.

Automobile. See MOTOR CAR.

Autonomy, political independence of a nation.

Autrefois acquit (formerly acquitted), a plea in criminal cases; when a person is indicted for an offence and acquitted, he cannot be afterwards indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted on it; and if he be thus indicted a second time, he may plead *autrefois acquit*, which will be a good bar to the indictment. The true test, whether such a plea is a sufficient bar, is, whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first.—*R.* v. *Emden*, (1808) 9 East, 437; *R.* v. *King*, 1897, 1 Q. B. 214, explained and distinguished in *Rex* v. *Barron*, 1914, 2. K B. 570; Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 28; and the Evidence Act, 1851 (c. 99), s. 13.

Autrefois attaint (formerly attainted), an ancient plea in criminal cases (as to which see Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 4), obsolete after the Forfeiture Act, 1870, see ATTAINDER.

Autrefois convict (formerly convicted), plea of. The defence of a person charged with any crime that he has been already convicted of the same crime, entitling the party proving it to a discharge on the ground that *nemo debet bis vexari pro unâ et eadem causâ*. See the principle recognized in s. 33 of the Interpretation Act, 1889; *R.* v. *Sheridan* and *R.* v. *Grant*, 155 L. T. 207 and 209, and for form of the plea, see s. 28 of the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100).

Autre vie, Estate pur, a tenancy of land for the life of another who is called the *cestui-que vie*. The lowest estate of freehold which the law allowed before 1926. After 1925 the estate has become an equitable interest, Law of Property Act, 1925, s. 1. If limited to the grantee and his heirs, it passed to the grantee's heirs or special occupants; if granted to executors or administrators, they took, as special occupants, if in that case or if there was no special occupant the estate went to the executors or administrators of the grantee. (Wills Act, 1837 (1 Vict. c. 26), s. 6, superseding the Statute of Frauds, s. 3, and 14 Geo. 2, c. 20, s. 9). By s. 3 of the Wills Act, 1837, the estate was declared to be disposable of by will. The estate could be assigned *inter vivos*. It could not be the subject of entail, see *Carson's Real Property Statutes; Notes* to s. 1 of the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74). It was not subject to dower or curtesy. See *Mountcashell* (*Earl of*) v. *Moore-Smyth*, 1896, A. C. 158. Estates *pur autre vie* now devolve on the personal representative (Administration of Estates Act, 1925, s. 11), and are assets for the payment of debts (s. 32, *ibid.*). A tenant *pur autre vie* appears to be a 'limited owner' for the purposes of s. 20 of the Settled Land Act, 1925, see sub-s. 1 (v). See SPECIAL OCCUPANT.

Auxesis [fr. *αὔξησις*, Gk.], a figure in rhetoric, by which anything is magnified.

Auxilium ad filium militem faciendum et filiam maritandam, an ancient writ which was addressed to the sheriff to levy compulsorily an aid towards the knighting of a son and the marrying of a daughter of the tenants *in capite* of the Crown.—Abolished.

Auxilium curiæ, a precept or order of Court citing and convening a party, at the suit and request of another, to warrant something.—*Ken. Paroch. Antiq.* 477.

Auxilium facere alicui in curiâ regis, to become another's friend and solicitor in the King's Courts, an office undertaken for and granted by some courtiers to their dependants in the country.—*Ibid.* 126.

Auxilium regis, the king's aid or money levied for the royal use and the public service, as taxes granted by Parliament.—1 *Bl. Com.* c. viii.

Auxilium vicecomiti, a customary aid or duty anciently payable to sheriffs out of certain manors, for the better support of their offices.—*Dugd. Mon. tom.* 2, p. 245.

Avage, or **Avisage,** a rent or payment by tenants of the manor of Writtle, in Essex, upon St. Leonard's Day, 6th of November, for the privilege of panning in the lord's woods.—*Blount.*

Avail [fr. *valoir*, Fr.; *valere*, Lat., to be worth], profit of land.

Avail of Marriage [fr. *valor maritagii*, Lat.], the right of marriage, which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. A guardian in socage had also the same right, but not attended with the same advantage.—2 *Bl. Com.* 70 and 89.

Avails, profits or proceeds.

Aval [Fr.], surety for payment.

Avalonia, the ancient name of Glastonbury in Somersetshire.

Avalum, a written guarantee.

Avenage, a certain quantity of oats paid by a tenant to his landlord as rent, or in lieu of some other duties.—*Blount.*

Avenor, an officer belonging to the royal stables, who provided oats for the horses.—13 Car. 2, c. 8, rep. by Stat. Law Rev. Act, 1863.

Aventuræ, adventures or trials of skill at arms, military exercises on horseback.—*Cowel.*

Aventure, or **Adventure,** a mischance causing the death of a man, as where a person is suddenly drowned or killed by any accident, without felony.—*Jac. Law Dict.*

Aver [fr. *avoir*, Fr.; *habere*, Lat., to have; or *haber*, Sp.], a beast of the plough; money.

Aver (to) [fr. *avérer*, Fr.; fr. *verus*, Lat.], to maintain as true.

Avera, a day's work of a ploughman, formerly valued at 8*d.*—*Domesday*: 4 *Inst.* 269.

Average, a medium, a mean proportion, used in various senses:—

(1) A service which a tenant owes to his lord by doing work with his *avers*.

(2) A shipping or insurance term. (*a*) *Average*, or more fully *general average*, is where any damage or loss has been properly and voluntarily incurred in respect of a ship or cargo for its safety, e.g., goods thrown overboard in a storm to lighten the ship. Such loss by maritime law is shared proportionately between the shipowners and the owners of the cargo, according to value. This risk is almost always covered by insurance. An Average Bond is a bond entered into by the consignees of a cargo with the shipowners, when a general average loss has been sustained by the ship, binding the former to pay their proportion as soon as ascertained. (*b*) *Particular average* is damage, or loss to a ship, or cargo, other than a general average loss. Such a loss rests where it falls, that is to say, is borne by the owner of the thing lost or damaged, or by his insurer, who compensates the insured in the proportion which the average loss bears to the whole insurance, and see the Marine Insurance Act, 1906 (6 Edw. 7, c. 41), s. 76, as the meaning of 'warranted free from particular average in marine insurance policies.' As to salvage loss and generally, see tits. 'Adjustment,' 'Insurance' and 'Constructive Total Loss,' and consult *Arnould's Marine Insurance* and *Carver's Carriage by Sea.*

(3) Also a small duty paid to masters of ships, when goods are sent in another man's ship, for their care of the goods over and above the freight.

(4) Stubble, or remainder of straw and grass left in cornfields after harvest. In Kent it is called *gratten*, and in other parts *roughings*.

(5) Average prices, such as are computed on all the prices of any articles sold within a certain period or district. See, e.g., Corn Returns Act, 1882 (45 & 46 Vict. c. 37), s. 9.

Average Weekly Earnings. See Workmen's Compensation Act.

A verbis legis non est recedendum. 5 *Co.* 118.—(From the words of the law there should not be any departure.) This maxim

directs the construction to be put upon Acts of Parliament, against the express letter of which the Courts will not sanction any interpretation, for the meaning of the Legislature cannot be so well explained as by its own direct words, since *index animi sermo* (language conveys the intention of the mind), and *maledicta expositio quæ corrumpit textum* (an exposition which corrupts the text is bad).—4 *Rep.* 35; *Sussex Peerage Case*, (1844) 11 Cl. & F. 143.

Aver-corn, a reserved rent in corn paid to religious houses.—*Cowel.*

Averia, cattle, which were the principal possession in early times.—*Spelman.* Also chattels generally.

Averia carrucæ, beasts of the plough exempt from distress, if other sufficient goods can be found to be distrained upon.—See DISTRESS.

Averia elongata, cattle eloigned, i.e., carried off.

Averiis captis in withernam, a writ granted to one whose cattle were unlawfully distrained by another and driven out of the county in which they were taken, so that they could not be replevied by the sheriff.—*Reg. Brev.* 82.

Averium, the best live beast due to the lord as a heriot on his tenant's death.—2 *Bl. Com.* 424.

Aver-land, that which tenants ploughed and manured for the proper use of a monastery or the lords of the soil.—*Cowel.*

Averment [fr. *verificatio*, Lat.], an advancement or affirmation of any matter in a pleading, and when new matter was introduced the pleading concluded with a verification, except in the anomalous case of the general plea of bankruptcy under the repealed 6 Geo. 4, c. 16. Verifications or averments were of two kinds: common and special. Common were applied to ordinary cases, and were in the following form:—'And this the plaintiff (or defendant) is ready to verify.' Special were used where the matter pleaded was intended to be tried by record or by some other method than a jury. They were in the following forms:—'And this the plaintiff (or defendant) is ready to verify, by the said record,' or, 'And this the plaintiff (or defendant) is ready to verify, when, where, and in such manner as the Court here shall order, direct, or appoint.'

Aver-penny or **Average Penny,** money paid towards the king's averages or carriages, and so to be freed thereof.—*Cowel.*

Averrare, a duty required from some customary tenants, to carry goods in a waggon or upon loaded horses.—*Jacob.*

Avers, draught cattle; cart-horses.

Aver-silver, a customary rent; see *Cowel's Law Dict.*

Aviation. See AERIAL NAVIGATION, AIR FORCE.

A vinculo matrimonii (from the bond of wedlock). It was a total divorce obtained from the Ecclesiastical Court on some canonical impediment existing *before* marriage and not arising *afterwards*, for the marriage was declared void, as having been absolutely unlawful *ab initio*, and the parties were therefore separated *pro salute animarum* (for the safety of their souls), the issue (if any) were illegitimate, and the parties might contract another marriage.

Though this divorce could not have been obtained from the Ecclesiastical Court where the marriage was not void *ab initio*, yet it was frequently granted before the establishment of the 'Divorce Court' in 1857, on the ground of adultery, by private Act of Parliament. See ADULTERY: DIVORCE.—*Cowel.*

Avisamentum, advice or counsel.—*Cowel.*

Avita, a grandmother.

Avitious [fr. *avitus*, Lat.], left by a person's ancestors.

Avizandum. In the Scotch Courts the judges are said to 'make avizandum' with a case when time is taken to consider judgment.

Avocat, a French barrister, or advocate.

Avoidance [fr. *vuide*, *vide*, Fr., empty, void, free from], when a benefice is void of an incumbent, in which sense it is opposed to plenarty.—*Jac. Law Dict.* Also the meeting, by new matter, of an opponent's pleading. See CONFESSION AND AVOIDANCE.

Avoidance of a Deed. The rendering void or of no effect of a deed, either on account of defective execution, disclaimer, fraud, or otherwise.

Avoirdupois, Avoirs-de-pois, or **Aver-dupois** [O. Fr.] (to have weight), a method of weighing goods, allowing 16 ounces to the pound, whilst Troy weight allows but 12. See Weights and Measures Act, 1878 (41 & 42 Vict. c. 49); and TROY.

Avona, the ancient name of Bungay in Suffolk, and Hampton Court.

Avonæ Vallis, the ancient name of Avondale, or Oundle, in Northamptonshire.

Avoucher, the calling upon a warrantor to fulfil his undertaking.

Avoué, a French attorney.

Avow. See ADVOW.

Avowant, one who makes an avowry.

Avowee. See ADVOWEE.

Avowry, or Advowry, was a pleading in the action of replevin (see that title), which stated the nature and merits of the defence, and justified or avowed taking the distress in his (the defendant's) own right, which, if established, would entitle him to a judgment *de retorno habendo*. An avowry was in the nature of a declaration. See Distress for Rent Act, 1737 (11 Geo. 2, c. 19), s. 22.

Avowterer, Advouterer, an adulterer. The crime being called *Avowtry.—Termes de la Ley.*

Avulsion [fr. *avulsio*, Lat.], lands torn off by an inundation or current from property to which they originally belonged, and gained to the estate of another; or where a river changes its course, and instead of continuing to flow between two properties, cuts off part of one and joins it to the other. The property of the part thus separated continues in the original proprietor, in which respect *avulsion* differs from *alluvion*, i.e., where an addition is insensibly made to a property by the gradual washing down of the river, for such an addition becomes the property of the owner of the lands to which it is made. Consult *Coulson and Forbes' Law of Waters.*

Avunculus, an uncle by the mother's side.

Avunculus magnus, a great-uncle.

Avus, a grandfather.

Await [fr. *awaiti*, Wall., to watch, *waiti*, to look], the lying in wait to execute some mischief.—See 13 Ric. 2, st. 2, by which no pardon is allowed for the death of a man slain by await.

Award [the primitive sense of *ward* is shown in the It. *guardare*, Fr. *regarder*, to look. Hence, Prov. Fr. *eswarder* (answering in form to award), to inspect goods, and, incidentally, to pronounce them good and marketable; *eswardeur*, an inspector.—*Hecart.* An award is accordingly, in the first place, the taking a matter into consideration and pronouncing judgment upon it; but in later times the designation has been transferred exclusively to the consequent judgment.—*Wedgw.*], a document containing the determination of commissioners, under an Inclosure Act or other public statute; also an instrument embodying an arbitrator's decision on a matter submitted to him. It must follow the submission, but need not necessarily be in writing, unless so prescribed. An award is generally considered as published as soon as the arbitrator has done some act whereby he becomes *functus officio*, and has declared, and can no longer change, his final mind. As soon as the award is executed, notice thereof should be given to all the parties that it is made and ready to be delivered: and if the submission direct that it be delivered to the parties by a certain day, in order to be valid it must be so delivered accordingly. It is usual for an arbitrator to keep the award until his costs are paid. The award must be stamped with a 10*s.* stamp.

Any words expressive of a decision are an award. Recitals are unnecessary. The award must be entire, final, on all the matters referred, or it will be void *in toto*; unconditional, but it may be alternative, without reservation or delegation, except as to ministerial acts, certain, mutual, possible, and consistent, without palpable mistake; when partly good and partly bad, the good part, if separable from the bad, will be valid.

A valid award is ordinarily final and conclusive on all matters referred by the submission, but it may be stated in the form of a case for the High Court, unless the submission exclude such power. The arbitrator himself may correct any clerical error or omission in his award.

An award may be set aside when:—

(1) An arbitrator or umpire has misconducted himself (for example of technical misconduct see *Williams* v. *Wallis and Cox*, 1914, 2 K. B. 478), or the arbitration or award has been improperly procured (Arbitration Act, 1889, s. 11);

(2) The award discloses a manifestly mistaken decision in law or fact;

(3) The award is a nullity, e.g., made after time has expired or the submission has been revoked;

(4) It is not final;

(5) It is uncertain:

(6) The arbitrator has exceeded his authority;

(7) The arbitrator has failed to use reasonable despatch in making the award.

When new and material evidence has been subsequently discovered, the award may be remitted to the arbitrator for reconsideration.

An interim award may be made and a special case may be stated on any question of law arising thereunder.

The sum awarded carries interest unless otherwise directed.

See the Arbitration Acts, 1889–1934, ARBITRATION; REFEREE; and *Russell on Arbitration.*

An appeal from an application to enforce an award lies to the Court of Appeal, and not

to the Divisional Court (*Re Colman and Watson*, 1908, 1 K. B. 47).

Away-going, or **Way-going Crops,** crops sown during the last year of a tenancy, but not ripe until after its expiration. The right which an out-going tenant has to take an away-going crop is sometimes given to him by the express terms of the contract, but, where that is not the case, he is generally entitled to do so by local custom or usage; such custom or usage has been held to be reasonable and valid (see *Wigglesworth* v. *Dallison*, 1 Sm. L. C., decided by Lord Mansfield in 1799), and to apply to tenants by parol agreement as well as by deed or written contract of demise, and this for the benefit and encouragement of agriculture; but modern farming agreements frequently bar any claim under it, and substitute a claim to compensation as found due by valuers.

Awm, Aums, or **Awame,** a measure of Rhenish wine containing 40 gallons, mentioned in some old statutes.—*Blount.*

Awnhinde. See THIRD-NIGHT-AWNHINDE.

Axelodunum, the ancient name of Hexham.

Axiom, an indisputable truth.

Ayant cause, a receiver; also a successor; or one to whom a right has been assigned, either by will, gift, sale, exchange or the like.—*French Law.*

Aye, an affirmative particle synonymous with *yea* or *yes.*

Ayle, a grandfather. See AIEL.

Azaldus, a poor horse or jade.—*Cowel.*

B.

'B' List. See CONTRIBUTORY.

Baccinium, or **Bacina,** a basin or vessel to hold water for washing the hands. There was formerly a service of holding the basin, or waiting at the basin, on the day of the king's coronation.—*Jac. Law Dict.*

Bachelacanæ Sylvæ, the woods of Bagley.

Bachelerla, commonalty or yeomanry, in contradistinction to baronage.—*Old Records.*

Bachelor [Fr. *bachelier*, Lat. *baccalarius*], one who takes the degree of apprentice or student of arts (B.A.), preliminary to that of master (M.A.), at the universities. Also, an unmarried man. Knight bachelor, a man who has been knighted without being made a member of any order of knighthood, as the Bath.

Backberinde, Backverinde, or **Backberend,** bearing upon the back, or about a man. Where a thief is apprehended with the things stolen in his possession, also called being taken with the *mainour*, as having the goods in his hand.—2 *Inst.* 188. It was one of the four circumstances wherein a forester might have arrested the body of a trespasser in a forest; viz., *dog-draw*, i.e., drawing after a deer that he has hurt; *stable-stand*, i.e., at his standing with a knife, gun, bow, or greyhound, ready to shoot or course; *backberend*, i.e., carrying away upon his back the deer which he had killed; *bloody-handed* (red handed), i.e., when he had shot or coursed, and was imbrued with blood.—4 *Inst.* 294.

Back-bond, a deed, which, in conjunction with an absolute disposition, constitutes a trust. It expresses the nature of the right actually held by a person to whom the disposition is made. It is equivalent to the English deed of trust.—*Scots Law.*

Back-freight. The freight payable by an owner of goods when the shipowner is unable to deliver them at their destination.

Backgammon, a lawful game, although with dice.—See Gaming Act, 1739 (13 Geo. 2, c. 19), s. 9, by which passage and all other games with dice ('backgammon and the other games now played with the backgammon tables only excepted') are prohibited. See DICE.

Backing a warrant of a justice of the peace. Formerly, where a warrant which had been granted in one jurisdiction was required to be executed in another, as where a felony had been committed in one county and the offender was lurking in another county, then, on proof of the handwriting of the justice who granted the warrant, a justice in such other county endorsed his name on the back of it, and thus gave authority to execute the warrant in such other county. See Indictable Offences Act, 1848, ss. 11–15, and later Acts. Now by the Criminal Justice Act, 1925, a warrant lawfully issued by a justice of the peace may be executed anywhere in England and Wales.

A warrant issued by a metropolitan police magistrate in respect of an offence committed within the metropolitan police district may be executed in England and Wales by any constable to whom it is addressed without backing (2 & 3 Vict. c. 71, s. 17). See METROPOLITAN POLICE MAGISTRATES.

Backside, a term formerly used in conveyances and even in pleading; it imports a yard at the back part of or behind a house and belonging thereto.

Backwardation. See CARRY OVER.

Baco, a bacon hog, used in old charters.

Bactile, a candlestick.

Bad (in substance). The technical word for unsoundness in pleading.

Badger [fr. *baggage*, Fr., a bundle, or fr. *bladier*, Fr., a corn-dealer.—*Wedgw.*], a person who buys corn or victuals in one place, and carries them to another to sell and make profit by them. 5 Eliz. c. 12 empowered magistrates to license badgers for one year, upon their entering into certain recognizances. 7 & 8 Vict. c. 24 abolished the offence of badgering, and repealed the statutes passed in relation to it, as being pernicious and in restraint of trade.

Badiza, an ancient name of Bath, in Somersetshire.

Badonicus mons, an ancient name of Barnes Down, near Bath.

Baga, a bag or purse. See PETTY BAG OFFICE.

Bagatelle. A game played with balls and a cue on a bagatelle board. A billiard license is required for a public bagatelle board, by the Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 11. See BILLIARDS.

Bagavel. Edward I. granted to the citizens of Exeter, by charter, the collection of a certain tribute or toll upon all wares brought to that city to be sold, to be applied towards the paving of the streets, repairing the walls, and maintaining the city, which was commonly called, in Old English, *bagavel*, *bethugavel* and *chipping-gavel.*—*Antiq. of Exeter.*

Bahadum, a chest or coffer.—*Fleta*, lib. 2, c. xxi.

Bail [fr. *bailler*, Fr., to hand over], to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required, in order that he may be safely protected from prison, to which they have, if they fear his escape, etc., the legal power to deliver him.

Bail may be given either in civil or criminal cases.

In civil cases there were, before the abolition of arrest on mesne process by the Debtors Act, 1869 :—

(1) Common bail, or bail below, given to the sheriff, after arresting a person, on a bail bond, entered into by two sureties, on condition that the defendant appear at the day and in such place as the arresting process commands (1 & 2 Vict. c. 110, s. 4).

(2) Special bail, or bail above, or bail to the action. This was bail given by persons who undertook generally, after appearance of a defendant, that if he should be condemned in the action, he should satisfy the debt costs and damages, or render himself to prison, or that they would do it for him.

Since the abolition of arrest on mesne process bail in civil cases is virtually extinct, but it may still be required in actions of ejectment brought by landlords. See Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), ss. 213, 215, and 216.

Bail in criminal cases is given for the appearance of the party bailed to take his trial to attend a further examination of a charge against him.

In all cases of felony, and in certain misdemeanours, the justices of the peace may take bail at the time of the examination; and in all cases where a person charged with an indictable offence is committed to prison to take his trial for the same, it is lawful at any time afterwards, and before the first day of the sessions or assizes at which he is to be tried, for the justice who signed the warrant for his commitment to admit him to bail. The justices, however, have no power to admit any person to bail for treason, nor may bail in that case be allowed, except by order of a Secretary of State or by the King's Bench Division of the High Court, or a judge thereof in vacation; while, on the other hand, they are bound to admit to bail in all cases of misdemeanour, except such as the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 23, particularly enumerates (being perjury, obtaining property under false pretences, and other misdemeanours, the costs of prosecuting which are allowed out of the county rate); and as to all felonies, as well as to the misdemeanours so enumerated, they have a discretionary power either to admit to bail, or to commit to prison.

The Bail Act, 1898 (61 & 62 Vict. c. 7), allows a justice, in cases within the 23rd section of the Indictable Offences Act, 1848, above mentioned, to dispense with sureties 'if in his opinion the so dispensing will not tend to defeat the ends of justice.'

The law as to bail and remand has been amended in several respects by the Criminal Justice Administration Act, 1914, ss. 19-24, and 1925, s. 45.

The Bill of Rights, 1 W. & M. sess. 2, c. 2, expressly enacts that excessive bail ought not to be required.

By s. 5, sub-s. 2, of the Coroners Act, 1887, coroners may admit to bail persons charged

with manslaughter upon an inquisition before them, and by the Municipal Corporations Act, 1882, s. 227, a borough constable may admit to bail persons charged with petty misdemeanours and brought into his custody, if a justice of the peace be not sitting.

The King's Bench Division of the High Court, or any judge in time of vacation, may admit to bail for any crime whatever; and by Rule 111 of the Crown Office Rules of 1906 applications for bail in felony or misdemeanour, where the party is in custody, must in the first instance be by summons at chambers for a writ of *habeas corpus* or to show cause why the defendant should not be admitted to bail either before a judge at chambers or before a justice of the peace, in such an amount as the judge may direct.

If unsuccessful the applicant can apply to another judge or renew his application to the Divisional Court, but cannot, it is submitted, appeal to the Court of Criminal Appeal: see *R.* v. *Foote*, (1883) 10 Q. B. D. 379; *Ex parte Pulbrook*, 1892, 1 Q. B. 86. It is a criminal offence to agree to indemnify any one who goes bail (*R.* v. *Porter*, 1910, 1 K. B. 369).

A shipowner is entitled to have his ship released from arrest upon giving bail. An undertaking by his solicitor will suffice, so that the bail-bond, if broken, will be forfeited (*The Cawdor*, 1900, P. 47), and see R. S. C., Ord. XXIX., rr. 5 and 6.

Bailable. An arresting process is said to be bailable when bail can be given, and the person arrested may obtain his liberty in consequence. See BAIL.

Bail-bond, an instrument prepared in the sheriff's office after an arrest, executed by two sufficient sureties and the person arrested, and conditioned for his causing special bail to be put in for him in the court out of which the arresting process issued, and in Admiralty Proceedings, see R. S. C. Orders, XII. and XXIX.

Bail Court, sometimes called the Practice Court, was an auxiliary of the Court of Queen's Bench. It heard and determined ordinary matters, and disposed of common motions.—Consult *Chit. Arch. Prac.*

Bailee, a person to whom goods are entrusted for a specific purpose. See BAILMENT; as to Larceny by Bailee, see Larceny Act, 1916, ss. 1 and 2.

Bailies, magistrates in Scotland.

Bailiff, a keeper or protector, an officer who puts in force an arresting process, or who is employed to distrain for rent, for which employment the certificate of a county court judge is required under the Law of Distress Amendment Act, 1888.

Bailiffs to execute county court processes are appointed under s. 28 of the County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), to assist one or more 'high bailiffs' for each court. Also, land-steward. There are several kinds of bailiffs, whose offices and employments greatly differ from one another, yet they agree in that the keeping or protection of something belongs to them all.

Bailiff-errant, a bailiff's deputy. See OUTRIDERS.

Bailiwick [fr. *bailli*, Fr., and *wic*, Sax.], the jurisdiction of a bailiff. A county, in respect of the sheriff's jurisdiction therein. A liberty exempted from a sheriff, over which a bailiff is appointed by the lord of the liberty or franchise, with such powers within his precinct as an under-sheriff exercises under a sheriff.

Bailment [fr. *bailler*, Fr., to deliver], a compendious expression to signify a contract resulting from delivery; perhaps best defined as a 'delivery of a thing in trust for some special object or person, and upon a contract express or implied, to conform to the object or purpose of the trust.'

In the celebrated case of *Coggs* v. *Bernard*, (1704) Ld. Raym. 909; 1 Sm. L. C., Lord Holt divided bailments thus:—

(1) *Depositum*, or a naked bailment of goods, to be kept for the use of the bailor.

A restaurant keeper has been held liable for loss of an overcoat entrusted by a customer to a waiter (*Ulzen* v. *Nicols*, 1894, 1 Q. B. 92; *Orchard* v. *Bush & Co.*, 1898, 2 Q. B. 284).

(2) *Commodatum*. Where goods or chattels that are useful are lent to the bailee *gratis*, to be used by him. See *Coughlin* v. *Gillison*, 1899, 1 Q. B. 145.

(3) *Locatio rei*. Where goods are lent to the bailee to be used by him for hire.

(4) *Vadium*. Pawn or pledge.

(5) *Locatio operis faciendi*. Where goods are delivered to be carried, or something is to be done about them, for reward to be paid to the bailee. For the history of the liability of carriers, see *Nugent* v. *Smith*, (1876) 1 C. P. D. 423, and for an explanation of the duty of private bailees of this class, *Brabant* v. *King*, 1895, A. C. 632. As to the liability of a bailee for the acts of his servants, see *Cheshire* v. *Bailey*, 1905, 1 K. B. 237. See CARRIER.

(6) *Mandatum*. A delivery of goods to

somebody, who is to carry them, or do something about them, *gratis*.

Consult *Wyatt Paine on Bailments ; Chitty on Contracts*.

Bailor, or **Bailer,** a person who commits goods to another person (the bailee) in trust for a specific purpose.

Bail-piece, a piece of parchment containing the names of special bail, with other particulars, which, being signed by a judge, was filed in the court in which the action was pending, and notice of the bail having justified was then given to the opposite party.

Bairam, Beiram. The names of two Mohammedan festivals, one held at the close of the fast Ramazan, the other 70 days after.

Bair-man, a poor insolvent debtor, left bare and naked, who was obliged to swear in court that he was not worth more than five shillings and fivepence.—Obsolete.

Bairns' part, a third part of a deceased's free movables, debt deducted, if his wife survive, and a half if she do not, due to his children.—*Scots Law.* See LEGITIM and REASONABLE PARTS.

Baiting Animals. The fighting or baiting of any animal, or being concerned therein in any way, is punishable as 'cruelty,' under s. 1 (1) c. of the Protection of Animals Act, 1911, and the Protection of Animals Act (1911) Amendment Act, 1912, by fine, or imprisonment for not exceeding three months, or both.

Bajardour, a bearer of any weight or burden.—*Old Records.*

Bakehouse. Any place in which are baked bread, biscuits, or confectionery from the baking or selling of which a profit is derived. Sections 97–102 of the consolidating Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), contain various sanitary provisions for the regulation of bakehouses, as defined above in Part II. of Sched. VI. of the Act. Section 98 enables a Court of Summary Jurisdiction to fine the occupiers of insanitary bakehouses and to order them to remove the ground of complaint of an inspector or district council. Limewashing, painting or varnishing are prescribed by s. 99, sleeping-places must be specially constructed as required by s. 100. By s. 101 underground bakehouses may not be used without a district council certificate, and by s. 102 it is for the district council to enforce these provisions as to retail bakehouses.

Balance, the amount required to equalize the two sides of an account.

Balance Order, a method of enforcing payment of a call from contributories under s. 206 of the Companies Act, 1929, and Companies Winding-up Rules, 1929, rr. 84–88. The order is not a judgment and does not preclude an action for the call (*Westmoreland Slate Co.* v. *Fielden,* 1891, 3 Ch. 15).

Balance-sheet, a statement shewing the assets and liabilities of a trading concern.

Balance of Trade, the difference between the value of the exports from and imports into a country.—*McCull. Comm. Dict.*

Balcanifer, or **Baldakinifer** [fr. *baldanum,* Low. Lat.], the standard-bearer of the Knights Templars.

Balconies [fr. *bala khaneh,* Pers., an upper chamber], small galleries of wood, iron or stone on the outside of houses. The erection of them is regulated in London by s. 73 of the London Building Act, 1894 (57 & 58 Vict. c. 213), and by the London Building Act, 1930 (21 Geo. 5, c. 158), s. 79, *Chitty's Statutes,* tit. '*Metropolis,*' which directs that they must be of fireproof material.

Bale [fr. *bal,* Sw. ; *balla,* Ital. ; *balle, bal,* Fr.], a pack or certain quantity of goods or merchandise, wrapped or packed up in cloth and tightly corded round, marked with figures corresponding to those in the bills of lading for the purpose of identification.

Balenga, a territory or precinct.

Balenger, a barge or water-vessel, a man-of-war.

Balk [fr. *valicare,* Ital., to pass over.—*Skinner*], a ridge of land left unploughed between the furrows, or at the end of a field.

Ballare, to dance.—*Spelm.* ; *Fl.* l. 2, c. 87.

Ballast. Heavy matter, as water, sand, stone, or iron, carried in the bottom of a ship to increase its weight and prevent its being readily over-set, a vessel being said to be 'in ballast' when she sails without a cargo. For penalty for taking from shore of harbour, etc., see Harbours Act, 1814 (54 Geo. 3, c. 15) ; and for penalty for throwing it into harbour or dock, Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 73; and see Weights and Measures Act, 1936.

Ballastage, a toll paid for the privilege of taking up ballast from the bottom of a port or harbour.

Balliers (*inutilis sarcina*), or bail-load (*baglæs,* Prov. Dan.), persons who, standing on a balk or ridge of ground, give notice of something to others.

Balliva, a bailiwick or jurisdiction.—*Old Records.* See BAILIWICK.

Ballivo amovendo, an ancient writ to remove a bailiff from office for want of sufficient land in the bailiwick.—*Reg. Brev.* 78.

Ballot [fr. *balla*, Ital. ; *balle*, Fr.], a little ball or ticket used in giving votes.

Ballot, to vote a person into an office or society by means of little balls which are put into either side of a box privately, according to the inclination of the voter, or by writing the names of the candidates upon small pieces of paper and rolling them up, so that they cannot be read, which are put into a box, and, when the time limited for the voting is over, are taken out one by one by an impartial person. As to ballots for the militia (now abolished), see MILITIA.

By the Ballot Act, 1872 (35 & 36 Vict. c. 33), *Chitty's Statutes*, tit. '*Parliament*,' secret voting by ballot papers (see s. 2 of the Act), showing the names and description of the candidates, each ballot paper having a number printed on the back, and having attached a counterfoil with the same number printed on the face. At the time of voting the ballot paper ' shall be marked on both sides with an official mark, and delivered to the voter within the polling station, and the number of each voter on the register is marked on the counterfoil.' The absence of the official mark from the face does not avoid the ballot paper (*Ackers* v. *Howard*, (1886) 16 Q. B. D. 739), though entire absence renders the presiding officer liable to an action for election lost (*Pickering* v. *James*, (1873) L. R. 8 C. P. 489). The system thus introduced into Parliamentary and Municipal Elections was applied to School Board Elections, County Council, District Council, and Parish Council Elections by various subsequent Acts. The form of voting is by making a cross opposite the name of that one of the candidates whom the voter votes for, the names of all the candidates being printed in alphabetical order. See *Woodward* v. *Sarsons*, (1875) L. R. 10 C. P. 733, in which, on a case stated by Lush, J., after hearing the Birmingham Municipal Election Petition, the mode of marking various disputed ballot papers was reviewed by the court.

The Act was originally limited to expire in 1880, but was continued annually until 1918, when it was made permanent by the Representation of the People Act, 1918.

By s. 31 (1) (*c*) of the Workmen's Compensation Act, 1925 (c. 84), before a scheme in substitution for the provisions of that Act can be certified, a ballot of the workmen to whom the scheme is applicable must be taken.

Ballot and Sale Society, a building society in which the right to have an advance from the funds of the society free of interest is determined alternately by a ballot among the members and by putting up the right to a sort of auction, the members bidding against each other for the right to the advance and the one who bids the highest obtaining it ; see Building Societies Act, 1894, s. 12, prohibiting balloting in the case of societies established since the Act.

Balnearii, stealers of the clothes of persons bathing in the public baths.—*Civil Law.*

Ban, or **Bann** [Teut.], a proclamation or public notice, or summons or edict, whereby a thing is commanded or forbidden. It is most especially used to signify the publication of intended marriages. See BANNS.

Banc (or **Banco**), **Sittings in** [fr. *bancus*, Lat., a seat or bench of justice. Thus *Bancus Reginæ* or *Bank la Reine* is the Queen's Bench ; *Bancus communium Placitorum*, or *Bench le Common Pleas*, is the Court of Common Pleas, or the Common Bench], the sittings of a Superior Court of Common Law as a full court as distinguished from the sittings of the judges at Nisi Prius or on circuit. Such sittings might be held out of term as well as in term (1 & 2 Vict. c. 32, s. 2, and C. L. P. Act, 1854, s. 95). The business of the courts in banc was transferred to Divisional Courts of the High Court of Justice (Jud. Act, 1873, ss. 40, 41). See now Judicature Act, 1925, s. 63. See DIVISIONAL COURT.

Bancale, a covering of ease or ornament for the bench or other seat.

Banco [Ital.]. See BANC. A seat or bench of justice ; also, in commerce, a word of Italian origin signifying a bank.

Bancus Superior, abbrev. *Banc. Sup.* [Lat.], the Upper Bench ; the King's Bench was so called during the Protectorate.

Bandit, a man outlawed, put under the ban (see that title) of the law.

Baneret, or **Banneret** [Fr.], a knight made in the field, by the ceremony of cutting off the point of his standard, and making it, as it were, a banner. Knights so made are accounted so honourable that they are allowed to display their arms in the royal army, as barons do, and may bear arms with supporters. They rank next to barons, and were sometimes called *vexillarii*.—*Jac. Law Dict.*

Bani, deodands ; see that title.

Banishment, an expulsion from the realm. For instances of it in English Law, see, e.g., Roman Catholic Relief Act, 1829 (10 Geo. 4,

c. 7), s. 34, banishing monks and Jesuits, and the Alien Act of 1848 (11 & 12 Vict. c. 20), revived for three years by the Prevention of Crime (Ireland) Act, 1882 (45 & 46 Vict. c. 25), s. 15. See ALIEN; TRANSPORTATION.

Bank. Commercially it is a place where money is deposited for the purpose of being lent out at interest, returned by exchange, disposed of to profit, or to be drawn out again as the owner shall call for it. Special provisions are contained in the Companies Act, 1929, relating to Banks. By s. 358, no company, association or partnership consisting of more than ten members shall be formed for the purpose of carrying on a banking business unless it is registered under the Act or formed in pursuance of an Act of Parliament or of letters patent. By s. 360, the liability of the members of a banking limited company remains unlimited in respect of the bank's liability for bank-notes issued by it. As to signature of balance sheets, see s. 129 and ANNUAL RETURNS, ss. 108 and 361. See also JOINT STOCK BANKS and LIMITED LIABILITY, and consult *Grant, Paget,* or *Walker on Banking, Chitty's Statutes,* tit. '*Bank.*'

The national banks are now: (1) the Bank of England, regulated by the Bank Charter Act, 1844 (7 & 8 Vict. c. 32), and other statutes, which conducts the whole banking business of the British Government, acting not only as an ordinary bank, but as a great engine of state. As to the position and functions of the bank in modern times, consult *Bagehot's 'Lombard Street.'* As to its origin, see *Macaulay's Hist. of England,* ch. xx.; *Hall. Const. Hist.,* ch. xv.; and for the original Charter, see *Pulling's Statutory Rules and Orders,* vol. i., tit. '*Bank.*' (2) The Bank of Scotland, established by Wm. 3, Parl. 1, s. 5; 44 Geo. 3, c. 23; 9 Geo. 4, c. 65.

Bank-book, a small book kept by a bank for a customer, showing the state of his account with it; otherwise termed a 'Pass-Book.' A pass-book passing to and fro between the bank and a customer is evidence of a stated and settled account (*Cunliffe Brooks & Co.* v. *Blackburn Building Society,* (1882) 22 Ch. D. 61; 9 App. Cas. 857).

Bank-credits, accommodations allowed to a person generally on security given to a bank, upon which to draw money to an extent agreed upon.

Banker, one who receives money to be drawn out again as the owner has occasion for it, the customer being lender, and the banker borrower, with the superadded obligation of honouring the customer's cheques up to the amount of the money received and still in the banker's hands.

A customer's money may become irrecoverable if six years have elapsed without payment by the banker of principal or interest after *demand.* The relation of banker and customer is merely that of debtor and creditor, with a superadded obligation on the banker to honour the customer's cheques, so that the Limitations Act, 1623, (21 Jac. 1, c. 16), runs against the customer. See UNCLAIMED PROPERTY.

A cheque is not an assignment to the payee of the customer's balance, so that if a customer having a balance of 99*l.* give a cheque for 100*l.*, the banker is legally justified in dishonouring it by refusing payment altogether (*Schroeder* v. *Central Bank of London,* (1876) 34 L. T. 735). If a customer overdraws his account, this amounts to a request for a loan (*Cuthbert* v. *Robarts & Co.,* 1909, 2 Ch. 226).

A banker may not disclose to a third person, without the consent of the customer express or implied, either the state of the customer's account or any of his transactions with the bank, or any information relating to the customer acquired through the keeping of his account, unless the banker is compelled to do so by order of the court or in certain circumstances when the protection of the banker's own interests require it (*Tournier* v. *National Provincial and Union Bank of England,* 1924, 1 K. B. 461); but see next title.

As to frauds by bankers, see Larceny Act, 1916, s. 20 (1) iv. A banker is not a 'money-lender' within the meaning of the Money-Lenders Act, 1900; and a money-lender may not be registered as a 'banker,' see Money-Lenders Act, 1911, s. 2.

Bankers' Books Evidence Act, 1879 (42 & 43 Vict. c. 11), whereby a copy of an entry in a banker's book is made *primâ facie* evidence of the entry, upon proof that the copy has been checked by comparison with the entry.

There is power under s. 7 for a magistrate to make an order in criminal proceedings before him for the prosecutor to inspect and take copies of entries in the books of a bank at which the defendant keeps an account (*R.* v. *Kinghorn,* 1908, 2 K. B. 949).

Bankers' Cash Notes, formerly called goldsmiths' notes, because bankers were originally goldsmiths. Written promises given by bankers to their customers as acknowledgments of having received money for their use, payable to bearer on demand and

considered as money, and transferable from one person to another by delivery. Now seldom if ever made, their use having been superseded by the introduction of cheques.

Banker's Draft. A banker's draft is defined by s. 1 of the Bills of Exchange Act (1882) Amendment Act, 1932 (22 & 23 Geo. 5, c. 44), as ' a draft payable on demand drawn by or on behalf of a bank upon itself whether payable at the head office or some other office of the bank.' This Act makes ss. 76 and 82 of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), applicable to a banker's draft as if it were a cheque.

Bank Holidays. Easter Monday, Whit Monday, the first Monday in August, and the 26th December if a weekday, or if it is a Sunday the 27th, or any day appointed by Order in Council in place of one of these, and any day appointed by Royal Proclamation in addition to these, is a statutory bank holiday in England, 34 & 35 Vict. c. 17; 38 & 39 Vict. c. 13; 45 & 46 Vict. c. 61. R. S. C. 1883, Ord. LXIV. In 1914 on the occasion of the outbreak of the war with Germany the August Bank Holiday was extended by Proclamation to four days. See HOLIDAY.

Bank of England. See BANK.

Bank-notes, or **Bank-bills,** written or printed promises for money, to be paid by a banking company. They are uniformly made payable on demand. They are not like bills of exchange, mere securities or documents for debt, nor are they so esteemed, but are treated as money in the ordinary course and transactions of business by the general consent of mankind, and, on payment of them, whenever a receipt is required, it is always given as for money, not as for securities or notes. Per Lord Mansfield, *Miller* v. *Race*, (1758) 1 Burr. at p. 457. Bank of England notes were made a legal tender by the 5th section of the Bank of England Act, 1833 (3 & 4 Wm. 4, c. 98), as amended, everywhere except at the Bank and its branches.

One-pound notes and ten-shilling notes are now issued by the Bank of England, under the authority of the Currency and Bank Notes (Amendment) Act, 1928, and made a legal tender for a payment of any amount. The notes first issued were found to be easy to forge, and they were accordingly called in after a short time and others issued instead—1918.

As to half-notes, to remit them is not payment (*Smith* v. *Mundy*, (1860) 29 L. J. Q. B. 172), but they are payable by a Bank upon indemnity (*Redmayne* v. *Barton Lloyd & Co.*, (1860) 2 L. T. 324).

As to forgery of bank notes and the offence of merely being in possession of paper or implements to be used for purposes of forgery, see the Forgery Act, 1913, ss. 2, 9. As to liability of shareholders in banks issuing bank notes see *ante* BANK.

Bank Rate. The minimum rate of discount charged for the time being by the Bank of England for discounting, cashing before due date the bills of certain approved mercantile houses. The bank rate is declared usually once a week.

Bankrupt [fr. *bancus*, or *banque*, the table or counter of a tradesman, and *ruptus*, Lat., broken, denoting thereby one whose shop or place of trade is broken or gone]. A debtor who does certain acts, tending to defeat or delay his creditors, may be adjudged bankrupt, and so made liable to the bankruptcy laws. Before the Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), ' traders ' only were liable to be made bankrupts, other insolvent debtors being dealt with by a succession of Relief of Insolvent Debtors Acts. See INSOLVENCY.

The Bankrupt Law is distinguished from the ordinary law between debtor and creditor as involving these three general principles :— (1) a summary and immediate seizure of all the debtor's property; (2) a distribution of it among the creditors in general, instead of merely applying a portion of it to the payment of the individual complainant; and (3) the discharge of the debtor from future liability for the debts then existing.

The law of bankruptcy, which dates from 34 & 35 Hen. 8, c. 4, after having been materially extended and altered by numerous statutes of early date, and more recently by statutes of 1831, 1849, 1861, 1869, 1883, 1890, and 1913, is now mostly contained in the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), and 1926 (16 & 17 Geo. 5, c. 7), and the General Rules and Deeds of Arrangement Rules, 1925, though parts of the Act of 1883 and of the subsequent statutes are left standing—a most inconvenient method of legislation. The petition of bankruptcy should be registered as a ' *lis pendens* ' and the receiving order and adjudication as ' orders ' in the Land Charges Register under the Land Charges Act, 1925. As to the effect of Bankruptcy of a proprietor of land registered under the Land Registration Act, 1925, see ss. 41–45 of that Act, and *Fortescue Brickdale and Stewart Wallace on the Land Registration Act* on s. 40. See ACT OF

BANKRUPTCY, and *Wace, Williams,* or *Baldwin on Bankruptcy,* and PREFERENTIAL PAYMENTS.

Bankrupt Solicitors.—The Law Society as Registrar of Solicitors may, by the Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37), replacing the Solicitors Act, 1906 (6 Edw. 7, c. 24), refuse to issue certificates (without which a solicitor cannot practise) to bankrupt solicitors.

Clergyman.—Where the bankrupt is a beneficed clergyman the trustee may apply for a sequestration of the profits of the benefice (Bankruptcy Act, 1914, s. 50). *Peers and Members of Parliament* are disqualified by bankruptcy from sitting or voting (Bankruptcy Act, 1883, s. 32), and in the case of the latter the seat is vacated unless the disqualification is removed within six months (s. 33).

Married Women.—A married woman who carries on a trade or business, whether separately from her husband or not, was subject to the bankruptcy laws as if she were a feme sole; see Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 125; *Re Clark,* 1914, 3 K. B. 1095, but now by the Law Reform (Married Women and Tortfeasors) Act, 1935 (c. 30), any married woman (trading or not) is made subject to the Bankruptcy Laws as if she were a feme sole, but if she was not carrying on a trade or business before the 2nd August, 1935, she cannot be made bankrupt in respect of her obligations incurred before that date.

Bankruptcy, Court of. The Bankruptcy Act, 1914, ss. 96 *et seq.*, gives jurisdiction in bankruptcy to the High Court and the county courts, the jurisdiction of the High Court being exercised by one of the judges assigned for that purpose by the Lord Chancellor, who is also empowered to exclude any county court and attach its district to the High Court.

Bankruptcy (Scotland). See the Bankruptcy (Scotland) Act, 1913 (3 & 4 Geo. 5, c. 20), repealing a number of earlier enactments and consolidating the law.

Bankruptcy Notice, a notice (taking the place of the 'debtor's summons' (see that title) under the Bankruptcy Act, 1869) to pay a judgment debt for any amount, non-compliance with which notice within a limited time amounts, by s. 1 (1) (g) of the Bankruptcy Act, 1914, to an 'act of bankruptcy.' The notice may be given by any creditor who has obtained a 'final judgment' or 'final order,' and if the debtor does not within seven days of service of the notice, if served in England, either comply with its requirements or satisfy the Court that he has a cross demand equalling or exceeding the judgment debt, and which he could not set up in the action in which judgment was obtained, he commits an 'act of bankruptcy' (see that title). Two or more debts cannot be included in one notice. A substantial defect in the notice cannot be amended (*Re a Debtor,* 1908, 2 K. B. 684).

Banneret. See BANERET.

Banning, an exclamation against, or cursing of, another.

Bannire ad placita, ad molendinum, to summon tenants to serve at the lord's courts, to bring corn to be ground at his mill.

Bannitus, or **Banniatus,** an outlaw; a banished man.

Bannock, a thick cake of oatmeal, being a perquisite of a mill-servant in thirlage.

Banns of Marriage. 'Banns' is the plural of 'Bann' or 'Ban,' an edict or prohibition. The Prayer Book of 1662 directed banns of marriage to be published in church 'three several Sundays or Holy Days immediately before the sentences for the offertory' (this was in the Rubric prefixed to the Form of Solemnization), but also after the Nicene Creed, together with many other notices separated from those sentences by the sermon (this direction was in the Rubric following the Nicene Creed, and the two directions do not seem quite consistent). In 1753 Lord Hardwicke's Act (26 Geo. 2, c. 33), directed publication during morning service, or evening service if there be no morning service, immediately after the Second Lesson; and about 1809 the Rubrics were altered by the king's printers of their own motion to bring them into agreement with Lord Hardwicke's Act, which, however, may possibly have referred in its alteration to the evening service only. The Marriage Act, 1823 (4 Geo. 4, c. 76), while repealing Lord Hardwicke's Act, by s. 2 re-enacted that part of it which related to the publication of banns, enacting that they should be published in an audible manner in the parish church of the parish wherein the persons to be married should dwell, according to the form of words prescribed by the Rubric prefixed to the office of matrimony in the Book of Common Prayer, upon three Sundays preceding the solemnization of marriage during the time of morning service, or of evening service (if there should be no morning service in such church . . . upon the Sunday upon which such banns should be published) immediately after the Second

Lesson; adding (1) that where the parties should reside in different parishes, the banns should be published in each parish; (2) that the Rubrics, except as altered, should be duly observed; and (3) that 'in all cases where banns shall have been published, the marriage shall be solemnized in one of the parish churches or chapels where such banns shall have been published, and in no other place whatsoever.' But by the Marriage Measure, 1930 (20 & 21 Geo. 5, No. 3), banns may also be published in a parish church which is the 'usual place of worship' of either party; though neither resides in that parish and the marriage may be solemnized there. The publication of banns may be dispensed with by special license of the Archbishop of Canterbury or by the license of any archbishop or bishop. As to the publication of banns on His Majesty's ships, see the Naval Marriages Act, 1908 (8 Edw. 7, c. 26). See MARRIAGE.

Bannum, or **Banleuga,** the utmost bounds of a manor or town.—*Seld. Hist. of Tithes*, 75.

Baptism [fr. βάπτιζειν, Gk., to dip]. One of the two Sacraments of the Church of England, the other being the Supper of the Lord (*Art.* xxv.). By the Baptismal Fees Abolition Act, 1872 (35 & 36 Vict. c. 36), it is rendered unlawful to demand any fee for the celebration or registration of baptism. See *Canons*, 68–70.

Bar, (1) a partition running across the courts of law, behind which all outer-barristers and every member of the public must sit or stand. Solicitors, being officers of the court, are admitted within it, as are also King's Counsel, barristers with patents of precedence, and serjeants, in virtue of their ranks. Parties who appear in person also are placed within the bar on the floor of the court. (2) The profession of barrister, who is said to be 'called to the Bar.' See BARRISTER.

Bar Committee. An elected body formed in 1883 'to collect and express the opinions of the members of the Bar on matters affecting the profession, and to take such action thereon as may be deemed expedient.' The members were elected for three years, one-third retiring annually. The Committee issued numerous reports, which were sent to subscribers only. It was dissolved in 1894 and succeeded by the BAR COUNCIL. See below.

Bar Council. A body more formally known as 'The General Council of the Bar,' which is the accredited representative of the Bar, and has imposed upon it the duty of dealing with all matters affecting the profession. Although established neither by charter nor statute, its existence is officially recognised—e.g., Criminal Appeal Act, 1907, s. 18 (2).

The Council consists of (1) *Official Members*, the Attorney- and Solicitor-General, as well as any former Attorney- or Solicitor-General who is in actual practice; (2) *Nominated Members*, who are practising barristers, four of whom are nominated by each of the Inns of Court; (3) 48 *Elected Members* elected by the whole Bar, of whom 12 must be of the Inner Bar and not less than 24 of the Outer Bar, and of these latter six at least must be of less than 10 years' standing; (4) *Additional Members*, not exceeding six in number, can be appointed from barristers in actual practice.

Of the Elected Members, half go out of office each year, but are eligible for re-election. All barristers are entitled to vote at the election.

The expenses of the Council are paid by contributions from the four Inns of Court.

The present address of the Secretary is—

5, *Stone Buildings*,
Lincoln's Inn.

The Council issue annual reports expressing their views on subjects of interest to the legal profession, such as bills before Parliament, and on points of etiquette, and communications are invited from members of the Bar on matters which may come to their knowledge touching the interests and well-being of the profession.

Bar-fee. See BARR-FEE.

Bar, Plea in, a pleading showing some ground for barring or defeating an action at Common Law. A plea in bar was therefore distinguished from all pleas of the dilatory class, as impugning the right of action altogether, instead of merely tending to divert the proceedings to another jurisdiction, or suspend them, or abate the particular writ or declaration. It was, in short, a substantial and conclusive answer to the action. It followed from this property, that, in general, it must either deny all, or some essential part of, the averments of fact in the declaration, or, admitting them to be true, allege new facts which obviated or repelled their legal effect. In the first case the defendant was said, in the language of pleading, to *traverse* the matter of the declaration; in the latter, to *confess and avoid* it. Pleas in bar were consequently divided into (1) pleas by way of traverse, and (2) pleas by confession and avoidance.

In Equity, a plea in bar was a defence resorted to when there was no defect apparent on the face of the plaintiff's bill, alleging affirmative matter, and reducing the case to a particular point, seeking to displace the plaintiff's equity. See now DEFENCE.

In Scottish criminal practice the expression denotes these preliminary pleas which, if sustained, prevent the trial proceeding. The more important of them are: that the accused is under eight years of age; that he is presently insane; that he has 'tholed an Assize,' i.e., that he has already been tried for the same offence; that the Court has no jurisdiction.

Bar, Trial at, the trial of a cause or prisoner before the Court itself instead of at *Nisi Prius*. It is confined to cases of great importance, and it is entirely discretionary with the Court to grant it, unless the Crown be interested (see as to this, *Dixon* v. *Farrar, Sec. of Board of Trade*, (1886) 18 Q. B. D. 43), when the Attorney-General may demand it as of right. The procedure for obtaining it is regulated by Rules 150–155 of the Crown Office Rules of 1906.

A celebrated trial at bar—of one Arthur Orton for perjury, in swearing that he was Sir Roger Tichborne—took place in 1873 before Cockburn, L.C.J., and Lush and Mellor, JJ. Others since that date are the action by the Attorney-General against Mr. Bradlaugh for penalties under the Parliament Oaths Act (*A.-G.* v. *Bradlaugh*, (1885) 14 Q. B. D. 667); the trial of Dr. Jameson and many others (*Reg.* v. *Jameson*, 1896, 2 Q. B. 425) for making an incursion into the Transvaal in contravention of the Foreign Enlistment Act, 1870 (see that title); and the trial of Arthur Lynch (*R.* v. *Lynch*, 1903, 1 K. B. 444), who, whilst a British subject, enlisted and took an oath of allegiance to the South African Republic after an outbreak of war in that country.

In civil matters trials before more judges than one may be held before Divisional Courts, if the Court think them unsuited for trial by a single judge (Judicature Act, 1925, s. 63); but this trial is in practice only of points of law; and, like the trial by two or more judges with a jury under R. S. C. Ord. XXXVI., r. 8, can be held anywhere, whereas a trial at bar takes place only at the Royal Courts of Justice in London.

Barbed-wire. By the Barbed Wire Act, 1893 (56 & 57 Vict. c. 32), s. 2, 'barbed wire' means any wire with spikes or jagged projections; and the expression 'nuisance to a highway,' as applied to it, means barbed wire which may probably be injurious to persons or animals lawfully using such highway. A local authority can require the removal of barbed wire adjoining a highway when it thus constitutes a nuisance; but on lands not adjoining a highway a person is in general under no liability for the use of such wire.

Barbados, a British Colony, administered by a Governor, Executive Committee, Legislative Council, and Assembly. See TRINIDAD AND TOBAGO.

Barber-chirurgeons, a corporation of London instituted by Edward IV. The barbers were separated from the surgeons by 18 Geo. 2, c. 15, and the latter were erected into a Royal College of Surgeons at the commencement of the nineteenth century.

Barbican [fr. *barbacana*, M. Lat.], a watch-tower or bulwark.

Barbicanage, money given towards the maintenance of a barbican; a tribute for repairing or building a bulwark.

Barcarium, a sheep-cote; a sheep-walk.

Bare Trustee. A person holding property in trust for another without any beneficial interest in or duty in regard to it except to transfer it to the person entitled. Under the Law of Property Act, 1925, 1st Sched., Part II., par. 3, the legal estate, if any, in a bare trustee (not being a trustee for sale) automatically vested in the person who could call for a conveyance of it. Although this simplified conveyancing where the legal estate in the trustee was only remote, it was found that great inconvenience would be caused in cases where the legal estate in the trustee related to the entirety of the property in question according to its nature, and the Law of Property Amendment Act, 1926, provided that a purchaser for money or money's worth without notice of the trust upon production of the title deeds may accept the conveyance from the trustee or persons deriving title under him. See ACTIVE TRUSTEE.

Bargain and Sale. A contract for the sale of real or personal property of any kind operating under the Statute of Uses as a conveyance of the land, or at Common Law, from early times of goods sold without delivery, the vendor of land being held originally to possess or be seised of the property to the use of the purchaser. In the case of goods the Common Law rule was and is that the property may be transferred by the contract if the parties so intend (see *Ogg* v.

Shuter, (1875) L. R. 10 C. P. at p. 162; and Sale of Goods Act, 1893, s. 20). In the case of land a similar result was effected by the Statute of Uses (27 Hen. 8, c. 101), which attached the property to the use and turned it into a legal estate. No formalities were required for a bargain and sale of lands until 27 Hen. 8, c. 16, required that bargains and sales of any estate of inheritance must be by deed enrolled within six months in the records of one of the King's Courts at Westminster. The devise of a lease and release (*q. v.*, *post.*) was then resorted to, to evade enrolment. For other enactments affecting bargains and sales of land, see the Statute of Frauds (29 Car. 2, c. 3), s. 4. The method of conveyance by bargain and sale inrolled had been in abeyance for many years before the R. P. Act, 1845 (8 & 9 Vict. c. 106), ss. 1 and 2 (replaced by the L. P. Act, 1925, s. 51), declared that all corporeal tenements or hereditaments were to lie in grant as well as delivery, and must be made by deed, and the same section 55 of the Act of 1925 expressly abolished bargain and sale as a mode of conveyance of lands or any interest therein.

Bargainee, a person to whom a bargain and sale is made.

Bargainer, or **Bargainor,** a person who makes a bargain and sale.

Barkary, a tan-house, or a place to keep bark in for the use of tanners.

Barleycorn, the third of an inch.

Barmote. The Great and Small Barmote Courts or inferior Courts dealing with rights of mining and mineral customs in certain parts of the High Peak, Derbyshire, belonging to the Duchy of Lancaster. There is an official of the Courts who is called the 'Barmaster.' See the High Peak Mining Customs and Mineral Courts Act, 1851 (14 & 15 Vict. c. 94); and Order of the Chancellor of the Duchy of May 30, 1859, Statutory Rules and Orders Revised, 1904, 'Inferior Court,' E., p. 63.

Barnard's Act, 7 Geo. 2, c. 8, repealed by 23 & 24 Vict. c. 38. The Act introduced by Sir John Barnard 'to abolish the infamous practice of stock-jobbing.'

Barnard's Inn, an Inn of Chancery. See INNS OF CHANCERY.

Baron [fr. *beorn*, Sax., noble], the fifth and lowest degree of nobility, next to a viscount, and above that of a knight or baronet. In the Salic Law it signifies free-born. The present barons are—(1) By prescription; for that they and their ancestors have immemorially sat in the Upper House. (2) Barons by patent, having obtained a patent of this dignity to them and their heirs, male or otherwise. (3) Barons by tenure, holding the title as annexed to land; it is said that it is the possession of their ancient landed territories which imparts the barony to the bishops, thereby giving them a place in the Upper House, although they hold by succession, not by inheritance; but it is rather thought that they sit in the Upper House by immemorial usage.

Baron Court. See COURT BARON.

Baron and feme [Fr.], husband and wife. A wife being under the protection and influence of her *Baron*, lord, or husband, is styled a *feme-covert* (*fœmina viro cooperta*), and her state of marriage is called her *coverture*. See HUSBAND AND WIFE.

Baronet [fr. *Baron*, Fr., and *et*, diminutive termination], the holder of a dignity of inheritance created by letters-patent, and descendible to the issue male. The order was instituted in 1611 by James I., who conferred the dignity in consideration of the payment of 1,000*l.* to the Crown, the money so raised being applied to pay the troops sent to quell an insurrection in the province of Ulster in Ireland. The number was at first 200, but has since much increased.

By a Royal Warrant (see *The Times*, Feb. 12, 1910) an official Roll of Baronets is kept, and no one who is not on that roll is received as a baronet or entitled to be addressed as such.

As an incorporeal hereditament a baronetcy is 'land' within the meaning of 'land,' see L. P. Act, 1925, ss. 201 (1) and 130 (2), with the necessary qualifications arising by reason of the inherent nature of a title of honour, and see S. L. Act, 1928, s. 67 (*Re Rivett-Carnac*, (1885), 30 Ch. D. 136).

Barons of the Exchequer, the judges of the old Court of 'The Exchequer of Pleas' at Westminster. See EXCHEQUER, COURT OF.

Barony, or **Baronage,** the honour and territory of a baron; also the body of barons and peers.

Barony of Land, a quantity of land amounting to 15 acres. In Ireland, a subdivision of a county.

Barratry. 1. Usually called 'common barratry,' the common moving of suits and quarrels in disturbance of the peace, either in courts or elsewhere.

The punishment is fine and imprisonment; and if the offender belonged to the profession of the law he was disabled from practising for the future, by 12 Geo. 1, c. 29, s. 4, which is unrepealed, though long obsolete.

2. In marine assurance, the commission of any fraud upon the owners or insurers of a ship by the master or crew, as deserting her, sinking her, or doing any act which may subject her to arrest, detention, loss, or forfeiture, etc. It is the practice in most countries to insure against barratry. Many foreign jurists hold that it comprehends every fault which the master and crew can commit, whether it arises from fraud, negligence, unskilfulness, or mere imprudence. But in this country it is ruled that no act of the master or crew shall be deemed barratry, unless it proceed from a criminal or fraudulent motive.—See *Arnould*, or *Chalmers*, or *Marsden on Marine Insurance*, also *Scrutton on Charter-parties*.

3. In Scotland, it is the crime of a judge who is induced, by bribery, to pronounce a judgment; and it is also applied to the simony of clergymen going abroad to purchase benefices from the see of Rome.

Barrel, a measure of 36 gallons.

Barr-fee, a fee of 20*l.* payable by every prisoner acquitted of felony to the sheriff or gaoler.—*Termes de la Ley.* (Abolished by Statute 130 years ago.)

Barrister, or **Barrastor,** a counsellor or advocate learned in the law, admitted to plead at the bar, and there to take upon himself the protection and defence of clients. He is termed *jurisconsultus* and *licentiatus in jure*. As to the mode and qualification for obtaining the degree of a barrister, see INNS OF COURT; and consult *Marchant on Barristers; Warren's Law Studies; Forsyth's Hortensius;* and *Chitty on Contracts;* also *Mews's Digest*, tit. '*Barrister*.'

Fees.—A barrister can maintain no action for his fees, which are given not as a salary or hire, but as a mere *honorarium* or gratuity, and even an express promise by a client to pay money to counsel for his advocacy is not binding; see *Re Le Brasseur & Oakley*, 1896, 2 Ch. 487; *Kennedy* v. *Broun*, (1863) 13 C. B. N. S. 677, where the whole law on the subject of counsel's fees is elaborately discussed. He cannot even recover fees from the solicitor to whom the lay client has paid them (*Wells* v. *Wells*, 1914, P. 157). Moreover, the payment of a fee does not depend upon the event of a cause; and for the purpose of promoting the honour and integrity of the Bar, it is expected that all their fees should be paid when their briefs are delivered (*Morris* v. *Hunt*, (1819) 1 Chitty R. at p. 551). On the other hand, he is not liable to an action for negligence or unskilfulness; or for any words spoken in court, however malicious or irrelevant (*Odgers on Libel and Slander*, 6th ed., p. 196). For a great number of years it had not been considered requisite that the fee notes signed by counsel to indicate the payment of the fees should be stamped as 'receipts'; but such notes have now been held to be receipts within the meaning of the Stamp Act, 1891 (*Council of the Bar* v. *Inland Revenue Commissioners*, 1907, 1 K. B. 462).

Intervention of Solicitor.—It is a rule of etiquette, but not a rule of law, that a barrister shall not take instructions except through the intervention of a solicitor. See *Doe* v. *Hale*, (1850) 15 Q. B. 171, where it was said that the rule of etiquette was beneficial, and ought to be maintained; and the correspondence between the Attorney-General and Mr. Yerburgh, M.P. (*Solicitors' Journal*, July 7, 1888), where, however, an important distinction is drawn between contentious and non-contentious business; *Annual Practice; Annual Statement of the Bar Council for* 1904–5 at p. 10. By rule 20 of the Resolutions of the Bar Committee (see *Annual Practice*), counsel who has drawn pleadings or advised or accepted a brief during the progress of an action is entitled to a brief at the trial. For the obligation resting on solicitors with regard to this rule, see *Re Harrison*, 1908, 1 Ch. 282.

Barristers have exclusive audience in the Supreme Court, but not in Bankruptcy business or before the Railway and Canal Commission, where, as in the County Courts, they are heard along with solicitors.

For a list of the posts for which barristers are qualified, with the length of standing required, see *Chit. Stat.* tit. '*Barrister*'; *Marchant on Barristers*.

Barrow [fr. *beorg*, Sax., a heap of earth], a large mound used as a sepulchre, found in many parts of England.

Barter, to exchange one commodity for another, or truck wares for wares.

Barton, Berton, or **Burton** [fr. *beretun, berteun, bere wic*, A.S., a court-yard, corn-farm; from *bere*, barley, and *tun*, inclosure, or *wic*, dwelling. A.S.—*Bosw.*], demesne lands of a manor, a great farm, a manor-house, out-houses, fold-yards, a court-yard.

In 2 & 3 Edw. 6, c. 82, barton lands and demesne lands are used as synonymous. Blount says it always signified a farm distinct from a mansion; and *bertonarii* were farmers or husbandmen, who held bartons at the will of the lord. In the west of England they call a great farm a

barton, and a small farm a *living*.—*Encyc. Londin.*

Bas-Chevaliers, low or inferior knights by tenure of a base military fee, as distinguished from bannerets, chief or superior knights. Hence we call our simple knights, viz., knights bachelors, *bas-chevaliers*.—*Ken. Par. Antiq.*

Base-Court, an inferior court, not of record, as a court-baron, court-leet, etc.

Base-estate, lands held by base-tenants, who performed villeinous services to their lords; but there is a difference between a base estate and villenage, for to hold in pure villenage is to do all that the lord commands; and if a copyholder have but a base estate, he, not holding by the performance of every commandment of his lord, cannot be said to hold in villenage.—*Kitch.* 41.

Base Fee. A species of inheritable freehold estate which forms part of the class of estates known as conditional freeholds of inheritance. See CONDITIONAL FREEHOLDS OF INHERITANCE. In a more special sense, a base fee was until 1926 a fee simple determinable on the failure of issue of an original donee of the estate in tail. It was limited by the failure of the heirs of the body of that donee to take, and upon that failure the persons next entitled in remainder became entitled to the remainder in tail or in fee simple, as the case might be. As where a tenant-in-tail, with remainder to a stranger, conveys the fee-simple to another in the property entailed upon him, such other takes a qualified fee by legal construction, determinable on the death of the tenant-in-tail and failure of the issue under the entail. Another example of such an estate is when a tenant-in-tail, not being himself entitled to the immediate remainder or reversion in fee, conveys without the consent of the protectos of the settlement; he then transfers a base-fee, determinable on the failure of his issue in tail (Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), s. 34). See ESTATE TAIL.

From and after 1st January, 1926, these base fees have lost their quality of legal estates and have been reduced to equitable interests by the L. P. Act, 1925, s. 1 (3). Under s. 130 (1) of that Act, the right to bar the entail so as to create an interest equivalent to a base fee has been preserved, and analogous interest may be created as provided by s. 130 in any property, real or personal. If the base fee and the freehold remainder or reversion becomes united in the same person the base fee will become enlarged into a fee-simple estate absolute (Fines and Recoveries Act, 1833, s. 39), and a base fee becomes a fee simple absolute if the person entitled to it has been in possession for twelve years after the original tenant-in-tail might have barred the remainders without consent of any protector of the settlement (Real Property Limitation Act, 1874, s. 6).

Base-infeftment, a disposition of lands by a vassal, to be held of himself.—*Scots Law.*

Baselard, or **Basillard,** a weapon, a poignard.—*Speight's Chaucer*; 12 Rich. 2, c. 6.

Basels, coins abolished by Hen. II., A.D. 1158.

Base-rights, those by which a grantor creates a subinfeudation in favour of a vassal, to be held of himself.—*Scots Law.*

Basilica, a new body of law, framed A.D. 880 by the Emperor Basilius and published by his successor Leo, surnamed the Philosopher, under the title of *βασιλικὰ*, either in honour of his father or as containing the imperial law.—1 *Colquhoun's Roman Civil Law*, s. 77.

Basket-tenure, lands held by the service of making the king's baskets.

Bass's Act, the Metropolitan Police Act, 1864 (27 & 28 Vict. c. 55), for the better regulation of Street Music within the Metropolitan Police District. See MUSICIAN.

Bassa tenura, a base tenure, was a holding by villenage, or other customary service, opposed to *alta tenura*, the highest tenure *in capite*, or by military service.

Basset, an unlawful game, made illegal in the year 1738 by 12 Geo. 2, c. 28.

Bassinet, a skin used by soldiers for coverings; a light helmet.

Bassnetum, a helmet.

Bastard [fornication], one born out of lawful marriage (Age of Marriage Act, 1929 (19 & 20 Geo. 5, c. 36)).

The civil and canon laws did not allow a child to remain a bastard if the parents afterwards intermarried, but a proposal by the bishops to assimilate the law of England to the canon law in this respect was rejected by Parliament in 1235. See MERTON, STATUTE OF. The law of England remained thus for nearly 700 years, until the Legitimacy Act, 1926 (16 & 17 Geo. 5, c. 60), legitimated a child born out of wedlock upon the subsequent marriage of parents if they were domiciled in England or Wales at the date of marriage. See LEGITIMATION. In Scotland, however, and in most other Christian countries, including

most, if not all, of the British Dominions, and most, if not all, of the United States of America, legitimation of the children has always followed the intermarriage of the parents.

The mother of a bastard cannot validly contract with another person for the transfer to that person of her rights and liabilities in respect of the child (*Humphreys* v. *Polak and Wife*, 1901, 2 K. B. 385), but since the Adoption of Children Act, 1926 (c. 29), an adoption order may be made affecting such child. See ADOPTION.

A person born in wedlock may be declared a bastard by legal sentence if it be proved that the husband of the mother had no access and no opportunity of access to the mother during such period as in the course of nature admitted of his being the father. In the case of persons born in wedlock *pater est quem nuptiæ demonstrant* (Co. Litt. 123) (he is the father whom marriage designates); the child is legitimate if born, though not begotten, in lawful wedlock, and all the legal rights and privileges of a child attach, however conspicuous and notorious may be the origin of the person, until his status has been legally destroyed. See ACCESS; *Mews's Digest*, tit. '*Bastard*.'

Provision is made by the Age of Marriage Act, 1929 (c. 36), s. 2, to enable a single woman whose marriage is void for non-age under that Act to obtain a summons notwithstanding that the father may not have paid money for the child's maintenance within twelve months of the birth of the child.

As to the obligations of the putative father to the mother of a bastard child, see AFFILIATION.

Until the Legitimacy Act, 1927, was passed, a bastard had no claim to succession to the real or personal property of his parents. By s. 9 that Act provides for the succession of an illegitimate child to the intestate estate of his mother if there are no legitimate issue and of the mother to her illegitimate child, but this is not to affect entailed interests. A child born out of wedlock has no right to any name save such as he acquires.

A bastard has no legal surname by inheritance, though he may acquire one (Co. Litt.).

A bastard may not marry within the prohibited degrees of relationship, it being the natural relationship which is here considered (*R.* v. *Brighton* (*Inhabitants*), 1861, 1 B. & S. 447).

A bastard has no duties towards his natural parents. The mother, whilst unmarried or a widow, must maintain a bastard child up to the age of sixteen (Poor Law Act, 1930 (c. 17)), but see AFFILIATION. The father may be compelled to contribute towards the cost of relief by a Poor Law Authority (Bastardy Laws Amendment Act, 1873 (c. 9), s. 5).

A bastard is not by reason of illegitimacy prevented from being a 'dependant' within the meaning of the Workmen's Compensation Act, 1906, s. 13. The definitions of dependants in Lord Campbell's Act (Fatal Accidents Act, 1846) only covered legitimate relatives, but the Law Reform (Miscellaneous Provisions) Act, 1934, s. 2, those definitions have been extended to comprise an illegitimate person. See Workmen's Compensation and Adoption of Children Acts, 1934.

In Scotland the Bastards (Scotland) Act, 1836 (6 & 7 Wm. 4, c. 22), enables bastards or natural children domiciled in Scotland to dispose of their movable estates by testament or last will in like manner as other persons belonging to that country may do. In England they have always had and have full disposing power. See Law of Property Act, 1925, s. 178. As to escheat to the Crown of a bastard's property, see ESCHEAT.

Sub-sections (1) and (2) of s. 9 of the Legitimacy Act, 1926, apply to Scotland.

Bastard Eigné, an elder son born before marriage; thus if a man had a natural son, and afterwards married the mother and by her had a legitimate son, the latter was *mulier puisné*, and the elder son *bastard eigné*.—*Watk. Descent.* c. v. See Legitimacy Act, 1926 (c. 60) and LEGITIMATION.

Bastardize. 1. To declare one a bastard, as a Court does. 2. To give evidence to prove one a bastard. A mother (married) cannot bastardize her child. See ACCESS.

Bastardy-bonds, to indemnify parishes as to natural children likely to be born, made void by the Poor Law Amendment Act, 1834 (4 & 5 Wm. 4, c. 76), s. 70. (Repealed by Statute Law Revision Act, 1874.)

Bastart, one born in concubinage, a bastard.

Bas-ville, suburbs of a town.—*Fr.*

Batable-ground, land that is in controversy, or about the possession of which there is a dispute, as the lands which were situated between England and Scotland before the Union.—*Skene.*

Bath, Knights of the, a military order of knighthood, instituted by Richard II. The order was newly regulated by notifications

in the *London Gazette* of May 25, 1847, and August 16, 1850. The Most Honourable Order of the Bath ranks fourth of the orders, and is so called from the ceremonial bathing formerly observed before reception into the order.

Bathing, Sea. There is no Common Law right in the public to use the sea-shore for bathing. So held (*diss.* Best, J.) in *Blundell* v. *Catterall*, (1821) 5 B. & Ald. 268, followed by the Court of Appeal in *Brinckman* v. *Matley*, 1904, 2 Ch. 313. Local authorities may make regulations as to bathing by virtue of ss. 231–234 of the Public Health Act, 1936.

Baths and Washhouses. The Public Health Act, 1936, ss. 231–234, enables local authorities to provide public baths, washhouses and bathing places, and make bye-laws for these if under their management; also for swimming baths and bathing pools which are not under their management. This Act repeals the Baths and Washhouses Acts, 1846 to 1899. As to the provision of baths for the use of miners, see Coal Mines Act, 1911, s. 77.

Batta, discount. 'In revenue matters,' says Mr. Wilson in the *Indian Glossary*, 'the amount added to, or deducted from, any judgment according to the currency in which it is paid as compared with a fixed standard coin.'—*Indian.*

Battel, Wager of, a form of trial formerly used in military cases, arising in the court of chivalry and honour, in appeals of felony in criminal cases, and in the obsolete real action called a writ of action. The question at issue was decided by the result of a personal combat between the parties, or, in the case of a writ of right, between their champions. See *Ashford* v. *Thornton*, (1818) 1 B. & Ald. 405, which quickly led to the practice, which had long been disused, being formally abolished in 1819 by 59 Geo. 3, c. 46.

Battersea Park. See 14 & 15 Vict. c. 77.

Battersega, the ancient name of Battersea, in Surrey.

Battery [*batterie*, Fr., fr. *battre*, to beat], beating and wounding. This, in law, includes every touching or laying hold, however trifling, of another's person or clothes, in an angry, revengeful, rude, insolent, or hostile manner. It is a good defence to prove that the alleged battery happened by misadventure, or that it was merely an amicable contest, or that it was the correcting of a child by its parent, or the punishment of a criminal by the proper officer, or that the prosecutor assaulted or beat the defendant first, and that the defendant committed the alleged battery merely in his own defence. As to the criminal proceedings for battery, see Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 42, 43. See ASSAULT.

Battlings [fr. *battellus*, Lat., a small measure, fr. *batus*, measure of allowance], an allowance of money, as '*battles*,' or '*battels*,' is an allowance of provisions.—*Encyc. Londin.*

Bawdy-house. See BROTHEL.

Bay, or **Pen,** a pond-head made of a great height to keep in water for the supply of a mill, etc., so that the wheel of the mill may be turned by the water rushing thence, through a passage or flood-gate.—27 Eliz. c. 19. Also an arm of the sea surrounded by land except by the entrance.

Bazaar—(1) daily market or market-place; (2) a place for the sale of miscellaneous goods for no profits to the sellers but for the purpose of raising funds for some charitable purpose. These sales are exempt from the Shops Acts, 1912 and 1913 (see SHOP), and from the provisions of the Betting and Lotteries Act, 1934 (24 & 25 Geo. 5), s. 23. See MARKET; LOTTERY.

Beacon—[fr. *beacen*, A.S., a sign, whence *beckon*, to nod], a light-house, or sea-mark, formerly used to alarm the country, in case of the approach of an enemy, but now for the guidance of ships at sea. The Trinity House was empowered by 8 Eliz. c. 13 to set up any beacons or sea-marks wherever they should be deemed necessary (see 10 & 11 Vict. c. 27), and has now the superintendence and management of all light-houses, buoys, and beacons, by s. 634 of the Merchant Shipping Act, 1894.

Beaconage, money paid towards the maintenance of beacons.

Beadle, or **Bedel** [fr. *beodan*, *bydel*, A.S., to bid], a church-servant who is chosen by the vestry, and whose business is to attend the vestry, to give notice of its meetings, to execute its orders, to attend upon inquests, and to assist the constables. A crier or messenger of a court, who cites men to appear and answer; an inferior officer of a parish or liberty. Many other kinds of subordinate officers are so called.

Beam [fr. *beam*, Sax., tree], the part of a stag's head whence the horns spring like branches out of a tree. A common balance of weight in cities and towns.

Beams, and **Balance,** instruments for weighing goods and merchandise, mostly used in the city of London.

Bear, a cant term used in the Stock Ex-

change to denote one who has sold stocks or shares he does not possess in the hope of purchasing them at a lower price before the time arrives for completion of his contract by delivery of the stock. A 'Bear' is therefore one who sells for a fall in price as contrasted with a 'Bull' (*q.v.*), who buys for a rise in price.

Bearer, a person who carries anything; of a bill of exchange, the person in possession of a bill or note which is payable to bearer. See Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 2.

Bearer Bond. A species of security for money paid or advanced (as opposed to registered bonds), which originated in America, but which may be classified as a negotiable security in English law. See *Edelstein* v. *Schuler & Co.*, 1902, 2 K. B. 144.

Bearers, persons who oppress others, usually called maintainers: justices of assize had power to inquire into their actions, etc.—4 Edw. 3, c. 11, repealed by the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59).

Bearrocsira, the ancient name of Berkshire.

Beasts *of chase* [*ferœ campestres*, Lat.]; there are five, viz., the buck, doe, fox, marten, and roe; *of the forest* are the hart, hind, buck, hare, boar, and wolf, also called beasts of venery; *of the warren* are the hare, coney, and roe.—*Co. Litt.* 233 *a*.

Beau-pleader (to plead fairly), an obsolete writ upon the Statute of Malbridge (52 Hen. 3, c. 11), which enacted that neither in the circuits of the justices, nor in counties, hundreds, or courts-baron, any fines should be taken for fair pleading, i.e., for not pleading fairly or aptly to the purpose; upon this statute, then, this writ was ordained, addressed to the sheriff, bailiff, or him who shall demand such fine, prohibiting him to demand it; an *alias*, *pluries*, and attachment followed.—*Nat. Br.* 596. It used to be had as well in respect of *vicious* as *fair* pleading by way of amendment.—2 *Inst.* 122.

Bebba, the ancient name of Bamburgh, in Northamptonshire.

Beck (fr. *becc*, Sax.], a small brook.

Bed of Justice [*lit de justice*, Fr.], the seat or throne upon which the King of France sat when personally present in parliament; hence it signified the parliament itself.

Bedelary, the jurisdiction of a bedel.

Bederepe, or **Biderepe,** a service which certain tenants were anciently bound to perform, as to reap their landlords' corn at harvest.

Bede-role, or **Bead-roll,** a long list.

Bedewerl, banditti, profligate and excommunicated persons.—*Mat. Paris.*

Bedford Level, a tract of fenny land in the counties of Norfolk, Suffolk, Cambridge, Huntingdon, Northampton, and Lincoln, drained by the Earl of Bedford in 1649. By the Bedford Level Act (15 Car. 2, c. 17), all conveyances, except leases for seven years, are required to be registered. The practice is to register the instrument at length. The registry does not include wills; but conveyances omitted to be registered are valid for all purposes, except for entitling the grantees to the privileges conferred by the act on the owners of lands within the Level. See also Local Acts and 4 Geo. 4, c. 46.

Beer, a liquor, compounded of malt and hops. The selling of it by retail is regulated by various Acts. The Licensing Act of 1828, which did not allow the sale of beer by retail except in 'alehouses,' etc., requiring a license from justices of the peace—grantable or refusable in their absolute discretion—not being considered to afford sufficient facilities for supplying the public with beer, the Beer Act of 1830 (11 Geo. 4 & 1 Wm. 4, c. 64), was passed to allow any person to retail beer upon taking out an excise license only.

This Act was amended in 1834 by 4 & 5 Wm. 4, c. 85, which drew a distinction between houses for the retail of beer *to be drunk on the premises* where sold—commonly called *beerhouses*—and houses for the retail of beer *not to be drunk on the premises* where sold—commonly called *beershops*, by requiring that the keeper of a beerhouse should obtain as a condition precedent to his excise license a certificate of good character, signed by six ratepayers not engaged in the trade.

The Wine and Beerhouse Act, 1869 (32 & 33 Vict. c. 29), by requiring a justices' license—with a saving for vested interests—placed beerhouses, beershops, and alehouses much on the same footing, and the Licensing Acts of 1873 and 1874 have continued this mode of treatment. The Beer Dealers Retail Licenses (Amendment) Act, 1882 (45 & 46 Vict. c. 34), confers on the justices of the peace an absolute discretion to refuse licenses for the sale of beer to be drunk off the premises where sold, repealing *pro tanto* the Act of 1869, which limited the power to refuse such licenses to cases where the applicant or his house had been proved to bear a bad character or the house to be below a certain rateable value. See now

Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), which defines 'beerhouse' as premises to which a beerhouse license is attached; and Licensing Act, 1921 (10 & 11 Geo. 5, c. 42). The Finance Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 35), provides that a person shall not be disqualified for receiving a beer retailer's license by reason only that the premises are not a dwelling-house or that he is not the real resident holder or occupier.

The purity of beer is specially safeguarded by the Inland Revenue Act, 1880, and the Customs and Inland Revenue Act, 1885, s. 8. See also INTOXICATING LIQUORS; ADULTERATION.

Beer Duties. See HEREDITARY DUTIES.

Beerhouse. A house where beer is sold to be drunk either on or off the premises.

Beershop. A house where beer is sold to be drunk off the premises only.

Bees. These are *ferœ naturæ* and the property in them is *ratione soli*; but a person retains the ownership in a swarm which flies from his land so long as he can keep them in sight and has the power to pursue them, even though the pursuit involve a trespass. If they take refuge on the land of another and he in due course reclaims them, then that person obtains a property in them *propter industriam*. See 2 *Bl. Com.* 392. The negligent keeping of bees in unreasonable numbers, at an unreasonable place, and with appreciable danger will render their owner liable for damage which they may cause (*O'Gorman* v. *O'Gorman*, 1903, 2 I. R. 573). As to the bee pest in Ireland, see Bee Pest Prevention (Ireland) Act, 1908 (8 Edw. 7, c. 34).

Bega, a land measure used in the East Indies. In Bengal it is equal to about a third part of an acre.

Beggars. Begging in a public place is an offence of an 'idle and disorderly person' within the meaning of the Vagrancy Act, 1824, s. 3 (5), and endeavouring anywhere to obtain alms by exposure of wounds, an offence of a 'rogue and vagabond' within s. 4 (5) of that Act (see VAGRANT). Procuring a child to beg in a public place is an offence against s. 14 of the Children Act, 1908, and see the Children and Young Persons Act, 1932 (23 & 24 Geo. 5, c. 12), s. 4.

Begging the Question. See PETITIO PRINCIPII.

Begin, Right to. See RIGHT TO BEGIN. This right rests with the party on whom is the onus of proving the affirmative. See *Best on Evidence*, sect. 637.

Begum, a lady, princess, woman of high rank.—*Indian.*

Behoof [fr. *behofian*, A.S., to be fit], use, service, profit, advantage, or behalf.

Belgæ, the ancient name of the inhabitants of Somersetshire, Wiltshire, and Hampshire; also of the city of Wells, in Somersetshire. Probably a Celtic tribe. The Romans, whom they resisted for nearly 100 years, included them indiscriminately among 'Germanic' populations.

Bellisama, the ancient name of Rhibelmouth, in Somersetshire.

Bell. As to rent by ringing church bells, see *Doe* d. *Edney* v. *Benham*, (1845) 7 Q. B. 976; and for a case of nuisance by bell-ringing, see *Soltau* v. *De Held*, (1851) 2 Sim. N. S. 133. As to annoyance in street by ringing doorbell, see Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 28; Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 54; and STREET OFFENCES.

Belles Lettres, polite literature.

Belligerent. A nation or party of persons waging regular war as recognized by the Law of Nations.

Bellinus sinus, the ancient name of Billingsgate, in the city of London.

Bello campo, de, the ancient name of Beauchamp.

Belloclivum, Bello desertum, Bellus locus, the ancient name of Beaudesert, in Staffordshire.

Bello loco, de, the ancient name of Beaulieu, in Hampshire.

Bellomariscus, the ancient name of Beaumaris, the county town of Anglesey.

Bello Prato, de, the ancient name of Beaupré.

Bench [fr. *bance*, A.S.], or **Banc** [Fr.], a tribunal of justice. (1) The judge or the aggregate body of the judges of any given court; (2) the bishops; (3) the benchers of an Inn of Court. See KING'S BENCH.

Benchers, more properly styled Masters of the Bench, seniors in the Inns of Court, usually but not necessarily King's Counsel, elected by co-optation, and having the entire management of the property of their respective Inns. The benchers have also the power of punishing a barrister guilty of misconduct, by either admonishing or rebuking him, by prohibiting him from dining in the hall or using the library, or even by expelling him from the Bar, called disbarring. They may also refuse admission to a student, or reject his call to the Bar, as was done in two cases in 1888. There is an appeal from them to the judges (*R.* v. *Gray's Inn*, (1780) 1 Dougl.

353). See *Odgers on Inns of Court and of Chancery.*

Bench Warrant. A warrant for the apprehension of a person, issued by a judge of a Court of Record on the Bench, such as to commit a witness for trial for perjury under s. 19 of the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100). The practice of issuing a warrant by a Court of Record for the immediate arrest and production before the Court of any indicted person is old established. See *Archbold's Crim. Pract.; Chitty's Statutes,* tit. '*Criminal Law.*'

Benefice [fr. *beneficium,* M. Lat., a kindness], an ecclesiastical living and promotion, a rectory or vicarage : all church preferments except bishoprics ; also a fief in the feudal system. See s. 13 (1) of the Benefices Act, 1898 (61 & 62 Vict. c. 48).

The Benefices Act, 1898, requires registration of the transfer of the right of patronage of a benefice, prohibits the sale of the right of the next presentation thereto, and requires a bishop before collating or admitting a clergyman to a benefice to give one month's notice to the churchwardens of the parish of the intended collation or admission.

By the Benefices Act, 1898 (Amendment) Measure, 1923 (14 & 15 Geo. 5, No. 1), s. 1, a right of patronage is to be incapable of sale after the benefice has been twice vacant subsequent to 14 July, 1924 ; and by s. 2 a patron may make a declaration under seal that his right of patronage shall thenceforth be without power of sale. And by the Benefices (Transfer of Rights of Patronage) Measure, 1930 (20 & 21 Geo. 5, No. 8), a person intending to transfer a right of patronage must give notice to the bishop.

When a right of patronage has been transferred the Parochial Church Council now has power under the Benefices (Purchase of Rights of Patronage) Measure, 1933 (23 Geo. 5, No. 1), within three years from the date of registration of the transfer, to purchase the advowson from the new patron, in which case it will be vested in the Diocesan Board of Patronage.

The Benefices Act, 1898, allows a bishop to refuse to institute a clergyman to a benefice, on the ground (1) that a year has not elapsed since the last transfer of the right of patronage, or (2) that at the date of presentation not more than three years have elapsed since the presentee was ordained deacon, or that the presentee is unfit for the discharge of the duties of the benefice by reason of physical or mental infirmity or incapacity, pecuniary embarrassment of a serious character, grave misconduct or neglect of duty in an ecclesiastical office, evil life, having by his conduct caused grave scandal concerning his moral character since his ordination, or having, with reference to the presentation, been knowingly party or privy to any transaction or agreement which is invalid under the Act.

From a bishop's refusal to institute on any of the above grounds, or any other ground otherwise sufficient, except of doctrine or ritual, there is an appeal to the archbishop of the province and a judge of the Supreme Court. The Benefice (Exercise of Rights of Presentation) Measure, 1931 (21 & 22 Geo. 5, No. 3), gives to Parochial Church Councils some control over presentations.

As to the union of benefices, see the Union of Benefices Measures, 1923 (14 & 15 Geo. 5, No. 2) and 1936 (26 Geo. 5 & 1 Edw. 8, No. 2).

Beneficial Owner. See COVENANTS, TITLE FOR, and also s. 76 of the L. P. Act, 1925, replacing s. 7, Conveyancing Act, 1881.

Beneficiary, he that is in possession of a benefice ; also the person having the beneficial enjoyment of property of which a trustee, executor, etc., has the legal possession, in which sense it is gradually superseding the old term *cestui que trust* : see, e.g., s. 62 of the Trustee Act, 1925. See CESTUI QUE TRUST.

Beneficio primo ecclesiastico habendo, an ancient writ, which was addressed by the king to the Lord Chancellor, to bestow the benefice that should *first* fall in the royal gift, above or under a specified value, upon a person named therein.—*Reg. Brev.* 307.

Beneficium abstinendi, the power of an heir to abstain from accepting the inheritance.—*Sand. Just., Cum. C. L.*

Beneficium cedendarum actionum, the privilege by which a surety could, before paying the creditor, compel him to make over to him the actions which belonged to the stipulator, so as to avail himself of them.—*Sand. Just.*

Beneficium competentiæ, a right of certain persons which saves them from being condemned beyond such an amount as they can pay without depriving themselves of the necessaries of life.—*Cum. C. L.* 350.

Beneficium inventorii, the privilege which an heir had by an inventory of the testator's property to protect himself from the debts.—*Cum. C. L.* 159.

Beneficium ordinis, or **excussionis,** or **discussionis,** a privilege by which a creditor was bound to sue the principal debtor first,

and could only sue the sureties for that which he could not recover from the principal.—*Sand. Just.*

Beneficium separationis, the right to have the goods of an heir separated from those of the testator in favour of creditors.—*Civil Law.*

Benefit Building Societies. See BUILDING SOCIETIES.

Benefit of Clergy [*privilegium clericale*, Lat.], an arrest of judgment in criminal cases. The origin of it was this: Princes and states, anciently converted to Christianity, granted to the clergy very bountiful privileges and exemptions, and particularly an immunity of their persons in criminal proceedings before secular judges. The clergy, afterwards increasing in wealth, number, and power, claimed this benefit as an indefeasible right, which had been merely a matter of royal favour, founding their principal argument upon this text of Scripture: 'Touch not mine anointed, and do my prophets no harm.' They obtained great enlargements of this privilege, extending it not only to persons in holy orders, but also to all who had any kind of subordinate ministration in the church, and even to laymen if they could read, applying it to civil as well as criminal causes. These exemptions at length grew so burthensome and scandalous, that the legislature from time to time interfered, by making particular offences 'felony, without benefit of clergy' (see, e.g., the Piracy Act, 1536 (28 Hen. 8, c. 15), s. 3), and finally the Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 6, abolished benefit of clergy altogether.—See 2 *Hale's Hist.* 323; *Jac. Law Dict.*

Benefit of Discussion, is that whereby the antecedent heir, such as the heir of line in a pursuit against the heir of tailzie, etc., must be first pursued to fulfil the defunct's deeds and pay his debts. This benefit is likewise competent in many cases to cautioners.—*Scots Law.*

Benefit Societies. See FRIENDLY SOCIETIES.

Benerth, an ancient service which a tenant rendered to his lord with plough and cart.

Benevolence, nominally a voluntary gratuity given by subjects to their king, but in reality a tax or forced loan, now yielded only with consent of the House of Commons, in pursuance of the Petition of Right, 3 Car. 1, and 1 W. & M. st. 2, s. 2.

Also an aid granted by a tenant to his lord, in times of distress, abolished by 13 Car. 2, c. 24.

Benevolentia regis habenda, the form of purchasing the royal pardon and favour, in ancient fines and submissions, to be restored to estate, title, or place.—*Paroch. Antiq.* 172.

Benignè faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat quam pereat; et verba intentioni non è contra debent inservire. *Co. Litt.* 36.—(Constructions are to be made liberally, on account of the simplicity of the laity, that the thing may rather avail than perish; and words ought to serve the intention, not contrariwise.) These maxims relate to the mode of interpreting written instruments. The judges will rather apply the words of a document to fulfil its lawful intent, than destroy such intent because of insufficient language, for to the intention, when once discovered, all technical forms of expression must give way.

See the maxims very fully illustrated in *Broom's Legal Maxims*, it being said that, notwithstanding qualifications and restrictions, the maxims 'are undoubtedly the most important and comprehensive which can be used for determining the true construction of written instruments.'

Bequeath [fr. *becwæthan*, fr. *cwæthan*, A.S., to say], to leave by will to another. The word is properly applied to personalty only, but in a will avails to transmit real property, as well as the word 'devise,' which is the proper word; and *vice versâ*.

Bequest, a gift of personal property by will; a legacy.

Berbecaria, a sheep-down, or ground to feed sheep.

Berbiage, a rent paid for the depasturing of sheep.

Bercaria, a sheep-fold, or other enclosure to keep sheep.

Bercia, Bercheria, the ancient names of Berkshire.

Berechingum, the ancient name of Barking, in Essex.

Berefellarii, the seven churchmen, who formerly belonged to the church of St. John of Beverley.—*Blount.*

Berewicha, or **Berewica,** a village or hamlet belonging to some town or manor.—*Domesday Book.*

Berghmaster [fr. *berg*, Sax., a hill], a bailiff or chief officer among the Derbyshire miners, who also executes the office of coroner; a mountaineer or miner.

Berghmoth, or **Berghmote** [fr. *berg*, Sax., a hill, and *gemote*, an assembly], an assembly or court upon a hill, held in Derbyshire, for deciding pleas and controversies among the miners.—*Squire on Anglo-Saxon Government.*

Beria, Berie, or **Berry,** a large open field. Those cities and towns in England which end with this word are built on plain and open places, and do not derive their names from boroughs, as *Spelman* imagines; the true sense of the word *berie* is a flat wide champaign, as is proved from sufficient authorities by the learned *Du Fresne,* who observes that *Beria Sancti Edmundi,* mentioned by *Mat. Paris,* sub. ann. 1174, is not to be taken for the town, but for the adjoining plain.

Bermundi Insula, the ancient name of Bermondsey, in Surrey.

Berne Convention, an international convention drawn up at Berne in 1886 for the international protection of copyright. This was revised in 1908 by the Berlin Convention, also known as the Revised Berne Convention, and in consequence of this revision the Copyright Act, 1911, was passed. See COPYRIGHT.

Bernet [fr. *byran,* Sax.], to burn.

Berra, a plain open heath.

Berry, or **Bury** [fr. *beorg,* Sax., a hill or castle], a villa or seat of habitation of a nobleman; a dwelling or mansion house; a sanctuary.

Bersa, a limit or bound.

Bersare [fr. *berser,* Ger.], to shoot or hunt.

Berwick-upon-Tweed, a town which was originally part of Scotland, but is now part of the realm of England, and bound by all Acts of the British Parliament, whether specially named or otherwise (Wales and Berwick Act, 1746 (20 Geo. 2, c. 42), s. 3). It is a county of a town corporate, and is no part of the county of Northumberland. See *Hale's Hist.* 257.

Besaile, or **Besayle** [fr. *besaïeul,* Fr.], a father of a grandfather.

Bescha [fr. *bescher,* Fr., to dig], a spade or shovel.

Beset. Section 7 of the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), makes it an offence to *beset* the house or place where another resides or works with a view to compel him to abstain from doing or to do any act which he has a legal right to do or abstain from doing. The effect of this section in the case of a trade dispute has been mitigated by s. 2 of the Trade Disputes Act, 1906 (6 Edw. 7, c. 47), which legalizes 'peaceful picketing,' but by the Trade Disputes and Trade Unions Act, 1927 (17 & 18 Geo. 5. c. 22), s. 3, attending in such numbers or manner as is declared to be unlawful by the Act shall be deemed to be a watching or besetting within s. 7 of the 1875 Act.

Besoin, need. See AU BESOIN.

Bestiality, the crime of men with beasts, punishable under the Offences against the Person Act, 1861, s. 61, by penal servitude for life, or for not less than ten years, but this minimum term is abolished, and power is given to inflict imprisonment for two years or less, by the Penal Servitude Act, 1891.

Bestials, beasts or cattle of any sort.

Betaches, laymen using glebe lands.

Bethlehem, a royal mental hospital.

Better Equity. Where as between rival claimants in a court of equity the court holds that one of them, either on the ground of notice or of priority in time or for some other sufficient reason, is entitled to priority over the other, such claimant is said to have the 'better equity.'

Betterment, increasing the value of property. Where the increase is due to the execution of public improvements, some modern Acts provide that the neighbouring owners should bear a special share of the expense. The principle seems to have been applied, under the term 'melioration,' by 19 Car. 2, c. 3, s. 26, when London was being re-built after the Great Fire. For an instance of what might now be considered betterment, see *Re South Eastern Railway & L.C.C.'s Contract,* 1915, 2 Ch. 252.

The principle has been adopted by the Town and Country Planning Act, 1932 (22 & 23 Geo. 5, c. 48), s. 21, which, upon or apart from any question of compensation, allows local authorities to claim for betterment. See *Re Webster,* 51 T. L. R. 201. See also Public Health Act, 1925, s. 31, and Local Government Act, 1929, Sched. I., Part I., and IMPROVEMENT OF TOWNS.

Betting. For definition and for s. 18 of the Gaming Act, 1845 (8 & 9 Vict. c. 109), see WAGER.

Bets are irrecoverable at law by virtue of s. 18 of the Gaming Act, 1845, and the Gaming Act, 1892 (55 & 56 Vict. c. 9). The latter statute gets rid of the decision in *Read* v. *Anderson,* (1884) 13 Q. B. D. 779; and see *Tatam* v. *Reeve,* 1893, 1 Q. B. 44, and *De Mattos* v. *Benjamin,* (1894) 70 L. T. 560). In the case of a cheque given in payment of a gaming transaction the combined effect of s. 1 of the Gaming Act, 1710 (9 Anne, c. 14), and ss. 1 and 2 of the Gaming Act, 1835, was that if it was paid to any indorsee or holder, the amount so paid could be recovered by the drawer from the payee (*Dey* v. *Mayo,* 1920, 2 K. B.

346 ; *Sutters* v. *Briggs*, 1922, 1 A. C. 1). The Gaming Act, 1922, does away with this position.

The Betting Act, 1853 (16 & 17 Vict. c. 119)—as to which see *Reg.* v. *Brown*, 1895, 1 Q. B. 119—elaborately provides for suppressing of houses, rooms, offices, or ' places ' kept open for the purpose of betting. In *Powell* v. *Kempton Park Racecourse Co.*, 1899, A. C. 143, it was held that a betting-ring on a racecourse to which subscribers only were admitted was not a ' place ' within the meaning of the Act.

Betting in the metropolitan streets by three or more persons is constituted a penal obstruction by the Metropolitan Streets Act, 1867 (30 & 31 Vict. c. 134), s. 23 ; and every person betting in any street or public place, or in any place to which the public have access (including, as was decided in *Langrishe* v. *Archer*, (1882) 10 Q. B. D. 44, a railway carriage on its journey), is declared to be a rogue and a vagabond within the Vagrancy Act, 1824, by the Vagrant Act Amendment Act, 1873 (see VAGRANT).

Street betting as prohibited by the Street Betting Act, 1906, is committed by any person frequenting or loitering in streets or public places on behalf either of himself or of any other person for the purpose of book-making, or betting, or wagering, or agreeing to bet or wager, or paying or receiving or settling bets. Upon a third or subsequent offence, or if there was any betting transaction with a person under 16 years, the offender is liable to imprisonment. Loitering for the purpose of betting includes distributing handbills containing offers to bet, etc. (*Dunning* v. *Swetman*, 1909, 1 K. B. 774; *Richards* v. *Price*, 1931, 2 K. B. 204 (distribution of entry forms in football pools)).

The Betting Act, 1874 (37 & 38 Vict. c. 15), imposes penalties on persons advertising or sending letters, circulars, telegrams, etc., as to betting ; and by the Betting and Loans (Infants) Act, 1892 (55 & 56 Vict. c. 4), soliciting infants by circular, etc., to bet is made a misdemeanour punishable by imprisonment or fine, or both.

Betting duties were imposed by ss. 15–18 of the Finance Act, 1926, but the duties chargeable on bets made with a bookmaker were repealed by the Finance Act, 1929.

The totalisator was legalized under certain conditions by the Racecourse Betting Act, 1928 ; which Act also contained a section (which is now repealed except as to Northern Ireland) dealing with bets made with persons under seventeen). The Betting and Lotteries Act, 1934, amends the law regarding betting on tracks. It permits the establishment of the totalisator on dog racecourses on certain conditions, and prohibits betting with persons under eighteen and the employment of young persons in betting business. The Ready Money Football Betting Act, 1920, penalises the printing, publishing or circulating of circulars, advertisements or coupons of any ready money football betting business. See *Chitty's Statutes*, tit. ' *Games and Gaming*,' *Coldridge's Law of Gambling*, and *Jenkins on Betting Offences ;* and tits. INFANT ; GAMING ; and WAGER.

Beverches, bedworks, or customary services done at the bidding of the lord by his inferior tenants.

Bewared, expended. Before the Britons and Saxons had introduced the general use of money, they traded chiefly by exchange of wares.

Bias [adopted from Fr. *biais*, oblique]. The law will not suppose a possibility of bias in a judge, who is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea.—3 *Bl. Com.* 361. See *R.* v. *Cork Justices*, 1910, 2 Ir. R. 271.

Bible. For punishment of persons (brought up, etc., as Christian) denying ' the Holy Scriptures of the Old and New Testament to be of divine authority,' see 9 Wm. 3, c. 32 (Ruff).

Bice Vlasya, a man of the third Hindu caste who by birth is a trader or husbandman.

Bicycles. The use of these and similar machines, formerly regulated by byelaws made by local authorities under the Highways Act of 1878, and the Municipal Corporations Act, 1882, is regulated by s. 85 of the Local Government Act, 1888, which repeals all Acts empowering byelaws to be made on the subject, declares bicycles, etc., to be ' carriages within the meaning of the Highway Acts ' (see especially s. 78 of the Highway Act, 1835) ; but see *Simpson* v. *Teignmouth, etc., Bridge Co.*, 1903, 1 K. B. 405, and in addition provides that cyclists must carry lamps between one hour after sunset and one hour before sunrise, and must give warning of their approach by bell or whistle. The Road Traffic Act, 1934, makes provisions as to red reflectors and a white surface in order to exempt bicyclists from having to shew a red rear light under Road Transport Lighting Act, 1927, s. 5 (see Pedal Cycles (White Surface) Provisional Regulations, 1934, 18 October,

1934); it also makes regulations as regards brakes, and prohibits (except on conditions) the carrying of more than one person.

Motor Cycles. Motor cycles are specially classified under Road Traffic Act, 1930, as mechanically propelled vehicles (not invalid carriages) with less than four wheels and weighing unladen not more than 8 cwt. A driving test of competency is required before the issue of a driving licence, though a provisional licence may be issued for learning purposes; also a degree of physical fitness. The minimum age is now 16. Regarding the compulsory insurance of third-party risks, and the pertinent regulations concerning motor cycles and offences in regard to driving, especially reckless, dangerous, or careless driving, see the Road Traffic Acts, 1930 and 1934.

Bidal, or **Bidall** [fr. *biddan*, Sax., to pray], an invitation of friends to drink ale at the house of some poor man, who hopes thereby to be relieved by charitable contribution. It is something like '*house-warming*,' i.e., a visit of friends to a person beginning to set up housekeeping.—26 Hen. 8, c. 6.

Bidder, a person who makes an offer at an auction, which he may retract before acceptance, although there may be a condition prohibiting it. See AUCTION.

Bidding of the Beade, a charge or warning given by the parish priest to his parishioners at some special time, to come to prayers upon any festival or saint's day, according to the canons of the church; also asking the banns is called bidding.—*Rubric.*

Bidding Prayer, an old form of prayer used before sermon, exhorting the people to pray for men of all conditions. A similar prayer for the University is used in the University Churches of Oxford and Cambridge.

Bidentes, two-yearling stags, or sheep of the second year.—*Paroch. Antiq.* 216.

Biens [Fr.], property; this term comprehends not merely goods and chattels, as in the Common Law, but also real estate, according to the sense attached to it by the civilians and continental jurists. Cf. the definition in s. 205 (1) (xx) of the Law of Property Act, 1925: 'Property includes anything in action and any interest in real or personal property.'

Biga, a cart, wain, or waggon; a chariot drawn by two horses, harnessed side by side; or, properly, a cart with two wheels, sometimes drawn by one horse.

Bigamus, a person guilty of the offence of bigamy.—4 *Inst.* 88.

Bigamy. By the Offences against the Person Act, 1861, s. 57, whomsoever, being married, shall marry any other person during the life of the former husband or wife . . . shall be guilty of a felony punishable by penal servitude for not more than seven years, or less than three, or by imprisonment for not more than two years, with or without hard labour. That section, however, does not apply to any second marriage contracted elsewhere than in England and Ireland by any other than a subject of His Majesty or to any person whose husband or wife shall have been continually absent for seven years from such person, and shall not have been known to such person to be living within that time; or even, as was held in *Reg.* v. *Tolson*, (1889) 23 Q. B. D. 168, by nine judges to five, to a person re-marrying within the seven years with a *bonâ fide* belief on reasonable grounds in the death of the first husband before the second marriage. Bigamy will have been committed though the second form of marriage was celebrated beyond the king's dominions (*R.* v. *Russell* (*Earl*), 1901, A. C. 446), and the indictment need not aver that the accused was a British subject (*R.* v. *Audley*, 1907, 1 K. B. 383).

Bilagines, byelaws of corporations, etc.

Bilancils deferendis, an obsolete writ addressed to a corporation for the carrying of weights to such a haven, there to weigh the wool anciently licensed for transportation.—*Reg. Brev.* 270.

Bilateral Contract, a contract in which both the contracting parties are bound to fulfil obligations reciprocally towards each other; as a contract of sale, where one becomes bound to deliver the thing sold, and the other to pay the price of it.—*Civil Law.*

Bilboes [fr. *boja*, Lat.; *boia*, Prov.; *boie*, O. Fr., fetters], a punishment at sea answering to the stocks on land.

Bilinguis, one who uses two tongues or languages; a jury, part Englishmen and part foreigners, which used to try a foreigner for a crime.

Bill. See BILL IN CHANCERY; BILL OF EXCHANGE; BILL IN PARLIAMENT, etc.

Bill of Adventure. See ADVENTURE, BILL OF.

Bill of Appeal, an abolished criminal prosecution.—59 Geo. 3, c. 46. See BATTEL.

Bill of Attainder, a bill declaring a person attainted and his property confiscated.

Bill Chamber, a department of the Court of Session in Scotland. Abolished by the

Administration of Justice (Scotland) Act, 1933 (23 & 24 Geo. 5, c. 41).

Bill in Chancery, or **Bill in Equity,** a printed or written statement of a plaintiff's case, in the nature of a petition to the Court, praying for some redress.

For the descriptions of the several bills, see their distinctive names, as PEACE, BILL OF.

Bills are now abolished, and all actions in the High Court are now commenced by writ of summons, followed in certain cases by a statement of claim (R. S. C. 1883). See STATEMENT OF CLAIM ; WRIT OF SUMMONS ; and PLEADING.

Bill of Costs, an account of the charges and disbursements of an attorney or solicitor incurred in the conduct of his client's business. It must be delivered, signed, to the client, one *calendar* month before an action can be brought to recover the amount thereof, in order to give the client an opportunity of taxing it. An executor or administrator of an attorney or solicitor must also deliver a bill of costs, signed, and delivered, before he can sue upon it. See Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37), ss. 64 and 65. As to taxation, *ibid.*, ss. 66 to 68, and see the Solicitors Remuneration Order, 1932 (S. R. & O. of 1932, No. 940) ; *Chit. Stat.*, tit. '*Solicitors.*'

Bill of Credit, a license or authority given in writing from one person to another, very common among merchants, bankers, and those who travel, empowering a person to receive or take up money of their correspondents abroad.

Bill in Criminal Cases. Grand Juries were abolished by the Administration of Justice (Miscellaneous Provisions) Act, 1933 (23 & 24 Geo. 5, c. 36), from 1st September, 1933, except in certain cases (s. 1 (9)). Section 2 of the Act provides for the new procedure. Until this Act was passed the bill was an indictment for a crime or misdemeanour preferred to a grand jury ; evidence in support of it was adduced ; if the grand jury thought it a groundless accusation, they endorsed ' not a true bill,' or ' not found,' and then the party was discharged without further answer, but a fresh bill might afterwards be preferred to a subsequent grand jury. If they were satisfied of the truth of the accusation, they then endorsed upon it ' a true bill '; the indictment was then said to be found and the party stood his trial.

Bill of Debt, or **Bill Obligatory,** when a merchant by his writing acknowledges himself in debt to another, in a certain sum, to be paid on a certain day, and subscribes it at a day and place certain. It may be under seal or not.—*Com. Dig.* ' *Merchant,*' *F.* 2.

Bill of Entry, an account of the goods entered at the Custom House, both inwards and outwards. It must state the name of the merchant exporting or importing, the quantity and species of merchandise, and whither transported, and whence. Also the name of a daily statistical publication issued by the Customs giving the particulars of goods imported and exported. See Customs Laws Consolidation Act, 1876 (39 & 40 Vict. c. 36).

Bill of Exceptions. Prior to the Judicature Acts, if a judge, at the trial of a cause at *Nisi Prius*, mistook the law, either in directing a judgment of nonsuit or in refusing or admitting evidence or challenges, and other matters, the counsel for the party dissatisfied with the ruling of the judge might tender a bill of exceptions at any time *before* verdict, and require the judge to seal it.

By the Judicature Act, 1875, Ord. LVIII., r. 1, bills of exception are abolished. But it is provided by s. 22, ' that nothing in the said Act, nor in any rule, etc., shall prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the judge to the jury, etc. : Provided also, that the said right may be enforced either by motion in the High Court of Justice or by motion in the Court of Appeal, *founded upon an exception entered upon or annexed to the record.*' It is believed that this section has never been acted upon. The present mode of proceeding is by motion for a new trial.

In the Court of Session in Scotland a Bill of Exceptions presented to the Inner House is the procedure for obtaining a new trial in civil jury cases where the objection to the verdict is based either (1) on a misdirection in law, or (2) on the undue admission or rejection of evidence which might materially affect the verdict.

Bill of Exchange. Defined in the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 3, as an ' unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.'

It is a chose in action, but, for the encouragement of commerce, it is assignable,

at Common Law, by mere endorsement, so that very many names are frequently attached to one bill as endorsers, and each of them is liable to be sued upon the bill, if it be not paid in due time. The person who makes or draws the bill is called the *drawer*, he to whom it is addressed is, before acceptance, the *drawee*, and after accepting it, the *acceptor*; the person in whose favour it is drawn is the *payee*; if he endorse the bill to another, he is called the *endorser*, and the person to whom it is thus assigned or negotiated is the *endorsee* or *holder*, and so on *ad infinitum*. A payee is not a holder in due course (*Jones* v. *Waring*, 1926, A. C. 670). The earliest recorded bills of exchange, according to Beckmann (*Hist. Invent.* iii. 430), are mentioned by the jurist Baldus, and bear date A.D. 1328. But they were by no means in common use till the next century. However, they are said to have been in use among the Florentines in the twelfth, and the Venetians in the thirteenth century. In 3 Rich. 2, c. 3, they are referred to as a means of conveying money out of the realm though not as a process in use among English merchants. The earliest English case on the subject is *Martin* v. *Boure*, (1603–04) Cro. Jac. 6. (See the judgment of Lord Cockburn, C.J., in *Goodwin* v. *Robarts*, (1855) L. R. 10 Ex. 337 at p. 346.)

The whole law of bills of exchange, except so far as relates to stamps and other small matters, is 'codified' by the Bills of Exchange Act, 1882, above mentioned, which, except s. 53, providing that a bill is not an assignment of funds in the hands of the drawee, assimilates the law of England and Scotland, but makes comparatively little alteration in the law of either country.

The remedy to recover on bills of exchange and promissory notes was much simplified and shortened by the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), the procedure under which was continued by Jud. Act, 1875, Ord. II., r. 6, but abandoned afterwards by one of the rules of April, 1880. See now R. S. C. Ord. III., r. 6, and Ord. XIV.

See also BANKER'S DRAFT; CHEQUE; NEGOTIABLE INSTRUMENTS; PROMISSORY NOTES; PROTEST; NOTE A BILL, TO; INCHOATE.

Bill of Grand Jury. See GRAND JURY.

Bill of Gross Adventure, an instrument in writing which contains a contract of bottomry, respondentia, and every species of maritime loan.—*Fr. Law.*

Bill of Health, 'a certificate or instrument, signed by consuls or other proper authorities, delivered to the masters of ships at the time of their clearing out from ports or places suspected of being particularly subject to infectious disorders, certifying the state of health at the time that such ship sailed. A *clean* bill imports that at the time the ship sailed no infectious disorder was known to exist. A *suspected* bill, commonly called a *touched* patent or bill, imports that there were rumours of an infectious disorder, but it had not actually appeared. A *foul* bill, or the absence of a clean bill, imports that the place was infected when the vessel sailed.'—*McCull. Com. Dict.* See QUARANTINE.

Bill of Indemnity, an Act of Parliament, passed every session until 1869, but discontinued in and after that year, as having been rendered unnecessary by the passing of the Promissory Oaths Act, 1868, for the relief of those who have unwittingly or unavoidably neglected to take the necessary oaths, etc., required for the purpose of qualifying them to hold their respective offices. See 30 & 31 Vict. c. 88; 31 & 32 Vict. c. 72, s. 16; and OATH. Acts of Indemnity have been passed at various times to protect the military authorities and others for having exceeded their powers, e.g., Indemnity Act, 1920.

Bill of Lading, a memorandum signed by masters of ships, in their capacity of carriers, acknowledging the receipt of merchants' goods, of which there are usually three parts—one kept by the consignor, one sent to the consignee, and one preserved by the master. It is the evidence of the title to the goods shipped; and by its endorsement and delivery, the transfer of the property in the goods specified therein is generally effected. By the Bills of Lading Act, 1855, the rights of suit under a bill of lading vest in the consignee or endorsee (as if the contract contained in the bill of lading had been made with himself) without prejudice to any right of stoppage *in transitu* or to freight. See Carriage of Goods by Sea Act, 1924 (14 & 15 Geo. 5, c. 22), and *Carver on Carriage by Sea.*

Bill of Middlesex, a fictitious mode of giving the Court of King's Bench jurisdiction in personal actions, by arresting a defendant for a supposed trespass. The 2 Wm. 4, c. 39, abolished this fiction, and after 1 & 2 Vict. c. 110, all personal actions in the Superior Courts of Law at Westminster were commenced by writ of summons.

Bill of Pains and Penalties, a special Act of the legislature which inflicts a punishment, less than death, upon persons sup-

posed to be guilty of treason or felony, without any conviction in the ordinary course of judicial proceedings. It differs from a bill of attainder in this, that the punishment inflicted by the latter is death.—4 *Br. & Had. Com.* 334.

Bill of Parcels, an account given by the seller to the buyer, containing particulars of the goods bought, and of their price.

Bill in Parliament, is either (1) public, affecting the countries of England, Scotland, or Ireland generally, or a very important part of them, as London; (2) local and personal, affecting particular areas only, as railway construction bills, water or gas supply bills, etc.; or (3) private, as bills settling estates, divorce bills (rendered generally unnecessary by the Matrimonial Causes Act, 1857), and naturalization bills.

All three kinds formerly required the assent of Sovereign, Lords, and Commons, but the assent of the House of Lords can now be dispensed with in the case of bills passed under the provisions of the Parliament Act, 1911; and by the Provisional Collection of Taxes Act, 1913 (3 Geo. 5, c. 3), resolution passed by a Committee of Ways and Means of the House of Commons varying or renewing taxation has for a limited period the same statutory effect as if contained in an Act of Parliament. In the case of local and personal bills and private bills the promoters and opposers are heard by counsel before select committees, whose decision is rarely questioned, the proceedings in the Houses being ordinarily merely formal. See *May's Parliamentary Practice; Chitty's Statutes*, tit. '*Bill in Parliament*'; ACT OF PARLIAMENT and PARLIAMENT.

Bill of Peace. See PEACE, BILL OF.

Bill of Rights, a declaration delivered by the Lords and Commons to the Prince and Princess of Orange, and afterwards enacted in parliament, when they became King and Queen, as 1 W. & M., sess. 2, c. 2. Its preamble sets forth that King James, by the assistance of evil counsellors, endeavoured 'to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom,' by exercising a power of dispensing with and suspending of laws; by levying money for the use of the Crown by pretence of prerogative, without consent of parliament; by prosecuting those who petitioned the King, and discouraging petitions; by raising and keeping a standing army in time of peace; by violating the freedom of election of members to serve in parliament; by violent prosecutions and the causing partial and corrupt jurors to be returned on trials, excessive bail to be taken, excessive fines to be imposed, and cruel punishments to be inflicted; all of which are declared to be illegal; and the Act declares that the Lords Spiritual and Temporal and Commons 'do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties.'

The Act also excludes from the Crown every person reconciled to or holding communion with the See of Rome or professing the popish religion or marrying a papist, and enacts that every sovereign shall on the first day of the meeting of his first parliament or at coronation (which shall first happen) make and subscribe a declaration. This form of declaration, being extremely obnoxious to his Majesty's Roman Catholic subjects, has been done away with by the Accession Declaration Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 29), which now provides a form of declaration as follows:—

I [*here insert the name of the Sovereign*] do solemnly and sincerely in the presence of God profess, testify, and declare that I am a faithful Protestant, and that I will, according to the true intent of the enactments which secure the Protestant succession to the Throne of my Realm, uphold and maintain the said enactments to the best of my powers according to law.

Bill of Sale, an assignment by deed of chattels personal, whether absolute or by way of security. See *Twyne's case*, (1602) 3 *Rep.* 80 [44 Eliz.], and 1 Sm. L. C. 1 *et seq.*, where the principal cases are collected.

The registration of bills of sale was first required in 1854 by 17 & 18 Vict. c. 31, which enacted that every bill of sale should be void as against assignees in bankruptcy and execution creditors, unless the bill or a copy thereof should have been filed in the Court of Queen's Bench within 21 days after its execution, together with an affidavit of the time of the bill of sale being given, and a description of the residence and occupation of the deponent and of every attesting witness of the bill of sale. In 1866, by 29 & 30 Vict. c. 96, registration had to be renewed every five years. The two Acts were consolidated with some important amendments by the Bills of Sale Act, 1878 (41 & 42 Vict. c. 31). The principal amendments were these:—The period within which to register was altered from 21 to seven days. Attestation by a solicitor is required, who is to state in the attestation that the effect of the bill of sale has been explained to the grantor, and the Act applies to trade machinery. The evasion of the law (*Ramsden*

v. *Lupton*, (1873) L. R. 9 Q. B. 17) by giving successive bills of sale, of which the last only was registered, is prevented. Fixtures and growing crops are not to be deemed separately assigned when the land passes by the same instrument.

Bills of sale for securing the payment of money are further affected by the Bills of Sale Act, 1882 (45 & 46 Vict. c. 43); the bill of sale must have attached thereto a schedule of the property comprised therein (s. 4); an unregistered bill is void as between grantor and grantee (s. 8); the causes for which seizure may be made are limited to default in payment of the sum secured, bankruptcy, fraudulent removal of the goods, non-production of receipt for rent, and suffering execution (s. 7); the bill is void unless it be in a form scheduled to the Act (s. 9), *Smith* v. *Whiteman*, 1909, 2 K. B. 437; attestation by a solicitor is dispensed with, and attestation by a 'credible witness' substituted (s. 10); and a bill is void if made for less than 30*l.* (s. 12). Further small amendments have been effected by the Bills of Sale Acts of 1890 and 1891 (53 & 54 Vict. c. 53, and 54 & 55 Vict. c. 35), but the law under the Acts of 1878 and 1882 is in a very confused state, and the decisions upon the construction of them are numerous and conflicting. To alter the mode of payment will be a defeasance of the bill of sale and render the registration void (*Pettitt* v. *Lodge*, 1908, 1 K. B. 744). As to what does not constitute a bill of sale requiring registration, see *G. E. Ry.* v. *Lord* (*Trustee of*), 1909, A. C. 109, and *Maas* v. *Pepper*, 1905, A. C. 102. Consult *Reed on Bills of Sale*.

Neither the 1878 Act nor the 1882 Act applies to Scotland or Ireland.

The Law of Property Act, 1925, s. 189 (1), provides that a power of distress given by way of indemnity against a rent payable in respect of any land, or against the breach of any covenant or condition in relation to land is not a bill of sale within the meaning of the above Acts.

Bill of Sight. When a merchant is ignorant of the real quantities or qualities of any goods assigned to him, so that he is unable to make a perfect entry of them, he must acquaint the collector or comptroller of the circumstance; and he is authorized, upon the importer or his agent making oath that he cannot, for want of full information, make a perfect entry, to receive an entry by *bill of sight* for the packages by the best description which can be given, and to grant warrant that the same may be landed and examined by the importer in presence of the officers; and within three days after any goods shall have been so landed, the importer shall make a perfect entry, and shall either pay the duties, or shall duly warehouse the same.

In default of perfect entry within three days, such goods are to be taken to the King's warehouse; and if the importer shall not, within one month, make perfect entry and pay the duties thereon, or on such parts as can be entered for home use, together with charges of moving and warehouse rent, such goods shall be sold to pay the duties.—Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 58 *et seq.*

Bill of Store, in the Customs, is a certified extract from the official records that certain imported goods, which would otherwise be liable to duty, are merely British goods which have been exported and are being returned to this country.—*Ibid.* s. 63.

Bill of Sufferance, a license granted to a merchant, to suffer him to trade from one English port to another, without paying custom. See *Blount's Law Dict.*, 14 Car. 2, c. 11, s. 7.

Bill in Trade (both wholesale and retail, and among workmen), an account of merchandise of goods delivered, or of work done and performed, etc.

Billet, (1) a soldier's quarters in a civilian's house; (2) the ticket which authorizes him to occupy them.

Billeting Soldiers, finding quarters for them. This is regulated by Part III. of the Army Act, which replaces the Annual Mutiny Acts. See ARMY. In case of emergency it may be extended to the Navy; see the Naval Billeting, etc., Act, 1914 (4 & 5 Geo. 5, c. 70).

Billeting on any inhabitant of the realm without his consent is illegal by 3 Car. 1, c. 1, and other Acts, but s. 102 of the Army Act annually suspends these Acts, and s. 104 obliges constables to provide billets. Section 104 subjects all innkeepers, etc., to the billets, and exempts private houses. The accommodation to be provided is very precisely laid down by s. 106 and Schedule II., as amended from time to time; the maximum remuneration is fixed by the Army Annual Act, which is passed every year. See *Chitty's Statutes*, tit. '*Army*.'

Billets of Gold, wedges or ingots of gold.—27 Edw. 3, c. 27.

Billiards. By the Gaming Act, 1845 (8 & 9 Vict. c. 109), ss. 10–14, every house 'where a public billiard table or bagatelle

board, or instrument used in any game of the like kind is kept' (not being a house licensed for the sale of intoxicating liquor to be consumed on the premises) must be licensed by justices of the peace. The allowing persons to play at billiards for money in a public-house subjects the publican to a penalty; nor may billiards be played in such a house, even by a lodger, after closing hours.

Bills of Mortality, returns of the deaths which occur within a certain district.

It was with the view of communicating to the inhabitants of London, to the Court, and the constituted authorities of the city, accurate information respecting the increase or decrease in the number of deaths and the casualties of mortality occurring amongst them, that the bills of mortality were commenced in London after a visitation of the plague in 1592, but they were not continued uninterruptedly until the occurrence of another plague in 1603, from which period, up to the present time, they have been continued from week to week; excepting during the Great Fire, when the deaths of two or three weeks were given in one bill.

In 1605, the parishes comprised within the bills of mortality included the 97 parishes within the walls, 16 parishes without the walls, and six contiguous out-parishes in Middlesex and Surrey.

In 1626, the city of Westminster was included in the bills; in 1636, the parishes of Islington, Lambeth, Stepney, Newington, Hackney, and Redriff (Rotherhithe). Marylebone and St. Pancras, with some others, were never included in the bills. The enactments providing for the registration of births, deaths, and marriages now secure full statistics on these subjects; but the area 'within the bills of mortality' came to be occasionally used in Acts of Parliament as a practical equivalent to the metropolitan area before the passing of the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120).

Bill-stickers. See Metropolis Management Act, 1862 (25 & 26 Vict. c. 102), for penalty for defacing property of metropolitan vestry, and, therefore, of London borough council; and Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 54, sub-s. 10, for penalty for affixing bill on any London building without the consent of the owner or occupier; as to bill-sticking on Post Office property, see Post Office Act, 1908.

Binding-over. See Recognizance.

Binonium, Vinocium, Brinomium, Vinovia, Binovia, ancient names of Binchester, in the bishopric of Durham.

Bipartite, of two parts.

Birds. Larceny may be committed at Common Law of domestic fowls, as hens, ducks, geese, etc. (1 Hale, P. C. 511), and of tame pigeons, though unconfined (*Reg.* v. *Cheafor*, (1851) 2 Den. C. C. R. 361), and of tame pheasants (*Reg.* v. *Head*, (1857) 1 F. & F. 350); or partridges (*Reg.* v. *Shickle*, (1868) L. R. 1 C. C. R. 158). The Larceny Act, 1861, ss. 21–23, provides, that whoever shall steal, or kill with intent to steal, birds ordinarily kept in a state of confinement, or for any domestic purposes, not being the subject of larceny at Common Law, or shall be in possession of any such bird, or the plumage thereof, knowing the same to have been stolen, shall be punishable on summary conviction by fine or imprisonment.

As to unlawfully and wilfully killing or wounding house doves or pigeons under circumstances not amounting to larceny at Common Law, see Larceny Act, 1861, s. 23, and Malicious Damage Act, 1861, s. 41. See also the Poultry Act, 1911, and the Protection of Animals Act, 1911, as to cruelty to birds; and the Captive Birds Shooting (Prohibition) Act, 1921, which prohibits the shooting of pigeons released from traps, etc.

All wild birds in the United Kingdom are protected during the breeding season by the Wild Birds' Protection Acts, 1880 to 1908. As to nuisances in keeping poultry, etc., see Public Health Act, 1936, ss. 80 and 81. The Act of 1880 (43 & 44 Vict. c. 35) contains a list of specially protected birds, for shooting or taking which the maximum penalty is one pound, whereas the maximum penalty in the case of other wild birds is five shillings for a second or subsequent offence only, the Act directing that a first offender shall be reprimanded and discharged on payment of costs.

The Act of 1880 was amended in 1881, in 1894 when the taking of eggs was prohibited, in 1896, in 1902, allowing eggs wrongfully taken to be forfeited, and in 1904 it was extended to St. Kilda by 4 Edw. 7, c. 10, and to the use of pole traps by 4 Edw. 7, c. 4, and in 1908 by 8 Edw. 7, c. 11, to the use of a hook in taking birds. As to publication of orders made under these Acts, see *Duncan* v. *Knill*, (1907) 96 L. T. 911; and as to what constitutes a wild bird 'recently taken,' see *Green* v. *Garstang*, (1901) 85 L. T. 615; *Hollis* v. *Young*, 1909, 1 K. B. 629; Protection of Birds Act, 1925 (18 & 19 Geo. 5,

c. 31) (dealing with taking or capturing birds); Protection of Birds Act, 1933 (23 & 24 Geo. 5, c. 52) (taking and sale of certain wild birds is made illegal), and ANIMALS. See *Aggs on Agricultural Holdings*.

Birretum, or **Birretus,** a thin cap fitted close to the shape of the head; the cap or coif of a judge or serjeant-at-law.—*Spelm.*

Birth, Concealing. See Offences against the Person Act, 1861, s. 60, which enacts that every person who shall, by any secret disposition (see *R.* v. *Brown*, (1870) L. R. 1 C. C. R. 244) of the dead body of a child, whether such child died before, at, or after his birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanour, punishable with imprisonment not exceeding two years. To constitute the offence it must be established that the mother was delivered of a child within the meaning of the statute (see *R.* v. *Colmer*, 9 Cox, 506; *R.* v. *Hewitt*, 4 F. & F. 1101), that there was a definite act of concealment of the body as distinguished from abandonment, that the child was dead at the time, and that a body has been found and identified with that of the child to whom the charge relates. Section 60 of the Act provides, further, that if any woman tried for the murder of a child is acquitted thereof, she can lawfully be convicted of concealment of birth if there is evidence of that offence. The Infanticide Act, 1922, s. 1 (4), provides for such a finding in the case of the acquittal of a woman upon indictment for infanticide; Infant Life (Preservation) Act, 1929 (19 & 20 Geo. 5, c. 34), s. 2 (4), provides similarly upon acquittal upon indictment for child destruction. The offence was first created in connection with the birth of bastards only, and concealment by the mother was by 21 Jac. 1, c. 27, punishable by death until the repeal of that statute in 1802 by 43 Geo. 3, c. 58, s. 3.

In Scotland the corresponding crime is concealment of pregnancy. A woman is guilty of this if she conceals her pregnancy during the whole time, and does not call for and use assistance in the birth, and if the child is found dead or not found at all, the punishment is imprisonment, not exceeding two years.

Births, Marriages, and Deaths. By the Births and Deaths Registration Act, 1836 (6 & 7 Wm. 4, c. 86), amended by the Births and Deaths Registration Act, 1837 (7 Wm. 4 & 1 Vict. c. 22), a General Register Office is provided for keeping a register of births, deaths, and marriages in England. The Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), amends the laws relating to the Registration of Births and Deaths in England in important particulars, and consolidates the law relating to the registration of births and deaths at sea. This Act (s. 1) imposes upon the father and mother of a child, and in their default, upon the occupier of a house in which to his knowledge a child is born, the duty of giving information to the registrar within 42 days. By s. 10 a corresponding obligation to register a death is imposed upon relatives, etc.

By s. 203 of the Public Health Act, 1936, births of any child alive or dead after the twenty-eighth week of pregnancy must be notified to the Medical Officer of Health, except as there provided. The Act repeals the Notification of Births Acts, 1907 to 1915, but is without prejudice to the Registration Acts.

As to false statements as to births or deaths, see Perjury Act, 1911 (c. 6), s. 4.

As to forgery of certificates of birth, etc., see Forgery Act, 1913 (c. 27), s. 3.

Searches may be made and certified copies obtained at the General Register Office, or at the office of the superintendent registrar of the district, or from the clergyman, or registrar, or any other person who shall for the time being have the keeping of the register books.

Non-Parochial Registers.—By the Non-Parochial Registers Act, 1840 (3 & 4 Vict. c. 92), provision is made for depositing with the registrar-general a number of non-parochial registers and records of births, baptisms, deaths, burials, and marriages, which had been collected by a commission appointed for that purpose, and for rendering such registers and records available as evidence.

Canonical Registers and Act of 1812.—The 70th Canon of 1603 prescribed that—

> In every parish church and chapel within this realm shall be provided one parchment book, at the charge of the parish, wherein shall be written the day and year of every christening, wedding, and burial which have been in that parish since the time that the law was first made in that behalf so far as the ancient books thereof can be procured, but especially since the beginning of the reign of the late Queen. . . . And henceforth upon every sabbath day, immediately after Morning or Evening Prayer . . . the ministers in the presence of the churchwardens shall write and record in the said book the names of all persons christened, together with the names and surnames of their parents, and also the names of all persons married and buried in that parish in the week before, and the day and year of every such christening, marriage, and burial. . . .

The Parochial Registers Act, 1812 (52 Geo. 3, c. 146) (repealed as to marriages by the Act of 1836), is to a similar effect with regard to registration ' by the rector, vicar, curate, or officiating minister of every parish, or of any chapelry,' of ' public and private baptisms, marriages, and burials ' solemnized according to the rites of the united Church of England and Ireland,' within all parishes or chapelries in England,' and that Act directs (as also does the Canon) transmission of copies of the entries, annually, to the diocesan registries.

See the Act and Canon in *Chit. Stat.*, tit. ' *Registration*,' and as to evidence of date of birth by baptismal register, see *Re Turner*, (1885) 29 Ch. D. 985. And see *Hubback on Succession*.

The Parochial Registers and Records Measure, 1929 (19 & 20 Geo. 5, No. 1) contains provisions relating to the care and custody of parochial registers.

By the Public Health Act, 1936, repealing the Notification of Births Acts, 1907 and 1915, the father (if residing in the house) and any person in attendance upon the mother must give written notice of the birth to the district medical officer of health within 36 hours of the birth.

Bisantium, Besantine, Bezant, an ancient coin, first issued at Constantinople (Byzantium); it was of two sorts—gold, equivalent to a ducat, valued at 9*s.* 6*d.*; and silver, computed at 2*s.* They were both current in England.

Bi-scot, a fine of 2*s.* for not repairing banks, ditches, and causeways.

Bishop [fr. *επίσκοπος*, Gk.; *biscop*, Sax.], an overseer or superintendent. The chief of the clergy in his diocese or jurisdiction in England, Wales, or Ireland, and the archbishop's suffragan or assistant. A bishop is elected by the king's *congé d'élire*, or license to elect the person named by the king, accompanied, by virtue of 25 Hen. 8, c. 20, by a letter-missive, addressed to the dean and chapter; and if they fail to make election in twelve days, the king, by letters-patent, may nominate whom he pleases. A bishop is said to be installed, and there are four things necessary to his complete title: (1) election, which resembles the presentation of a clerk to an ecclesiastical benefice; (2) confirmation, which cannot be opposed on doctrinal grounds: see *Reg.* v. *Archbishop of Canterbury*, 1902, 2 K. B. 503, under title CONFIRMATION OF BISHOPS; (3) consecration, similar to institution; (4) installation, answering to induction. The bishops are the lords spiritual in parliament: see HOUSE OF LORDS. A bishop has three powers: (1) a power of ordination, gained on his consecration, by which he confers orders, etc., in any place throughout the world; (2) a power of jurisdiction throughout his see or his bishopric; (3) a power of administration and government of the revenues thereof, gained on confirmation. He has, also, a Consistory Court, to hear ecclesiastical causes, and visits and superintends the clergy of his diocese. He consecrates churches and institutes priests, confirms, suspends, excommunicates, and grants licenses for marriages. He has his archdeacon, dean and chapter, chancellor who holds his court and assists him in matters of ecclesiastical law, and vicar-general.

As to the resignation of archbishops and bishops when incapacitated by age or other infirmities, and appointment of bishop co-adjutor where bishop incapacitated by reason of permanent mental infirmity, see Bishops Resignation Act, 1869 (32 & 33 Vict. c. 111), continued by 35 & 36 Vict. c. 40, and made perpetual by 38 & 39 Vict. c. 19.

As to Indian bishops, see 37 & 38 Vict. c. 77, s. 13; and as to bishops suffragan, see SUFFRAGAN. As to the position of bishops in Parliament, see *Hall. Mid. Ages*, ch. viii.; Lord Selborne's *Defence of the Church against Disestablishment*, 5th ed., pp. 24-26, 45; and the Welsh Church Act, 1914, s. 2.

Bishopric, a diocese of a bishop. In the Church of England there are the following: Canterbury, Winchester, London, Bath and Wells, Chichester, Exeter, Ely, Hereford, Lincoln, Lichfield, Rochester, Salisbury, Gloucester, St. Albans, Bristol, Peterborough, Oxford, Norwich, Truro, Birmingham, Southwark, Southwell, Chelmsford, Coventry, St. Edmondsbury and Ipswich, Worcester, Derby, Guildford, Leicester, Portsmouth, York, Chester, Carlisle, Durham, Sodor and Man, Ripon, Liverpool, Manchester, Newcastle, Wakefield, Sheffield, Bradford, and Blackburn. As to the Welsh Bishoprics of Bangor and St. Asaph, Llandaff and St. Davids, see the Welsh Church Acts, 1914 and 1919, which came into force in 1920, disestablishing the Church in Wales.

Bissextile, leap-year. See LEAP-YEAR.

Black Act, 9 Geo. 1, c. 22, so called because it was occasioned by the outrages committed by persons with their faces blacked or otherwise disguised, who appeared in Epping Forest, near Waltham, in Essex, and destroyed the deer there, and committed

divers other enormities. Repealed by 7 & 8 Geo. 4, c. 27.

Black Acts, Acts printed in the old black letter during the dynasty of the Stuarts in Scotland.

Black Book, a book kept in the Exchequer, and at the Admiralty.

Black Cap. The head-dress worn by the judge in pronouncing sentence of death is not an emblem of the sentence. It is part of the judicial full dress, and is worn by the judges on occasions of especial state.

Black Death, the great pestilence which visited England and other parts of Europe about the middle of the fourteenth century.

Black Game, heath fowl, in contradistinction to red game, as grouse, is 'game' (see that title) within the Game Act, 1831 (1 & 2 Wm. 4, c. 32), by s. 2 of that Act.

Black-leg. To call a man a 'black-leg' is not actionable unless it can be shown that the word was understood by the bystanders to mean 'a cheating gambler liable to be prosecuted as such' (*Barnett* v. *Allen*, (1858) 3 H. & N. 376). The term is applied to a man who refuses to join, or follow the ruling of, a Trades Union in times of disputes between employer and employee.

Black List. The term given to any list of persons with whom the person or body compiling the list advises that no one should have dealings of the character indicated. Thus the list of defaulters on the Stock Exchange is so named, and various societies and individuals also publish lists with a similar purpose. By s. 6 of the Licensing Act, 1902 (2 Edw. 7, c. 28), there is power to put an 'habitual drunkard,' if he consents (*Commissioner of Metropolitan Police* v. *Donovan*, 1903, 1 K. B. 895), on a list kept by the police, and this renders him liable to a penalty on summary conviction for obtaining intoxicating liquor within three years, and the licensee or other person supplying him is also liable. See DRUNKENNESS.

The publication of a black list may constitute a libel if it conveys a defamatory and untrue meaning. 'Black lists are real instruments of coercion, as every man whose name is on one soon discovers to his cost' (*Quinn* v. *Leathem*, 1901, A. C. 538); see also *Ware & De Freville, Ltd.* v. *Motor Trades Association*, 1921, 3 K. B. 41, as to putting a person's name on a black list to influence people to abstain from trading with him.

Black Mail [fr. *maille*, Fr., a small piece of money], a certain rent of money, coin, or other thing, anciently paid to persons upon or near the borders, who were men of influence and allied with robbers and brigands, for protection from the devastations of the latter. It was in fact a species of insurance. This was rendered illegal by 43 Eliz. c. 13. The same practice prevailed in Scotland, where it was also illegal. Also rent paid in cattle, otherwise called neatgild; and all rents not paid in silver are called *reditus nigri* (black mail or rents), by way of distinction from *reditus albi* (blanch-firmes, or white-rents).

But the term is used in modern times to signify extortion of money by threatening letters or threats to accuse of crime—an offence punishable, if the crime is punishable, by death or penal servitude for not less than seven years, or be an attempt at rape, or be an 'infamous crime,' i.e., sodomy, etc., by penal servitude for life, and in the case of a male under sixteen, by whipping. Larceny Act, 1916, s. 29.

It is immaterial to this offence whether the party threatened be innocent or guilty (*R.* v. *Gardner*, (1824) 1 C. & P. 479). See THREATS.

Black Rod, Gentleman Usher of, a chief officer of the king, deriving his name from the *Black Rod* of office which he carries, and on the top of which reposes a golden lion. During the session of parliament he attends on the peers, and to his custody all peers impeached for any crime or contempt are first committed.—Consult *May, Parl. Pr.*

Blackstone, William, 1723 80. Judge of King's Bench and Common Pleas. Author of 'Commentaries on the Laws of England,' etc.

Black Ward, a sub-vassal, who held ward of the king's vassal.

Bladarius, a corn-monger, mealman, or corn-chandler.

Blanch-firmes. In ancient times the Crown rents were many times reserved *in libris albis* or blanch-firmes, in which case the buyer was holden *dealbare firmam*, i.e., his base money or coin, below standard, was melted down in the Exchequer, and reduced to the fineness of standard silver, or instead thereof, he paid twelve pence in the pound by way of addition.—*Jac. Law Dict.*

Blanch Holding, an ancient tenure of the law of Scotland, the duty payable being trifling, as a penny or peppercorn.—20 Geo. 2, c. 50; 25 Geo. 2, c. 20.

Blancoforda, the ancient name of Blandford, in Dorsetshire.

Blancum Castrum, Blane Castle, in Monmouthshire.

Blank Acceptance. An acceptance written on the paper before the bill is made, and delivered by the acceptor, will charge the acceptor to the extent warranted by the stamp. See Bills of Exchange Act, 1882, s. 20.

Blank Bar, common bar, a plea in bar, which, in an action of trespass, was resorted to to compel the plaintiff to assign the place where a trespass was committed.

Blank Bonds, Scottish securities, in which the creditor's name was left blank, and which passed by mere delivery, the bearer being at liberty to put in his name and sue for payment. Declared void by the Act 1696, c. 25.

Blank Indorsement, when the name of the indorsee is not mentioned.

Blank, Transfer in. A deed executed with the name of a transferee or vendee in blank is void; but the lender will have an equitable security (*Colonial Bank* v. *Whinney*, (1884) 26 C. D. 257), and this principle is applicable to transfers of shares in companies transferable only by deed; but if transferable under hand only the transfer may be filled in by any one having express authority, or authority to be implied from the nature of the transaction (*Hibblewhite* v. *McMorine*, 6 M. & W. 200, and *Powell* v. *London, etc., Bank*, 1893, 2 Ch. 555).

If in a will the name of a legatee is left blank, the Court may sometimes be able to ascertain from the context who was intended to take (*Re Harrison*, (1885) 30 Ch. D. 390). Parol evidence is never admissible to fill in the blank. See *Theobald on Wills*.

Blanks, a kind of white money (value 8*d*.) coined by Henry V., in those parts of France which were then subject to England; forbidden to be current in this realm by 2 Hen. 6, c. 9. Also, certain void spaces, sometimes left by mistake, in judicial proceedings, and which, if anything material be wanting, render the same void.

Blasphemy [fr. *βλάπτω*, Gk., to hurt, and *φήμη*, reputation; *βλασφημέω*, to speak impiously; *blasphemo*, Lat., to revile.—*Wedgw.*], an offence against God and religion, by denying to the Almighty His Being and Providence, or by contumelious reproaches of our Saviour Christ. Also, all profane scoffing at the Holy Scripture, and exposing it to contempt and ridicule. It is an indictable misdemeanour at Common Law (see *Reg.* v. *Ramsay & Foote*, (1883) 15 Cox, C. C. 231).

In case an offender has been educated in or at any time made profession of Christianity, the statute 9 & 10 Wm. 3, c. 32 (c. 35 in the Revised Statutes), *Chitty's Statutes*, tit. '*Criminal Law* (*Offences against Peace, etc.*),' commonly called 'The Blasphemy Act,' though it is only directed against apostasy, but is cumulative upon the common law (*R.* v. *Carlile*, (1819) 3 B. & Ald. 167), very severely punishes any person 'who shall by writing printing teaching or advised speaking, deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of divine authority,' and is convicted thereof on indictment by the oath of two or more credible witnesses. The punishment is, for a first offence, disability for and forfeiture of any office 'ecclesiastical, civil, or military'; for a second, disability to sue in any action, or to be guardian of any child, or an executor or administrator, 'or capable of any legacy or deed of gift,' or to bear any office within the realm for ever, and also to suffer three years' imprisonment. 'So far as I am aware,' wrote Sir F. Pollock in 1895 (Preface to 22 R. R. at p. vi.), 'no prosecution under the statute has ever taken place'; but in *Cowan* v. *Milbourn*, (1867) L. R. 2 Ex. 230, it was held by Bramwell, B., in an action for breach of contract to let a room for lectures intended to show that 'the character of Christ is defective,' etc., that to establish that the lectures were illegal was a good defence. The Court of Appeal, however, has recently declined to follow this case, see *Re Bowman*, 1915, 2. Ch. 447. Consult *Odgers on Libel and Slander*, 6th ed., p. 400. And see SWEARING.

Blatum Bulgium, the ancient name of Bulness, in Cumberland.

Blaunpain, *alias* **Blancpain,** Whitbread.

Ble, sight, colour, etc.

Bleaching and Dyeing. These works were at first regulated by 23 & 24 Vict. c. 78; 25 & 26 Vict. c. 8; 26 & 27 Vict. c. 38; and 27 & 28 Vict. c. 98. By 33 & 34 Vict. c. 62, however, all these Acts are repealed after January 1, 1872, and the Factory Acts made to apply to them; and they are now regulated, along with other factories, by the consolidating Factory and Workshop Act, 1901 (1 Edw. 7, c. 22). By Schedule VI., bleaching and dyeing works are a non-textile factory and are defined as 'any premises in which the process of bleaching, beetling, dyeing, calendering, finishing, hooking, lapping, and making up and packing any yarn or cloth of any material or the dressing or finishing of lace or any one or more of such processes or any process incidental thereto are or is carried on.' Section 28 deals with hours of employment; s. 40 deals with meal-

times; and s. 53 with overtime employment. See FACTORY.

Blench, Blench-holding. See ALBA FIRMA.

Blenheim, the Honour of Woodstock was granted to John, Duke of Marlborough, and Blenheim House built by Parliament, in reward of the victory at Blenheim, August 2, 1704; see 3 & 4 Anne, c. 4; 6 Anne, cc. 6, 7; 1 Geo. 1, st. 1, c. 12.

Bleta [fr. *bleche*, Fr.], peat or combustible earth dug up and dried for burning.

Blind Persons Act, 1920. Applies the Old Age Pensions Acts to persons who are so blind as to be unable to perform any work for which eyesight is essential at the age of 50 instead of 70. The Act has further provisions as to charities for and the welfare of blind persons.

Blinks, boughs broken down from trees and thrown where deer are likely to pass.

Blockade [fr. *bloccato*, Ital., military term], the disposition of troops or armed vessels, so as to cut off all external communication with an enemy's port, fortress, city, etc. The term is now generally applied to the blockade of a port by armed vessels. By the Declaration of Paris, Art. 4, blockades in order to be binding must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy. Accordingly, the two essential circumstances necessary to make a blockade good against neutrals are—(1) that there be actually stationed at the place a sufficient force to prevent the entry or exit of vessels; and (2) that the party violating it shall be proved to be aware of its existence. The effect of a guilty violation of blockade to the offending party, when captured, is the condemnation usually of both the ship and the cargo. Consult *Hall's International Law.*

Pacific blockades, i.e., blockades of the ports of a power with whom the blockading power is not at war, have been more than once practised in fact, as those of Greek ports in 1827 and 1897; but such blockades are unrecognized by international law.

Blood, kindred, lineage. It is a maxim that none shall claim as heir who is not of the blood (i.e., kindred) of the purchaser.—*Co. Litt.* 12 *a.* And see STRANGER IN BLOOD.

Bloodwit, or **Bloudveit** [fr. *blod*, Sax., blood, and *wyte*, Old Eng., pity], an amercement for bloodshed; a customary fine, paid as a composition and atonement for shedding or drawing of blood.—*Paroch. Antiq.*

Bloody-Hand. See BACKBERINDE.

Blossevilla, the ancient name of Bloville Blofield.

Board [fr. A. Sax. *bord*, a plank or table], a body of persons having delegated to them certain powers of the central government, as the Board of Trade, the Board of Control, the Board of Admiralty, and the Local Government Board; or elected for the purposes of local government, as a Board of Guardians under the Poor Law Acts, a Local Board under the Public Health Acts; or elected as directors by the shareholders in public companies.

Board of Control. The Mental Treatment Act, 1930 (20 & 21 Geo. 5, c. 23), established five Commissioners, including the Chairman, all of whom are paid. The Commissioners are styled senior Commissioners—including the Chairman—one at least shall be a practising barrister or solicitor of five years' standing, two shall be medical commissioners, and one, at least, a woman. The Commissioners have the powers specified in the 2nd and 3rd Schedules to the Mental Treatment Act, 1930, under s. 14 of that Act, together with other powers mentioned in that section, and also the powers and duties of the Lunacy Commissioners which were transferred to the Board by the Mental Deficiency Act, 1913 (3 & 4 Geo. 5, c. 28), s. 25.

Board of Green Cloth. See COUNTING HOUSE OF THE KING'S HOUSEHOLD.

Board of Trade. See TRADE, BOARD OF.

Boards of Health. See PUBLIC HEALTH.

Boats. By s. 94 of the Public Health Acts Amendment Act, 1907, local authorities may license pleasure boats; see also Public Health Act, 1936, s. 267. See *Chitty's Statutes;* and FISHING BOATS.

As to the provision of boats on ships, with a view to the prevention of accidents and the saving of life at sea, see Order of the Board of Trade, Merchant Shipping (Life-saving Appliances) Rules, May 8, 1914.—S. R. and O. 1914, No. 1006, and Merchant Shipping (Safety and Local Line Conventions) Act, 1932 (22 Geo. 5, c. 9).

Boc, a charter.—*Ang.-Sax.*

Boc-hord, or **Book-hoard,** place where books or writings are kept.

Bock-land, Boc-land, or **Book-land,** one of the original modes of tenure of manor-land, also called charter-land or deep-land, which was held by a short and simple deed under certain rents and free services, and in effect differed in no respect from the free-socage lands, whence have arisen most of the freehold tenants, who hold of particular manors

and owe suit and service to the same.—2 *Bl. Com.* 90. And see *An Inquiry into the Royal Prerogative in England*, by John Allen, 1839, 143-151; and FOLC-LAND.

Bodotrio, the ancient name of the Firth of Forth.

Boduno; the people of Gloucestershire and Oxfordshire were formerly called so.

Bodily Harm, generally used in contradistinction to 'actual bodily harm' or 'grievous bodily harm,' as meaning a trivial injury. See ACTUAL BODILY HARM.

Body, the main part of any instrument; in deeds it is spoken of as distinguished from the recitals and other introductory parts and signatures; in *affidavits*, from the title, and jurat, *q.v.*; also the term is used in writs to describe the person who is to be taken (as *habeas corpus*). And see CORPSE.

Body Politic [fr. *bodig*, A.S.; *bodhag*, Gael.], the nation; also a corporation.

Boliary, water arising from a salt well belonging to a person who is not the owner of the soil. *Cf. Co. Litt.* 4 *b.*

Boiler Explosions Act, 1882 (45 & 46 Vict. c. 22), whereby detailed notice of an explosion from any boiler, i.e. (s. 3), 'any closed vessel used for generating steam, or for heating water, or for heating other liquids, or into which steam is admitted for heating, steaming, boiling, or other similar purposes,' must be sent within 24 hours by the 'owner or user,' or their agent, to the Board of Trade, who have power to order an inquiry with respect to the explosion. Boilers used exclusively for domestic purposes, and boilers used in the service of his Majesty or on board certificated steamships, were exempted from the Act, and so were some boiler explosions in mines, but an amending 'Boiler Explosions Act, 1890,' repeals these exemptions, except those for Crown and domestic boilers. A pipe may be a 'boiler' within this Act (*R.* v. *Commissioners*, 1891, 1 Q. B. 703); but a boiler used for heating business premises is within the exception (*Smith* v. *Müller*, 1894, 1 Q. B. 192).

Boiling to Death, the punishment for poisoning inflicted by 22 Hen. 8, c. 9, repealed by 1 Edw. 6, c. 12.

Bois, wood; *sub-bois*, underwood.

Bois saillis [Fr.], a coppice, or copse.

Bolhagium, or **Boldagium,** a little house or cottage.—*Blount.*

Bolorium promontorium. The Land's End.

Bolt, a long narrow piece of silk or stuff.

Bolting [*fr. bolt*, Sax., a house], a private arguing of cases in the Inns of Court. Now discontinued. See MOOT.

Bona. This term, according to the Civil Law, includes all sorts of property, movable and immovable.—*Story's Confl. Laws*, 375.

Bona confiscata, property forfeited for crime to the *fiscus*, or public treasury.

Bonâ fide (in good faith), implying the absence of all fraud or unfair dealing or acting, whether it consists in simulation or dissimulation.

As to '*bonâ fide* traveller,' see TRAVELLER.

Bona forisfacta, goods forfeited; called by the civilians *bona confiscata*, because they belonged to the *fiscus*, or imperial treasury.

Bona gestura, good behaviour.

Bona mobilia, movable effects and goods.

Bona notabilia, notable good —goods sufficient in amount to require a probate or administration to be taken out under ecclesiastical law. They were determined by the 93rd Canon (excepting in London, where the sum is 10*l.*) to be legal personal estate to the value of 5*l.* or upwards.

The jurisdiction of the Ecclesiastical Courts as to wills and administration is abolished. See PROBATE.

Bona patria, an assize of countrymen or good neighbours; it is sometimes called *assiza bonæ patriæ*, when 12 or more men are chosen out of any part of the county to pass upon an assize. The persons composing it are called *juratores*, because they are to swear judicially in the presence of the party, etc., according to the practice of Scotland.—*Skene.*

Bonaught, or **Bonaughty,** an exaction imposed on the people of Ireland, at the will of the lord, for relief of the knights, called *Bonaghti*, who served in the wars.—*Antiq. Hibern.* 60.

Bona vacantia, things found without any apparent owner which belong to the first occupant or finder, unless they be whale or sturgeon, wreck, treasure trove, waifs or estrays (see those titles), which belong to the Crown by virtue of its prerogative. So personal property held on trusts which have failed, or held in trust for a corporation which has been dissolved, belongs to the Crown as bona vacantia; see *Re Higginson*, 1898, 1 Q. B. 325, and cases there cited. By the Companies Act, 1929, s. 296, the property of a dissolved company including property held on trust for it shall, subject to the provisions of the Act, become bona vacantia. Before the Act was passed freehold and leasehold property reverted to the grantor. *Hastings Corporation* v. *Letton*, 1908, 1 K. B. 378, s. 296 is not retrospective, *Re Katherine*

Ltd., 1932, 1 Ch. 70, and 1933, 2 Ch. 29. As to the rights of the Crown, the Duchy of Lancaster or the Duke of Cornwall to bona vacantia, see Administration of Estates Act 1925, ss. 45 and 46, and ESCHEAT. And see Law of Property Act, 1922, Sched. 12 (11) (c) and Land Registration Act, 1925, s. 80; FINDER; UNCLAIMED PROPERTY.

Bona villa, de Bonevil.

Bona waviata, goods waived or thrown away by a thief in his flight for fear of being apprehended. They are given to the Crown by law, as a punishment upon the owner for not himself pursuing the felon and recovering his goods.—2 *Steph. Com.* bk. 4, ch. vii.

In the Roman Law it was originally the property which a person left at his death, without having disposed of it by will, and without having any *hæres*. Such property was open to occupancy; and so long as the strict laws of inheritance existed, such an event must not have been uncommon. A remedy was, however, found by the *bonorum possessio* of the *prætor.—Smith's Dict.*

Boncha [fr. *bonna* or *bunna*, Old Lat.], a rising bank, the bounds of fields.

Bond [fr. *binda*, *band*, *bunden*, A.S., to bind], a written acknowledgment or binding of a debt under seal. See DEED. No technical form of words is necessary to constitute a bond; see *Gerrard* v. *Clowes*, 1892, 2 Q. B. 11; *Strickland* v. *Williams*, 1899, 1 Q. B. 382. The person giving the bond is called the obligor, and he to whom it is given the obligee. A bond is called single (*simplex obligatio*) when it is without a penalty, but there is generally a condition added, that, if the obligor does or forbears from some act, the obligation shall be void, or else shall remain in full force, and the bond is then called a double or conditional one; see *Dav. Prec.* vol. v., pt. ii., p. 368. When a bond contains a penalty, which is generally double the amount of the principal sum secured, only the sum actually owing, with interest, can be recovered, and in no case can this exceed the amount appearing on the face of the bond. See 8 & 9 Wm. 3, c. 11, s. 8; *Re Dixon*, 1900, 2 Ch. 561.

Although it is unnecessary to mention personal representatives or successors who are intended to be included in the benefit or burden of the obligation, see s. 80, L. P. Act, 1925, it is advisable to name them if it is contemplated that they may perform the condition, see *K. & E.*, 13th ed. p. 277. The benefit passes to the survivors in the case of the death of any joint obligees, L. P. Act, 1925, s. 81, and the receipt of the survivors is sufficient, s. 111, *ibid.*, but joint obligees are, *primâ facie*, tenants in common in equity for all other purposes.

A bond conditioned either to do something which is *malum in se* or *malum prohibitum*, or to omit the doing of something which is a duty, or to encourage such crimes and omissions, is void. A bond may be valid in part and void in part, if such parts are separable.

There are two kinds of *post obit* bonds: (1) Where the sum secured is greater than the sum borrowed, but to be payable only upon a contingency, such as the obligor-expectant surviving his ancestor. (2) Where the sum secured is greater than the sum borrowed, but it is to be paid on the death of a particular person, whether the obligor be then alive or not, the time of payment being contingent only. See EXPECTANT HEIRS; MONEY-LENDERS; POST OBIT BOND; USURERS.

Bonds to procure marriage (or marriage brokage bonds), or to restrain marriage, or for immoral considerations, such as *future*, but not *past*, cohabitation, and also in *total* restraint of trade, are void.

As to forgery of a bond, see Forgery Act, 1915, s. 2; and as to larceny thereof, see Larceny Act, 1916, ss. 1 and 46. The term 'bond' is also used to denote an acknowledgment of indebtedness for a loan obtained by a Government or company. Bonds contain provisions as to interest until repayment of the principal. 'Bonds to Bearer' pass by simple delivery, and interest on the amount secured is collected by means of coupons attached to the bond, which are cashed at due date as warrants for the interest specified on each. Other bonds are registered, and interest is paid by the issue of warrants as in the case of ordinary shares. See also BEARER BONDS and DEBENTURES.

Bonds are also executed to secure duty on dutiable goods to the Crown while in a merchant's or shipper's warehouse.

See BONDED WAREHOUSE; BOTTOMRY BOND; LLOYD'S BOND.

Bondage, slavery; also a kind of tenure or occupation.

Bond-creditor, a creditor whose debt is secured by a bond.

Bonded Warehouse, a warehouse licensed by the Commissioners of Customs and Excise for the storing of dutiable goods without payment of the duty until they are 'cleared,' i.e., taken away. So called owing to the bond into which it is necessary to enter in order to secure that the Crown does not lose the duty

by the goods being removed into the country without payment. Goods in such a warehouse are said to be 'in bond.'

Bondsman, a surety.

Bond-tenants, copyholders and customary tenants are sometimes so called.—*Calthorp on Customs of London.*

Boni judicio est ampliare jurisdictionem. (It is the part of a good judge to enlarge his jurisdiction.)—*Chanc. Prec.* 329. This maxim is said (see *Broom's Max.*) to be erroneous, and Lord Mansfield, in *R.* v. *Philips,* (1757) 1 Burr. 304, observes that the true text is '*justitiam,*' and not '*jurisdictionem.*'

Bonis non amovendis (that the goods be not removed), a writ addressed to the sheriff, where error is brought, commanding that the person against whom judgment is obtained be not suffered to remove his goods, till the error be tried and determined.—*Reg. Brev.* 131. See EXECUTION.

Bonitarian, the right of possession.—*Civil Law.*

Bonium, or **Bovium,** Boverton, or Cowbridge, in Glamorganshire; also Bangor, in Flintshire.

Bono et malo (*Writ de*), an abolished writ of gaol delivery, which issued for every prisoner.

Bonus, premium or advantage; an occasional extra dividend; a gratuity. As to the respective rights of tenant for life and remaindermen in a bonus declared by a company, see *Bouch* v. *Sproule,* (1887) 12 App. Cas. 385; *Re Northage,* (1891) 60 L. J. Ch. 488, and see *Palmer's Company Law,* 15th ed., p. 228.

Book. For the purposes of s. 15 of the Copyright Act, 1911, dealing with the delivery of books to certain libraries, the expression 'book' includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but not a second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress, or in the maps, prints, or other engravings belonging thereto. By s. 15 a copy of every book published in the United Kingdom must be sent to the British Museum, and on written demand to the Bodleian Library, Oxford, the University Library, Cambridge, the Library of the Faculty of Advocates at Edinburgh, and the Library of Trinity College, Dublin, and subject to certain provisos the National Library of Wales. See COPYRIGHT; LIBRARIES.

Books. All the volumes which contain authentic reports of decisions in English Courts, from the earliest times to the present, are sometimes called, *par excellence,* 'The Books.' See REPORTS.

Books of Account. All companies registered under the Companies Act, 1929, are by s. 122 obliged to keep books of account of (*a*) all receipts and expenses with matters relating thereto; (*b*) all sales and purchases; and (*c*) the assets and liabilities of the company: these books are to be open to inspection by the directors—heavy penalties for non-compliance are imposed. The auditors are to have access at all times, s. 134.

Boosey [or **Boosy**] **Pasture,** a pasture with a shed on or by it, by custom of the country or written agreement in the north-western counties of England frequently allowed, till May 1, or 12, to outgoing tenants whose tenancy expires on the 2nd February or 25th March.

Booting, or **Boting Corn** [fr. *bote* or *boot,* Sax., compensation], rent corn, anciently so called.

Booty of War, property captured in war on land which falls to the forces capturing by grace of the Crown or to the Crown itself. By 3 & 4 Vict. c. 65, s. 22, the jurisdiction in matters of booty of war is in the Admiralty Jurisdiction of the High Court, on a reference by the sovereign. See Judic. Act, 1925, s. 22. See *Banda and Kirwee Booty,* (1875) L. R. 4 Adm. & E. 436. Appeals lie to the Privy Council, *ibid.,* s. 27. See ADMIRALTY; PRIZE COURT.

Borcovicus, Berwick-upon-Tweed.

Bordagium. See BORDLODE.

Bordaria [fr. *bord,* Sax.], a cottage.

Bordarii, or **Bordamanna** [fr. *bords,* Old Gall., limits, borders], boors, husbandmen, cottagers.—*Domesday.*

Bord-brigch [fr. *borg-bryce,* or *burg-brych,* Sax.], a breach or violation of suretyship, pledge-breach, or breach of mutual fidelity.

Border Warrant [fr. *bord,* Fr., edge, margin], a process granted by a judge ordinary, on either side of the border between England and Scotland, for arresting the person or effects of a person living on the opposite side, until he find security, *judicio sisti.*

Bord-halfpenny [fr. *bord,* Sax., a table, and *hafpeny,* or halfpenny], a customary small toll paid to the lord of a town for setting up boards, tables, booths, etc., in fairs or markets.

Bordlands, the demesnes which a lord keeps in his own hands for maintenance of his board or table.—*Bract.* l. 1, t. 3, c. ix.

Bordlode, or **Bordage,** a service required

of tenants to carry timber out of the lord's woods to his house, or the quantity of food or provisions which the *bordarii* or *bordmen* paid for their *bordlands*. The old Scots had the term of *burd* and *meet-burd* for victuals and provisions, and *burden-sack* for a sack full of provender, whence probably came our word burden.—*Spelm.*

Bord-service, a tenure of bordlands.

Borel-folk, country people, from the Fr., *boure*, a lock of wool, because they covered their heads with such stuff.

Borough, originally a walled town or other fortified place. In the Reform Act, 1832, by s. 79, the word means a town entitled to return a member to Parliament, or 'parliamentary borough,' and in the Municipal Corporations Act, 1882, as also (by virtue of s. 15 of the Interpretation Act, 1889) in every Act passed in or after 1890 when used in relation to local government, a town incorporated for the purposes of internal government, and subject to the Municipal Corporations Act, 1882, or 'municipal borough.' See MUNICIPAL CORPORATION.

Borough Council, the body representing the burgesses of a municipal corporation by virtue of the Municipal Corporations Act, 1882, and consisting of a mayor, alderman, and councillors, the councillors being elected by the burgesses, and the mayor and aldermen by the council. The councillors are elected for three years, one-third of their number going out annually. The aldermen are elected for six years, one half going out every third year. The mayor is elected for one year. The Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), has consolidated and amended the relevant sections of the 1882 Act, see ss. 17 *et seq.*, of the 1933 Act; but it does not apply to London.

Borough Courts, private and limited tribunals, held by prescription, charter, or Act of Parliament, in particular districts for the convenience of the inhabitants, that they may prosecute small suits, and receive justice at home. In boroughs subject to the Municipal Corporations Acts they are termed 'borough civil courts' and regulated by ss. 175–188 of the Municipal Corporations Act, 1882, but they are very few in number. See, further, INFERIOR COURTS.

Borough English, a custom abolished by Administration of Estates Act, 1925, s. 45. See Law of Property Act, 1922, 12th Schedule; evidently of Saxon origin, and so named to distinguish it from the Norman customs. By this custom, which was met with in some burgage tenemental lands and elsewhere, if a person had several sons, and died intestate, the youngest son inherited all the realty, which belonged to his father, situated within such borough. It was based on the assumption that the youngest son, on account of his tender age, was not so capable as the rest of his brethren to keep himself. Among the pastoral tribes, the sons, as soon as they attained the proper age, migrated from the paternal habitation, with an allotment of cattle, to seek a residence elsewhere; the youngest son usually continued with his father, and thus became the heir to his house.—2 *Bl. Com.* 83.

The custom obtained in the manor of Lambeth, Surrey, in the manors of Hackney, St. John of Jerusalem in Islington, Heston and Edmonton in Middlesex, and in other counties.

Borough Fund, the revenues of a municipal borough derived from the rents and produce of the land, houses, and stocks belonging to the borough in its corporate capacity, and supplemented where necessary by a borough rate. See ss. 138–144 of the Municipal Corporations Act, 1882, which specifies the purposes to which it is legally applicable, and allows (s. 141) orders of a town council for payment of money out of it to be questioned by the High Court on certiorari.

Borough Funds Acts. The Borough Funds Act, 1872 (35 & 36 Vict. c. 91) (commonly called Leeman's Act), authorized borough councils and governing bodies of other urban districts to apply public funds under their control to promoting or opposing bills in parliament or to prosecute or defend legal proceedings in the interest of their constituents, but will not allow of their indemnifying the chief constable for costs he has incurred in opposing a licensing appeal at Quarter Sessions (*Tynemouth Corporation* v. *A.-G.*, 1899, A. C. 293); and the Borough Funds Act, 1903 (3 Edw. 7 c. 14), has materially amended that Act by requiring the resolutions of councils to promote bills to be submitted to public meetings, and dispensing with the consent of owners and ratepayers to incurring expense in opposing bills. See now the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), ss. 254 *et seq.*, which consolidates and amends both the 1872 and 1903 Acts, but does not apply to London. See *Chitty's Statutes*.

Borough-heads, borough-holders, borsholders, or burs-holders.

Borough-reeve, the chief municipal officer in towns unincorporated before the Municipal Corporations Act, 5 & 6 Wm. 4, c. 76.

Borough Sessions, courts established in boroughs under the Municipal Corporations Act, 1882. They are held by the recorders of the respective boroughs once a quarter, or oftener if they think fit, and at times to be fixed by them. The Court has ' cognizance of all crimes, offences, and matters ' cognizable by the County Quarter Sessions, whose powers extend to all boroughs which may not have obtained a separate court by petition under s. 162 of the Act, 1882, and see also Summary Jurisdiction (Appeals) Act, 1933 (23 & 24 Geo. 5, c. 33).

Borrowing Powers. Most public bodies are possessed of borrowing powers, but the terms of the Act conferring the power to borrow must be strictly pursued ; see *Att.-Gen.* v. *De Winton*, 1906, 2 Ch. 106 ; *Rex* v. *Locke*, 1910, 2 K. B. 201.

A company under the Companies Act, 1929, has no power to borrow money unless the provision is contained in the Memorandum of Association, but it has an implied power to borrow money and give security therefor for the purposes of its business (*General Auction Estate Co.* v. *Smith*, 1891, 3 Ch. 432). If the money borrowed is beyond the company's powers the excess is void (*Wenlock* v. *River Dee Co.*, (1885) 10 A. C. 354). And see *Re Harris Calculating Machine Co.*, 1914, 1 Ch. 920, as to the lender's right of subrogation to creditors who have been paid with the proceeds of the void loan. See also Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), ss. 38 *et seq.* ; ASSOCIATION, MEMORANDUM OF.

Borsholder, borough's ealder, tithing-man, or head-borough, supposed to be the discreetest man in the borough, town, or tithing. He was one of the principal inhabitants annually appointed to look after the rest, each separate community in the time of the Saxons being answerable as surety for the good behaviour of all its members.—1 *Bl. Com.* 114, 356.

Borstal Institution. This name originated from a large juvenile-adult reformatory which was opened at Borstal, near Rochester, in 1901, by utilizing a portion of the existing convict prison for the purpose. Power to establish Borstal Institutions is given by s. 4 of the Prevention of Crime Act, 1908, and the same section describes such institutions as ' places in which young offenders whilst detained may be given such industrial training and other instruction, and be subject to such disciplinary and moral influences as will conduce to their reformation and the prevention of crime.' The Act has been amended by the Criminal Justice Administration Act, 1914, ss. 10, 11.

Bortmagad [fr. *bord*, Sax. ; *domus*, Lat., and *magad, ancilla*], a housemaid.—*Spelm.*

Boscage [fr. *bosco*, Ital.], food which wood and trees yield to cattle, as mast, etc.

Boscaria, wood-houses, or ox-houses, from *bos*, Lat.

Bosco, de, Bois, Boys.

Boscoarso, de, Brentwood, or Burntwood.

Bosco Boardi, de, Borhard.

Boscus [fr. *bosco*, Ital. ; *bois*, Fr.], all manner of wood ; boscus is divided into high wood or timber, *hautbois* ; and coppice, or underwoods, *sub-boscus*, *sub-bois* ; but the high wood is properly called *saltus*, and in Fleta we read it *maeremium*.—*Jac. Law Dict.*

Bossinnus, a rustic pipe.

Bostar, an ox-stall.

Bote [fr. *bot*, A.S. ; *beton*, to repair, synonymous with *estovers*, Fr. ; *esroffer*, to furnish], necessaries for the maintenance and carrying on of husbandry. The owner of an estate for life or for years is entitled, even if he is impeachable for waste and unless expressly restrained by the terms of the conveyance, settlement, or devise, to reasonable estovers or botes, i.e., necessary wood, such as house-bote, plough-bote, cart-bote, and hay-bote or hedge-bote. *House-bote* is a sufficient allowance of wood from off the estate to repair or burn in the house, and sometimes termed fire-bote ; *plough-bote* and *cart-bote* are wood to be employed in making and repairing all instruments of husbandry ; and *hay-bote* or *hedge-bote* is wood for repairing of hays, hedges, or fences. The word also signifies reparation for any damage or injury done, as *man-bote*, which was a compensation or amends for a man slain, etc.—2 *Bl. Com.* 35 ; *Jac. Law Dict.*

Boteless, or **Bootless,** without boot, profit or advantage, unavailing.

Bottellaria, a buttery or cellar, in which the *butts* and *bottles* of wine and other liquors are deposited.

Botha, a booth, stall, or standing in a fair or market.—*Dugd. Mon.* 2 par. fo. 132.

Bothagium, or **Boothage,** customary dues paid to the lord of a manor or soil, for the pitching or standing of booths in fairs or markets.—*Paroch. Antiq.* 680.

Bothna, or **Buthna,** a park where cattle are enclosed and fed ; a barony, lordship, etc.—*Skene.*

Botiler of the King [*pincerna regis*, Lat.], an officer that provides the king's wines, who might (*Fleta*, l. 2, c. xxi.), by virtue

of his office, choose out of every ship laden with sale wines, one cask before the mast, and one behind.—25 Edw. 3, st. 5, c. 21.

Bottom [Old English], a valley.

Bottomry Bond, or **Contract,** also **Bottomree,** or **Bummaree,** a species of mortgage or hypothecation of a ship, by which her keel or bottom is pledged (*partum pro toto*) as a security for the repayment of a sum of money. If the ship be totally lost, the lender loses his money; but if she returns safely, he recovers his principal, together with the interest agreed upon. Such bonds are allowed as valid in all trading nations, for the benefit of commerce, and as a *pretium periculi* for the extraordinary hazard run. See *Abbott on Shipping*, and RESPONDENTIA.

Bouche of Court or **Budge of Court,** a certain allowance of provision from the king to his knights and servants who attended him on any military expedition.

Bough of a Tree, a symbol which gave seisin of land, to hold of the donor *in capite*. And see TREES.

Bought and Sold Notes. It is no longer the custom for brokers who have succeeded in making a contract to make any entry in their books save for their own private information, and it is now almost the universal practice to regard the bought and sold notes as the proper evidence of the contract. The broker sends to the seller a 'sold note' and to the buyer a 'bought note,' these being now the usual terms, though formerly their use was sometimes the converse. When each note discloses the name of both parties to the transaction, each is a complete memorandum of the bargain. When each note only discloses the name of one party, the two may be treated as one memorandum. The bought and sold notes are deemed to constitute a single document, and if they differ materially they are nullities unless one has been assented to by the parties as containing the terms of the contract.

Every contract note for or relating to the sale or purchase of any stock or marketable security must be stamped when the value of the subject-matter is 5*l.*, and does not exceed 100*l.*, 6*d.*; does not exceed 500*l.*, 1*s.*: does not exceed 1,000*l.*, 2*s.*; does not exceed 1,500*l.*, 3*s.*; does not exceed 2,500*l.*, 4*s.*; and for every 2,500*l.* or part thereof, a further 2*s.* up to a maximum of 1*l.* Consult *Addison on Contracts, Benjamin on Sale, or Leake* or *Chitty on Contracts.*

Bound, or **Boundary** [fr. *borne, bone,* Fr., a limit], the utmost limits of lands, whereby the same is known and ascertained. See ABUTTALS.

Boundaries are the lines marking the division between two adjacent territories. The boundary may be (*a*) physical, or (*b*) national and supported by documentary or other evidence. (*a*) may consist of walls, fences, hedges or ditches, and the presumption is that the outer line along the top line of the ditch bank furthest from the hedge marks the boundary of the land on which the hedge, if any, is erected, because the owner of the soil would be presumed to throw up the soil on to his own land for the hedge, but this presumption may be rebutted. Simple fences or ditches and walls frequently belong to the owners of both properties in common, see PARTY WALL.

Physical boundaries may also be roads or non-tidal streams, see *Ad medium filæ,* or the sea or tidal rivers, in which case the high-water mark of medium tides is presumed to be the boundary. *Williams Real Property,* 23rd ed., p. 463. (*b*) Unmarked or imaginary boundaries are generally ascertained by reference to maps or plans, or by description in documents.

The practice in regard to Registered Land is regulated by the Land Registration Act, 1925, s. 76, and Rules, 1925, ss. 272–288.

The divisions of counties and the limit of cities and boroughs so far as regards the election of members to sit in Parliament are now governed by the Boundary Act, 1868 (31 & 32 Vict. c. 46), and the Representation of the People Act, 1918 (7 & 8 Geo. 5, c. 64).

The boundaries of municipal boroughs, as fixed under the repealed Municipal Corporations Acts, 1835 and 1836 (5 & 6 Wm. 4, c. 76), ss. 7, 8, and (6 & 7 Wm. 4, c. 103), in England and Wales, were not affected by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50). See s. 250 (2) (now repealed), see *infra.*

The Local Government Boundaries Act, 1887 (50 & 51 Vict. c. 61), constituted a Commission to inquire into the best mode of so adjusting the boundaries of counties and other areas of local government as to arrange that no poor law union, municipal borough, sanitary district, or parish should be situate in more than one county; and various provisions for the boundaries of counties and other areas for the purpose of the election of county councils are contained in the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51). See also METROPOLITAN POLICE DISTRICT.

Bound-bailiffs, officers who arrested

debtors, etc., and who entered into bonds for their good behaviour. The vulgar phrase 'bum-bailiff' is, perhaps, a corruption of this word.

Bounty, (1) a premium paid by Government to the producers, exporters, or importers of certain articles, or to those who employ ships in certain trades, with a view of encouraging the establishment of some new branch of industry, or of fostering and extending a trade that is believed to be of paramount importance. See *Smith's Wealth of Nations*, Bk. iv. c. v. Bounties have been entirely abolished in England, and the Sugar Convention Act, 1903 (3 Edw. 7, c. 21), which authorized restrictions upon the importation of bounty-fed sugar into the United Kingdom, has been repealed.

(2) Queen Anne's Bounty: see BOUNTY OF QUEEN ANNE.

(3) Money paid to officers and crew of a king's ship which had successfully engaged pirates, slave traders, etc.

(4) King's Bounty: the grant made by the Crown on the birth of three or more infants in wedlock at one confinement.

Bounty of Queen Anne, given by royal charter, which was confirmed by Queen Anne (2 Anne, c. 11), whereby all the revenue of first-fruits and tenths (see those titles) which belonged to the English Crown was transferred by Queen Anne to trustees for ever, called 'Governors,' to form a perpetual fund for the augmentation of the maintenance of the poor clergy. After the appropriation of the revenue arising from the payment of first-fruits and tenths to the augmentation of small livings, it was considered a proper extension of this principle to exempt the smaller livings from the incumbrance of those demands; and, for that end, the bishops of each diocese were directed to inquire and certify into the Exchequer what livings did not exceed 50*l.* a year, according to the improved value at that time; and it was further provided that such livings should be discharged from those dues in future. It has been still further regulated by subsequent statutes, especially by the Queen Anne's Bounty Act, 1838 (1 & 2 Vict. c. 20); and by the Clergy Residences Repair Act, 1776 (17 Geo. 3, c. 53), commonly called 'Gilbert's Act,' s. 12, amended by the Parsonages Act, 1911, the Governors are empowered to lend money at not more than 4 per cent. for parsonages, etc., on mortgage of a benefice.

Under the Tithe Act, 1926 (15 & 16 Geo. 5, s. 87), there is vested in Queen Anne's Bounty all ecclesiastical tithe rentcharge. The rentcharge is collected by the Bounty and paid over to the clergy. See TITHES.

The Governors comprise, under the charter, Archbishops and Bishops, the Judges, the Lords Lieutenants of Counties, the King's Counsel, and the Mayors of Cities, the quorum being five by the Parsonages Act, 1865, s. 5, of whom three at least must be archbishops or bishops. See *Chitty's Statutes*, tit. '*Church and Clergy.*'

Bovata terræ, an oxgange or oxgate of land, as much land as an ox can plough; 8 bovatæ make 1 carucate. See *Co. Litt.* 5 *a*, and OXGANG.

Boverium, or **Boveria,** an ox-house.

Bovettus, a young steer, or castrated bullock.

Bovicula, a heifer, or young cow.

Bovill's (Sir W.) Act, an Act to amend the law relating to the procedure in petitions of right.—23 & 24 Vict. c. 34. Also, an Act relating to partnership, 28 & 29 Vict. c. 86, now repealed but substantially re-enacted by the Partnership Act, 1890. It established the principle that participation in profits does not in itself constitute partnership, in accordance with *Cox* v. *Hickman*, (1860) 8 H. L. C. 268.

Bow-bearer, an under-officer of the forest whose duty it was to oversee and true inquisition make, as well of sworn men as unsworn, in every bailiwick of the forest; and of all manner of trespasses done, either to vert or venison, and cause them to be presented without any concealment, in the next court of attachment, etc.—*Crompt. Juris.* 201.

Bowling, Game of, legalized by the Gaming Act, 1845 (8 & 9 Vict. c. 109) (see *Chitty's Statutes*, tit. '*Games and Gaming*'), s. 1 of which repeals 33 Hen. 8, c. 9, which Act by s. 16 decreed that labourers, 'servants at husbandry,' fishermen, and others named therein, might not play bowls or other games named therein 'out of Christmas,' and 'in Christmas only in their masters' houses or in their masters' presence.'

Bowyers, manufacturers of bows and shafts. An ancient company of the city of London.—12 Edw. 4, c. 2; 33 Hen. 8, c. 6; 8 Eliz. c. 10.

Boycott, a cant term meaning to shun, ignore and refuse to have any dealings whatsoever with a person. The word is derived from the name of an estate agent in County Mayo, Captain Boycott, one of the first persons to whom this species of persecution was applied.

Boys, employment of, in factories, workshops, etc. See CHILDREN; FACTORY. As to the employment of boys in mines below ground, see Coal Mines Act, 1911, ss. 91–95, and s. 102 (7).

Bracelets, hounds or beagles of the smaller or slower kinds.

Bracenarius, a huntsman or master of the hounds.

Bracetus, a hound.—*Dugd. Mon.* t. 2, 283.

Brachylogy [fr. βραχύς and λογος, Gk.], the method of expressing a sentence or argument concisely.

Bracinum, a brewing; the whole quantity of ale brewed at one time, for which *tolsesto* was paid in some manors. *Brecina,* a brewhouse.

Bracton, the author of the Latin treatise entitled *De Legibus et Consuetudinibus Angliæ.* He lived at the latter end of the reign of Henry the Third. Bracton's book, compared with that of Glanville, is a voluminous work. It is divided into five books, and these into tracts and chapters. See 2 *Reeves' Hist.* c. viii. 86, note (*a*), for an analysis of the several divisions of the chapters and a complete digest of the contents of this venerable code. The rules of property are explained; the proceedings in actions, through the minutest steps, are investigated and developed; while every proposition is supported by fair deduction, or corroborated by the authority of some adjudged case, so that the reader never fails in deriving instruction or amusement from the study of this scientific treatise on our ancient laws and customs. Bracton was deservedly looked up to as the first source of legal knowledge, even down to the time of Sir Edward Coke, who seems to have made this author his guide in all inquiries into the foundation of our law.

It is said that Bracton was a judge, and, speaking of some judges of his time, he calls them *insipientes, et minus doctos, qui cathedram judicandi ascendunt antequam leges didicerint* (Brac. I.).—*Hale's Hist.* 189. In Lincoln's Inn Library is an ancient MS. copy of Bracton, which is said to be more correct than the printed copies. The work was edited, with an English translation, by Sir Travers Twiss in the Rolls Series.

Branding in the hand or face with a hot iron. A punishment inflicted by law for various offences, after the offender had been allowed benefit of clergy. Abolished by 3 Geo. 4, c. 38.

Brasiator [fr. *brasium,* Lat., malt], a maltster, a brewer.—*Old Records.*

Brasium, malt.

Brawling [fr. *brailler,* Fr., to brawl], the offence of quarrelling, or creating a disturbance in the church or churchyard, punished by 5 & 6 Edw. 4, c. 4 (partly repealed by 9 Geo. 4, c. 31, s. 1, and wholly repealed as to laymen by the Ecclesiastical Courts Jurisdiction Act, 1860 (23 & 24 Vict. c. 32)), by excommunication and suspension, and also, by the unrepealed but disused 1 Mary, st. 2, c. 3, by imprisonment until the party repent.

By the Act of 1860, persons guilty of riotous, violent, or indecent behaviour in churches and chapels of the Church of England or Ireland, or in any chapel of any religious denomination, or in England in any place of religious worship duly certified under the Places of Worship Registration Act, 1855 (18 & 19 Vict. c. 81), or in churchyards or burial grounds, on conviction before two justices are made liable to a penalty of not more than 5*l.*, or imprisonment for any term not exceeding two months. See *Matthews* v. *King,* 1934, 1 K. B. 505.

To object to a deacon presenting himself for ordination as priest, that he has taken part in services in churches, in breach of prescribed ritual, is not to allege a crime or impediment to ordination, within the ordination service, and therefore the objector may be convicted of an offence against the Act of 1860 (*Kensit* v. *St. Paul's Dean and Chapter,* 1905, 2 K. B. 249).

Breach of Close, an unwarrantable entry on another's land; for every man's land is in the eye of the law enclosed and set apart from his neighbour's, and that either by a visible and material fence, as one field is divided from another by a hedge, or by an invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field. Every such entry or breach of a man's close carries necessarily along with it some damage.—3 *Bl. Com.* 209.

Breach of Peace, offences against the public, which are either actual violations of the peace, or constructive violations, by tending to make others break it. See PEACE.

Breach of Pound. See POUND.

Breach of Prison, an escape by a prisoner lawfully in prison. See PRISON.

Breach of Privilege, contempt of either of the Houses of Parliament. See PRIVILEGE.

Breach of Promise of Marriage. See MARRIAGE, PROMISE OF.

Breach of Trust, a violation of duty by a

trustee, executor, or other person in a fiduciary position.

In some cases a breach of trust may be a comparatively venial offence, arising from the trustee having honestly misconstrued the deed or will creating the trust either as to the persons entitled, or as to his powers of investment of or dealing with the trust property, or having otherwise erred in the discharge of his strict duty; in other cases he may have been guilty of negligence or carelessness involving at least some degree of moral blame; or, in other cases again, he may have committed some gross fraud. But in all these cases alike the trustee is personally responsible at the suit of the beneficiaries for any loss which may have resulted, and the rules of equity on the subject were extremely strict and were enforced with great severity by the Court of Chancery. In later times, however, the Court was not quite so astute in fixing honest trustees with liability for breach of trust as formerly; see *Speight* v. *Gaunt*, (1883) 9 App. Cas. 1. More recently, the Trustee Acts have relaxed the stringent rules of Equity in regard to trustees; their authority has been extended, their discretion has been widened; indemnities for innocent breaches of trust have been provided, and see generally, the Trustees Act, 1925. By s. 57 of this Act the Court may extend the powers of trustees in certain cases, and s. 61 *ibid.*, replacing s. 3 of the Judicial Trustees Act, 1896, empowers the Court, if a trustee has acted honestly and reasonably and ought fairly to be excused, to discharge him from liability.

Further, the Trustee Act, 1888, s. 8, allows a trustee to plead the Statute of Limitations except in cases of fraud or if he has not benefited by the breach of trust; see LIMITATIONS.

A breach of trust was not a criminal offence until 20 & 21 Vict. c. 54. It is now punishable, by the Larceny Act, 1916, s. 21, as a misdemeanour, with penal servitude not exceeding seven years; but no prosecution can be commenced without the sanction of the Attorney-General, or, if civil proceedings have been started by the prosecutor, without the sanction of the Court before whom the proceedings have been or are pending. Consult *Lewin*, *Godefroi*, or *Underhill on Trusts*.

Bread. The Acts (see *Chitty's Statutes*, tit. '*Bread*') relating to the sale of bread are the London Bread Act, 1822 (3 Geo. 4, c. cvi.) (metropolis), now repealed; and the Bread Act, 1836 (6 & 7 Wm. 4, c. 37), which, by s. 4 (as to which see *Cox* v. *Blaines*, 1902, 1 K. B. 670, explained in *Mattinson* v. *Binley*, 1908, 2 K. B. 534), prescribes that bread, 'except French, or fancy bread (as to which see *Bailey* v. *Barsby*, 1909, 2 K. B. 610) or rolls,' must be sold by *weight*, etc.; but the Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 32, makes a request by the purchaser an essence of the offence of refusal to weigh in the case of bread carried out in a cart. See *Evans* v. *Jones*, (1909) 99 L. T. 799; *Lyons & Co.* v. *Houghton*, 1915, 1 K. B. 489.

Section 8 of the Act of 1836 enacts that the names, addresses and offences of bakers and others convicted of adulterating bread may be directed by the convicting justices to be published in some newspaper. Section 14 prohibits Sunday baking, and the consents for prosecution for Sunday trading generally, which are required by the Sunday Observance Prosecution Act, 1871 (see SUNDAY), need not be procured (*R.* v. *Mead*, 1902, 2 K. B. 212). The Bread Acts (Amendment) Act, 1922 (12 & 13 Geo. 5, c. 28), amended the then existing law so as to remove the restrictions as to the use of self-raising flour.

Breaking Bulk, a term formerly used to signify the separation of goods in the hands of a bailee which made him liable for felony. Since the Larceny Act, 1861, this distinction is immaterial, and remains so under the Larceny Act, 1916.

Breaking In. See ss. 24–27 of the Larceny Act, 1916, 'as to Sacrilege, Burglary, and Housebreaking,' and BURGLARY.

Breaking of Arrestment, is the contempt of the law committed by an arrestee who disregards the arrestment used in his hands, and pays the sum or delivers the goods arrested to the debtor. The breaker is liable to the arrester in damages.—*Scots Law.*

Brecca [fr. *brèche*, Fr.], a breach or decay.

Brecina. See BRACINUM.

Brede [adj.), broad.—*Bract.* Also in Saxon, deceit.

Bredwite [fr. *bread* and *wite*, Sax.], a fine or penalty imposed for defaults in the assize of bread.—*Paroch. Antiq.* 114.

Brehon, the Irish name for a Judge.

Brehon Law, the law by which Ireland was governed at the time of its conquest by Henry II.; 'a rule of right, unwritten but delivered by tradition from one to another, in which oftentimes there appeared great show of equity in determining the right between party and party, but in many things repugnant quite, both to God's laws and man's.' This law was formally abolished by 40 Edw. 3, it being unanimously declared to be indeed no law, but a lewd custom crept

in of later times. See 1 *Bl. Com.* 100; *Edm. Spenser's State of Ireland*, 1513, edit. Hughes; *Hale's Hist.* 217.

Breisna, wether-sheep.—*Cowel's Law Dict.*; *Dugd. Mon.* t. 1, p. 406.

Brenagium, a payment in bran, which tenants anciently made to feed their lord's hounds.

Brephotrophi, curators of places for receiving foundlings.

Bressummer, in the London Building Act, 1894 (57 & 58 Vict. c. ccxiii. (see s. 5 (7)), means 'a wooden beam or a metal girder which carries a wall.'

Bretoyse, or **Bretoise,** the law of the Welsh marches, observed by the ancient Britons.

Bretwalda (wielder), ruler of the Britons.

Breve, a writ, by which a person is summoned or attached to answer an action, complaint, etc., or whereby anything is commanded to be done in the courts, in order to do justice, etc. It is called *breve*, from the brevity of it, and is addressed either to the defendant himself, or to the chancellors, judges, sheriffs, or other officers.—*Skene, de verb.* '*Breve.*' See WRIT; ORIGINAL WRIT; JUDICIAL WRIT.

Breve ita dicitur, quia rem de qua agitur, et intentionem petentis, paucis verbis breviter enarrat. 2 *Inst.* 39.—(A writ is so called because it briefly states, in few words, the matter in dispute, and the object of the party seeking relief.)

Breve de recto, a writ of right or license for a person ejected out of an estate, to sue for the possession of it.

Breve perquirere, to purchase a writ or license of trial, in the king's courts, by the plaintiff, *qui breve perquisivit*; whence the usage of paying 6*s.* 8*d.* fine to the Crown where the debt is 40*l.*, and of 10*s.* where the debt is 100*l.*, etc., in suits and trials for money due upon bond, etc.

Brevet, a commission conferring on an officer a degree of rank immediately above that which he holds in his particular regiment; without, however, conveying a power to receive the corresponding pay. Brevet rank does not exist in the royal navy, and in the army it neither descends lower than that of captain, nor ascends above that of lieutenant-colonel.

Brevia magistralia, official writs framed by the clerks in Chancery to meet new injuries, to which the old forms of actions were inapplicable.—4 *Reeves*, 426.

Brevia selecta, abbrev. *Brev. Sel.* [Lat.], choice writs or processes.

Brevia testata, written memoranda, introduced to perpetuate the tenor of a conveyance and investiture, when grants by parol only became the foundation of frequent dispute and uncertainty. To this end they registered in the deed the persons who attended as witnesses, which was formerly done without their signing their names (that not being always in their power), but they only heard the deed read; and then the clerk or scribe added their names in a sort of memorandum; thus, '*his testibus, Johanne Moore, Jacobo Smith, et aliis ad hanc rem convocatis.*' Our modern deeds are in reality nothing more than an improvement or amplification of these *brevia testata.* —2 *Bl. Com.* 307.

Breviate, a memorandum occasionally prefixed to a Parliamentary Bill, shortly stating its effect.

Brevibus et rotulis liberandis, a writ to a sheriff to deliver to his successor the county, and appurtenances, with the rolls, briefs, remembrance, and all other things belonging to his office.—*Reg. Brev.* 295.

Brewster Sessions. The special sessions of licensing justices annually held in the first 14 days of February for the grant of licenses for sale by retail of intoxicating liquors to be drunk on the premises where sold. See INTOXICATING LIQUORS. Before the Licensing Act, 1902, these sessions were held under s. 1 of the Licensing Act, 1828, in August and September, and in Middlesex and Surrey in March.

Bribe, a gift to any person in office or holding a position of trust, with the object of inducing him to disregard his official duty or betray his trust for the benefit of the giver. It is a misdemeanour at common law for a public officer, whether judicial or ministerial, to accept a bribe, or for such an officer to conspire with others that he shall receive such a bribe (*Rex* v. *Whitaker*, 1914, 3 K. B. 1283). It has long been settled law that the secret profits of an agent belong to his principal: see *De Busche* v. *Alt*, (1878) 8 Ch. D. 286. The acceptance of a secret commission from the other side to a negotiation justifies the dismissal of the agent receiving it (*Boston Deep Sea Fishery* v. *Ansell*, (1888) 39 Ch. D. 339). The bribery of an agent avoids a contract: see *Shipway* v. *Broadwood*, 1899, 1 Q. B. 369, where a veterinary surgeon employed to test horses by the purchaser had passed them after acceptance of a bribe from the seller. In such a case it is an immaterial inquiry to what extent the bribe or the offer of it influenced the person to whom it was given

or made: *ibid.*, p. 373, per Chitty, L.J. The corrupt giving to or acceptance by any agent of any gift or consideration for doing or forebearing to do any act in relation to his principal's affairs or business is a misdemeanour punishable by fine or imprisonment or both (the Prevention of Corruption Acts, 1906 and 1916; and see the Prevention of Corruption Order, 1918, No. 321). See also the Public Bodies Corrupt Practices Act, 1889, which is directed against the bribery and corruption of members, officers, and servants of public bodies.

A right to vote for a candidate for election to the House of Commons being deemed a trust as well, it has been provided (Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102)) (see also Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51)) that to procure or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote or refrain from voting, or corruptly to do any such act as aforesaid on account of such voter having voted or refrained from voting at any parliamentary election, is bribery punishable by heavy penalties; and this definition is applied to municipal and other local elections by the Municipal Elections (Corrupt and Illegal Practices) Act, 1884; to county council elections by s. 75 of the Local Government Act, 1888; and to parish and district council elections by s. 48 (3) of the Local Government Act, 1894. See new Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 40. See CORRUPT PRACTICES.

The Extradition Act, 1906 (6 Edw. 7, c. 15), (see EXTRADITION), adds bribery to the list of extradition crimes.

The Honours (Prevention of Abuses) Act, 1925 (15 & 16 Geo. 5, c. 72), makes illegal any gift of money to assist in securing a title of a dignity or of honour.

Bribour [fr. *bribeur*, Fr.], a pilferer of other men's goods.—28 Edw. 2, c. 1.

Bricks. the duties of excise on, were repealed by 13 & 14 Vict. c. 9.

Bridewell, a house of correction.

Bridge [*γέφυρα*, Gk.; *pons*, Lat.; *bric*, Sax.], a building erected across a river, ditch, valley, or other place, for the common benefit of travellers. The 'Statute of Bridges' (22 Hen. 8, c. 5), (which see, with other statutes, *Chitty's Statutes*, tit. '*Highways* (*Bridges*)'), provides for the rating of the inhabitants of a county or borough for the repair of bridges not repairable by any person *ratione tenuræ*. As to the offence of pulling down, throwing down, or destroying a bridge, see Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 29 and 33.

The management of county bridges is transferred from justices to county councils by s. 3, par. viii., of the Local Government Act, 1888; and by s. 6 of the same Act the county councils may purchase bridges not being county bridges, and may erect new bridges. And see Pub. Health Act, 1936, s. 343. The construction and repair of railway bridges over or under a public highway is mainly regulated by the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 46 *et seq.* See *Rhondda Urban Council* v. *Taff Vale Railway*, 1909, A. C. 253, and TRUNK ROADS.

The Road and Rail Traffic Act, 1933 (23 & 24 Geo. 5, c. 53), s. 30, deals with power to prohibit or restrict the use of vehicles on certain bridges.

Bridge-masters, of London Bridge, were persons chosen by the citizens, who had certain fees and profits belonging to their office and the care of the bridge.—*Jac. Law Dict.*

Brief [fr. *brevis*, Lat.; *brief*, Dutch, a letter], an abbreviated statement of the pleadings, proofs, and affidavits in any legal proceeding, with a concise narrative of the facts and merits of the plaintiff's case, or the defendant's defence, for the instruction of counsel at the trial or hearing. See BARRISTER.

Also a document bearing the royal signature addressed to bishops and clergy, authorizing the collection in churches of money for charitable purposes therein mentioned. The issue of such documents was regulated by 4 Anne, c. 14, repealed by 9 Geo. 4, c. 42, and is still legal, though disused for many years.

Brief al'evesque, a writ to the bishop which, in *quare impedit*, shall go to remove an incumbent, unless he recover or be presented *pendente lite*.—1 *Keb.* 386.

Brief, or **Brieve, out of the Chancery,** a writ issued in Scotland in the name of the sovereign in the election of tutors to minors, the cognoscing of lunatics or of idiots, and ascertaining the widow's terce; and sometimes in dividing the property belonging to heirs-portioners. In these cases only brieves are now in use.—Consult *Bell's Scotch Law Dict.*

Briga [fr. *brique*, Fr.], debate, contention.

Brigandine [*lorica*, Lat.], a coat of mail or ancient armour, consisting of numerous

jointed scale-like plates, very pliant and easy for the body, mentioned in 4 & 5 P. & M. c. 2; also in Jer. xlvi. 4, and li. 3, Authorized Version.

Brigantes, the ancient names for the inhabitants of Yorkshire, Lancashire, Durham, Westmoreland, and Cumberland.

Brigbote, or **Bragbote** [fr. *brig*, Sax.; and *bote, compensatio*], the contribution to the repair of bridges, walls, and castles, which by the old laws of the Anglo-Saxons might not be remitted.—*Fleta*, l. 1, c. x., lvii.

Bristol Bargain, where A. lends B. 1,000*l.* on good security, and it is agreed that 500*l.*, together with interest, shall be paid at a time stated; and as to the other 500*l.*, that B., in consideration thereof, should pay unto A. 100*l. per annum* for seven years.

British America. See Fur Trade Act, (1 & 2 Geo. 4, c. 66), North-Western Territories Act (22 & 23 Vict. c. 26), and the British North America Act, 1867 (30 & 31 Vict. c. 3), by which the Dominion of Canada was formed by the union of the provinces of Canada, Nova Scotia, and New Brunswick. Manitoba joined the Union in 1870, British Columbia in 1871, and Prince Edward Island in 1873. Outlying British possessions were added by Order in Council in 1880, and Newfoundland alone remains independent. The Act of 1867 was amended by the British North America and other Acts, all referred to collectively as the British North America Acts, 1867 to 1930. See Statute of Westminster.

British Broadcasting Corporation. See Broadcasting.

British Columbia, the territory on the north-west coast of North America, once known by the designation of New Caledonia. See British America.

British Empire, the Most Excellent Order of the, founded in 1917 for both men and women. The various grades take precedence immediately after the corresponding grades of the Royal Victorian Order.

British Islands. In Acts of Parliament the United Kingdom, Channel Islands and the Isle of Man, see Interpretation Act, 1889 (52 & 53 Vict. c. 68).

British Museum, founded in 1752, under the will of Sir Hans Sloane and 25 Geo. 2, c. 22. The museum is governed by a body of trustees of whom three, the Archbishop of Canterbury, the Lord Chancellor and the Speaker of the House of Commons, are *ex-officio* trustees. The museum is entitled to a copy of every book published in the United Kingdom by s. 15 of the Copyright Act, 1911, but certain classes of publications, e.g., trade advertisements, registers of voters, specifications of Patents, time tables, calendars, etc., may be excepted; see British Museum Act, 1932. The trustees are authorized to store newspapers at 'the Hendon building' by the British Museum Act, 1902, and to lend objects for public exhibition by 14 & 15 Geo. 5, c. 23. In *Martin* v. *British Museum Trustees*, (1894) 10 T. L. R. 338, the plaintiff failed to recover for a libel in a pamphlet bought by the defendants and placed in the library for public use.

British Nationality and Status of Aliens Act, 1914. See Alien.

British Ship. As to the qualification for owning and the obligation to register British ships, see Merchant Shipping Act, 1894, ss. 1–3. The owner must be a British subject, natural born or naturalized, or a denizen *q.v.*, or a body corporate established and subject to the laws of some part of His Majesty's dominions and having their principal place of business in those dominions but not a natural born British subject who has taken the oath of allegiance to a foreign sovereign or State or become a citizen or subject of a foreign State or been naturalized or made a denizen, unless *while he is owning a British ship* he has taken the oath of allegiance to the King after his disqualification and is, during his ownership, either resident in the said dominions or is partner of a firm carrying on business there.

Britton, a small French law tract under the name of Britton, thought by some to have been composed under the direction of Edward I., by others considered as nothing more than an abridgment of Bracton, with the subsequent alterations that had been made in the law; and to be called Britton, as one of the names of Bracton himself. 2 *Reeves*, c. xi. p. 280.

Broad-arrow, used as a Government mark, is thought to have had a Celtic origin; and the so-called arrow may be the or *á*, the broad *a* of the Druids. This letter was typical of superiority either in rank and authority, intellect, or holiness; and is believed to have stood also for king or prince. Public stores are marked with the Broad Arrow. See Public Stores Act, 1875.

Broadcasting. Aural or visual communication by wir less telegraphy (*q.v.*).

In the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man, the service of broadcasting to the public by means of wireless

telephony and television is carried on by the British Broadcasting Corporation incorporated by Royal Charter in December, 1926, which was supplemented in August, 1931, acting under licence of the Postmaster General. See *Parliamentary Papers*, Cmd. 5329 (1936); and WIRELESS TELEGRAPHY.

Brocage, the wages or hire of a broker; also termed *Brokerage.*—12 Rich. 2, c. 2.

Brocella [fr. *brusca,* obs. Lat.; *broce,* Fr.], a wood, a thicket, hence *brouce* of wood, and *brousing* of cattle.—*Jac. Law Dict.*

Brode-halfpenny, or **Broad-halfpenny.** See BORD-HALFPENNY.

Broken Stowage, that space in a ship which is not filled by her cargo.

Broker [fr. *broceur,* Fr., a person who breaks into small pieces], (1) an agent employed to make bargains and contracts between other persons in matters of trade, commerce and navigation, by explaining the intentions of both parties, and negotiating in such a manner as to put those who employ him in a condition to treat together personally; (2) and, more commonly, an agent employed by one party only to make a binding contract with another.

There are various sorts of brokers now employed in commercial affairs, whose transactions form, or may form, a distinct and independent business. Thus, for example, there are exchange and money-brokers, stock-brokers, ship-brokers, and insurance-brokers, who are respectively employed in buying and selling bills of exchange, or promissory notes, railway scrip, goods, stocks, ships, or cargoes; or in procuring freights or charter-parties. By custom or usage brokers may become personally liable on contracts made by them on behalf of principals where the principal's name is not disclosed at the time of contract. See *Pike* v. *Ongley,* (1887) 18 Q. B. D. 708. The character of a broker is also sometimes combined in the same person with that of a factor. In such cases we should carefully distinguish between his acts in the one character and in the other, as the same rules do not always apply to each. See FACTOR. The Romans called brokers *Proxenetæ.*

Brokers in the City of London were by 33 & 34 Vict. c. 60, and 47 Vict. c. 9, the London Brokers Relief Acts of 1870 and 1884, relieved from the necessity of being admitted by the Court of Aldermen and other restrictions to which they were formerly subject.

As to fraudulent misappropriation by brokers, see Larceny Act, 1916, especially s. 20.

The term 'broker' is also applied to the agent or 'bailiff' employed by a landlord to distrain. (See 57 Geo. 3, c. 93, s. 6, whereby every broker must give a copy of his charges to the person on whose goods he distrains, and DISTRESS.) County court bailiffs may be authorized by a county court judge to act as brokers to sell goods taken in execution under the County Court Act, 1934, s. 133.

For the purposes of s. 17 of the Finance Act, 1925 (15 & 16 Geo. 5, c. 36), a broker includes a general commission agent.

Brokerage, the commission or percentage paid to brokers on the sale or purchase of bills, funds, goods, etc. See CONTRACT NOTE.

Bronze Coinage. See 33 & 34 Vict. c. 10, repealing 22 & 33 Vict. c. 30.

Brooke's (Sir Robert) Abridgement, a work printed in 1568, and an improvement on the plan of Statham and Fitzherbert. The cases are here arranged with more strict regard to the title; but the order in which they are strung together is very little better, being generally guided only by the chronology.—*Foster.*

Brossus, bruised or injured with blows, wounds, or other casualty.—*Cowel's Law Dict.*

Brothel [fr. *bordel,* Fr.], a habitation of prostitutes. To keep one is an offence at Common Law, the prosecution of which by indictment is specially encouraged by the Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), s. 5, and the prosecution of which by summary proceedings before justices of the peace is allowed by the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69). Further provision for the suppression of brothels is made by the Criminal Law Amendment Acts, 1912 and 1922. For a person licensed to sell intoxicating liquor to permit his premises to be a brothel, the penalty is up to 20*l.* fine, forfeiture of license, and perpetual disqualification for holding another, by s. 15 of the Licensing Act, 1872. A woman who keeps a house for the purpose of prostitution with herself alone cannot be convicted of keeping a brothel (*Singleton* v. *Ellison,* 1895, 1 Q. B. 607).

Brougham's (Lord) Acts. The best known of them are the Beer Act of 1830 (11 Geo. 4, & 1 Wm. 4, c. 64), the Judicial Committee Act of 1833 (3 & 4 Wm. 4, c. 41), the repealed County Court Act of 1846, the repealed Act for shortening the language of Acts of Parliament (13 & 14 Vict. c. 21), for which

ss. 1, 3 of the Interpretation Act, 1889, are now substituted, and the Evidence Acts of 1845 and 1851 (8 & 9 Vict. c. 113), and (14 & 15 Vict. c. 99); and the Act, now replaced, which made slave trading a felony for the first time.

Brudhote. See BRIGBOTE.

Brudkop [fr. *brautkauf*, Low. Sax.], betrothment.

Bruere [*erica*, Lat., heath], heath-ground.

Brueria [fr. *brær*, Sax., briar], thorns, briars, heath.—*Par. Ant.* 620.

Brullletus, a small coppice or wood.

Brullius [fr. *breil, breuil*, Fr., a thicket], a clump of trees in a park or forest.

Bruneta. See BURNETA.

Bruscia, a wood.—*Dugd. Mon.* t. 1, fol. 773.

Brutum fulmen, an empty noise: an empty threat.

Bubble Act, 6 Geo. 1, c. 18 (repealed by 6 Geo. 4, c. 91), passed after the failure of the South Sea Scheme, to discourage similar schemes designed merely as baits to extract money from the thoughtless.

Bucinus, a military weapon for a footman.

Buckstall, a toil to take deer.—4 *Inst.* 306.

Buckwheat, a French wheat, called in Essex, *brank*, and in Worcestershire *crap*.—15 Car. 2, c. 5.

Buggery, sodomy, punishable by the Offences against the Person Act, 1861, s. 61, by penal servitude for life or any term not less than ten years, but by the effect of the Penal Servitude Act, 1891, a maximum term of two years' imprisonment may in the discretion of the Court be imposed. And see BLACK MAIL, and INFAMOUS CRIME.

Building, defined by Lord Esher in *Moir* v. *Williams*, 1892, 1 Q. B. 270, as an inclosure of brick or stone covered by a roof, and said by Park, J., in *R.* v. *Gregory*, (1833) 5 B. & Ad. at p. 561, not to include a wall; but the definition depends on circumstances, and may include a reservoir (*Moran* v. *Marsland*, 1909, 1 K. B. 744). The London Building Act, 1930 (20 & 21 Geo. 5, c. clviii.), has no definition. The term 'new building' was defined in s. 23 of the Public Health Acts Amendment Act, 1907 (c. 53) (now repealed); and see also *Southend-on-Sea Corporation* v. *Archer*, (1901) 70 L. J. K. B. 328; *South Shields Corporation* v. *Wilson*, (1901) 84 L. T. 267. An old railway carriage will be a 'new building' if the interior arrangements are altered (*Hanrahan* v. *Leigh Urban Council*, 1909, 2 K. B. 257). An advertisement hoarding is a building within a restrictive covenant (*Nussey* v. *Provincial Bill Posting Co.*, 1909, 1 Ch. 734; *Stevens* v. *Willing & Co. Ltd.*, 1929, W. N. 53. See also *Paddington Corporation* v. *Attorney-General*, 1906, A. C. 53. With regard to the Disused Burial Grounds Act, 1884 (47 & 48 Vict. c. 72), an electricity transformer chamber (*Rector and Churchwardens of the Parish of St. Nicholas Acons* v. *London County Council*, 1928, A. C. 469) and a urinal (*the Mayor, Aldermen and Councillors of Bermondsey* v. *Mortimer*, 1926, P. 87), are buildings within the meaning of s. 3, but a small tool-shed is not (*ibid.*). Building is defined in the Roads Improvement Act, 1925 (15 & 16 Geo. 5, c. 68), s. 11, as including 'any erection of whatsoever material and in whatsoever manner constructed and any part of a building.' For the Lead Paint (Protection against Poisoning) Act, 1926 (16 & 17 Geo. 5, c. 37), building is defined as including fixtures, s. 7. The term 'building' for the purposes of the Representation of the People Act, 1832 (2 & 3 Will. 4, c. 45), s. 27 (repealed 7 & 8 Geo. 5, c. 64), is discussed in *Powell* v. *Boraston*, (1865) 18 C. B. N. S. 175, at p. 179. See also 18 & 19 Geo. 5, c. 12. See NEW BUILDING.

Building Acts. The Acts commonly so called apply only to the metropolis, and have been called the Metropolitan Building Acts. The Metropolitan Building Acts, 1855 and 1862 (which were public general Acts), and their amending enactments were repealed and re-enacted with many amendments by the local and personal London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), and its amending Acts of 1898 and 1905. These in their turn are repealed by the London Building Act, 1930 (20 & 21 Geo. 5, c. clviii.). See LONDON BUILDING ACT.

The old Building Act, *par excellence*, the Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78), although otherwise partial and repealed, has two sections, 83 and 86, which are still in force and (it is submitted) of universal application. See as to s. 86, *Ex parte Goreley*, (1864) 4 De G. J. & S. 477, but compare *Westminster Fire Office* v. *Glasgow Provident Society*, (1888) 13 App. Cas. at p. 167, per Lord Watson. Section 33 provides for the application of insurance money in reinstatement of insured buildings after damage by fire, and section 86 that no action shall lie against a person in whose house a fire accidentally begins.

Building Contract. 'A building contract means a contract for the building of anything—not necessarily a house, but any other physical construction' (*Carlisle*

R. D. C. v. *Carlisle Corporation*, 1909, 1 K. B. 471, at p. 483).

Building Lease, a lease of land for a long term of years, usually 99, at a rent called a ground rent, the lessee covenanting to erect certain buildings thereon according to specification, and to maintain the same, etc., during the term. At the end of the term, the land, with the buildings upon it, reverts to the lessor and his assigns. By 45 & 46 Vict. c. 38, s. 2 (10) (iii), a building lease is defined as a lease for the erecting and improving of, and the adding to and the repairing of, buildings, and by the Law of Property Act, 1925, s. 205, as a lease for building purposes or purposes connected therewith. Such leases of settled land are regulated by the Settled Land Act, 1925, s. 44, and (as to leases by mortgagees), by s. 99, sub.-ss. 58 (3), (9) and (10) of the L. P. Act, 1925. See the Landlord and Tenant Act, 1927 (17 & 18 Geo. 5, c. 36), s. 2 (1), in connection with a tenant's claim for compensation for improvements.

Building Societies, associations of persons subscribing to a common fund which is employed in making advances to such members (called 'advanced members') as desire to obtain them on the security of real or leasehold property, while those members who do not desire an advance (called 'investing members') simply pay their contributions to the society and receive interest thereon. Building societies are either (*a*) Unincorporated, or (*b*) Incorporated. Unincorporated societies (now few in number) are governed by the Building Societies Act of 1836 (6 & 7 Wm. 4, c. 32), and certain sections of the old Friendly Societies Acts of 1829 and 1835 (repealed for all other purposes) incorporated therewith. Incorporated societies are governed by the Building Societies Acts, 1874 to 1894, and the Building Societies Regulations, 1895, made thereunder. A cross division of these societies is into (1) Terminating, and (2) Permanent. A Terminating Society is one which continues only until every member has obtained an advance and then comes to an end; a Permanent Society is one which continues indefinitely. Every society is governed by its rules, which must be registered with the Chief Registrar of Friendly Societies and form the contract between the society and its members. The form and operation of receipts by building societies for moneys paid on redemption of mortgages in England and Wales is now governed by s. 115 of the L. P. Act, 1925. See *Wurtzburg on Building Societies*, and *Davis on Building Societies*, 5th ed.

Bulk. See LADEN IN BULK. The Electric Lighting Act, 1909 (9 Edw. 7, c. 34), provides (s. 4) for the 'supply of electricity in bulk,' which means (s. 25) to supply electricity—

(a) to any local authority, company, or person authorized to distribute electricity to be used for the purposes of distribution, or

(b) to any local authority authorized by any general or special Act to undertake or contract for the lighting of streets, bridges, or public places, to be used for the purposes of lighting streets, bridges, and public places.

Bull [fr. *bulla*, Lat., a stud or boss], a brief or mandate of the Pope or Bishop of Rome, so called from the seal of lead or gold affixed to it, upon which was engraved on one side an image of St. Paul on the right of a cross, and that of St. Peter on the left, and on the other the Pope's name, and the year of his pontificate.

To procure, publish, or put in use any of these is made treason, punished by death, by 13 Eliz. c. 2. That Act, though long previously obsolete, was not expressly repealed until 1846, and then only by an Act (the Religious Disabilities Act, 1846 (9 & 10 Vict. c. 59)) repealing it so far only as the same imposes the penalties or punishments therein mentioned.

Bull, a cant term used in the Stock Exchange to denote one who has bought stocks or shares with the intention of reselling on a rise in the market value. It may be applied either to a purely speculative purchaser or to one who makes a temporary investment. See BEAR.

Bull and Boar. By the custom of some places the parson was obliged to keep these animals for the use of the parishioners, in consideration of his having tithes of calves and pigs, etc.—1 *Roll. Abr.* 559.

Bull Baiting. See BAITING.

Bulletin, an official notice of a public transaction or matter of public importance; an abridged edition of the *London Gazette*.

Bullion [fr. *billon*, Fr., copper], uncoined gold and silver in the mass. Those metals are called so, either when smelted from the native ore, and not perfectly refined; or when they are perfectly refined, but melted down into bars or ingots, or into any unwrought body, of any degree of fineness. As to the purchase of bullion for the Mint, see Coinage Act, 1870 (33 & 34 Vict. c. 10), s. 9,

which provides that the Treasury may, from time to time, issue to the Master of the Mint such sums as may be necessary to enable him to purchase bullion to provide supplies of coin for the public service. As to the weights used in sales of bullion, see Weights and Measures Act, 1878, replacing 16 & 17 Vict. c. 29. See CURRENCY AND BANK NOTES ACT.

Bulls. Licence required for keeping, see 21 & 22 Geo. 5, c. 43.

Bulter, or **Boulter,** the bran or refuse of meal after it is dressed; also the bag in which it is dressed. Hence, *bulted* or *boulted* bread, being the coarsest bread.

Bum-Bailiff, a person employed to dun one for a debt; the bailiff employed to arrest for debt. See BOUND-BAILIFFS.

Bungalow. Generally, a building on a single, or ground floor, the roof meeting the walls enclosing that floor, either with or without gables, but the space under the roof may be utilized; see *Ward* v. *Paterson*, 1929, 2 Ch. 396 (*restrictive covenant*).

Buoys and **Beacons.** As to supervision of these marks and signs of the sea, see ss. 634 *et seq.* and s. 742 of the Merchant Shipping Act, 1894.

Burden of Proof [*onus probandi*, Lat.]. The most prominent canon of evidence is, that the point in issue is to be proved by the party who asserts the affirmative, according to the civil law maxims, *Ei incumbit probatio qui dicit, non qui negat; Actori incumbit onus probandi;* and *Affirmanti non neganti incumbit probatio.* The burden of proof lies on the person who has to support his case by proof of a fact which is peculiarly within his own knowledge, or of which he is supposed to be cognizant. See *Best on Evidence*, Bk. III., Pt. 1, ch. 2.

Bureau [fr. *bujo*, It., dark], a large writing table; also the office of any functionary where public business is transacted.

Bureaucracy, government by departments, each under a chief; a word to describe the system used in an invidious sense.

Burgage-holding, a tenure by which lands in royal boroughs in Scotland are held of the sovereign. The service was watching and warding, and was done by the burgesses within the territory of the borough, whether expressed in the charter or not. See 31 & 32 Vict. c. 101.

Burgage-tenure. Tenure in burgage is, where an ancient burrough is, of which the King is lord, and they, that have tenements within the burrough, hold of the King their tenements; that every tenant for his tenement ought to pay to the King a certaine rent by yeare etc. And such tenure is but tenure in socage.—*Co. Litt.* 108 *b.* And the same manner is, where another lord spirituall or temporall is lord of such a burrough, and the tenants of the tenements in such a burrough hold of their lord to pay, each of them yearly, an annual rent.—*Ibid.* 109 *a.* It was a freehold tenure and may still give a right of vote, see Representation of the People Act, 1918 (7 & 8 Geo. 5, c. 64), s. 17(2). The tenure of Borough English (*q.v.*) is sometimes connected with burgage tenure. See also schedule 12 (1) (d) of the Law of Property Act, 1922, as amended.

Burgbote, a contribution towards the building or repairing of castles or walls of a borough or city.—*Cowel*; *Fleta*, l. 1, c. 47.

Burg-breche [*fidejussionis violatio*, Lat., a breach of pledge], a fine imposed on the community of a town for a breach of the peace, etc.—*Leg. Canuti*, c. lv.

Burgesses [fr. *burgeise*, O.E.; *burgeois*, O. Fr.; *birgensis*, Lat.], generally the inhabitants of a borough or walled town; sometimes restricted to the magistrates, etc., of corporate towns, and sometimes to the representatives of a borough in the Commons House of Parliament; in and for the purposes of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), those persons who by one year's residence in a borough and occupation of property and payment of rates are entitled to be 'enrolled,' and when enrolled, to elect the 'council,' by which a municipal corporation is capable of acting. The term 'Local Government electors' was substituted for 'burgesses' by the Representation of the People Act, 1918 (c. 64), s. 72, sched. 6, par. 2. See MUNICIPAL CORPORATION.

Burgessour, a burglar.—*Britt.*

Burgh, in Scotland equivalent to 'borough' in England. The Town Councils (Scotland) Act, 1900 (63 & 64 Vict. c. 49), consolidates (repealing 12 entire Acts) various Acts from 3 Geo. 4, c. 91, to the Burgh Police (Scotland) Act, 1892, Amendment Act, 1894 (57 & 58 Vict. c. 18). Important changes have been made by the Local Government (Scotland) Act, 1929 (19 & 20 Geo. 5, c. 50).

Burgheristhe, or **Burgeriche,** a breach of the peace in a city, etc.—*Domesday.*

Burgh-malls, yearly payments to the Crown of Scotland, introduced by Malcolm III., and resembling the English fee-farm rents.

Burghware, a citizen or burgess.

Burglary [fr. *burg*, Sax., a house, and

larron, a thief, fr. *latro*, Lat.]. At Common Law burglary is the breaking and entering of the dwelling-house of another in the night-time with intent to commit a felony therein. Section 25 of the Larceny Act, 1916, provides that—

> Every person who in the night (1) Breaks and enters the dwelling-house of another with intent to commit any felony therein; or (2) breaks out of the dwelling-house of another, having (*a*) entered the said dwelling-house with intent to commit any felony therein; or (*b*) committed any felony in the said dwelling-house, shall be guilty of the felony called burglary and on conviction thereof liable to penal servitude for life.

Section 46 defines night as meaning 'the interval between nine o'clock in the evening and six o'clock in the morning of the succeeding day.' As to the meaning of dwelling-house, see s. 46 (2). The felonious intent must exist, but need not be executed. The 'breaking,' which may be either actual, e.g., the forcing of a door or the opening of a window, or constructive, as where the offender obtains admittance by fraud, is a necessary part of the offence of burglary, although entry without a breaking in is a felony punishable with penal servitude not exceeding seven years (s. 27, *ibid.*). Burglary is triable at quarter sessions (s. 38, replacing s. 1 of the Burglary Act, 1896).

The question whether and how far it is justifiable to kill a burglar is by no means clear. If violence on the part of the burglar be reasonably apprehended, it is not murder to shoot him dead with intent to kill him, but whether it is justifiable to kill merely in defence of property is doubtful. By s. 7 of the Offences against the Person Act, 1861, 'no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence, or in any other manner without felony,' and this kind of exculpation has been applied to unarmed burglary by high authorities. See 1 *Hale*, 481, 484; *Archbold's Cr. Pl.*, 29th ed., p. 893, and the authorities there cited, especially *R.* v. *Scully*, (1824) 1 C. & P. 319; 28 R. R. 780.

Burgmote, a court of a borough.—*Leg. Canuti*, c. xliv.

Burl, husbandmen.—*Dugd. Mon.* t. 3, p. 183.

Burial. Burial in some part of the parish churchyard without payment is a Common Law right, but not burial in any particular part of it. In order to acquire a perfect right to be buried in a particular vault or place, a faculty must be obtained from the ordinary, as in the case of a pew; or a man may prescribe that he is occupier of an ancient messuage in a parish, and ought to have separate burial in such a vault within the church, and such prescription implies that a faculty was originally obtained. The faculty, however, fails when the family cease to be parishioners. In *Bryan* v. *Whistler*, (1828) 8 B. & C. 288, it was held that an exclusive right of burial in a vault is an easement, and therefore cannot be granted by parol or by mere writing without a deed.

Burial must not take place except after the Registrar of Births, Deaths or Marriages has issued his certificate of death or by order of a Coroner, see 16 & 17 Geo. 5, c. 48. See CORONER.

A clergyman may be prosecuted in the Ecclesiastical Court for improperly refusing to bury a dissenter or other person, for by the 68th canon 'no minister shall refuse or delay to bury any corpse that is brought to the church or churchyard (convenient warning being given him before), in such manner and form as is prescribed in the Book of Common Prayer.' See *Escott* v. *Martin*, (1841) 4 Moore, P. C. 104, in which a clergyman was suspended under the canon for refusing to bury a child which had been baptized by a Wesleyan minister.

Burial Grounds. The Common Law place of burial is the parish churchyard; but the growth of population and sanitary reasons having made additional burial grounds necessary, these began to be provided by companies specially authorized thereto by local Acts of Parliament, and in 1847 the Cemeteries Clauses Act (10 & 11 Vict. c. 65), consolidated the provisions usually contained in the local Acts, which thenceforward usually, though not necessarily, incorporated that Act.

In 1852 an adoptive Burial Act (15 & 16 Vict. c. 85), enabled elective 'burial boards' of metropolitan parishes to acquire land for burial grounds, and this Act was applied to boroughs and parishes by an Act of 1853 and subsequent Acts, the parish meetings in rural parishes being constituted the sole adopting bodies by s. 7 of the Local Government Act 1894 (56 & 57 Vict. c. 73). The Burial Act, 1880 (43 & 44 Vict. c. 41), allows burial in a churchyard without Church of England rites; and the Burial Act, 1900, (63 & 64 Vict. c. 15), regulates the consecration of burial grounds not being churchyards, and otherwise amends the law affecting such burial-grounds. By the Burial Act, 1906 (6 Edw. 7, c. 44), no consent to the use of grounds for burials is required in respect of a house erected within 100 yards

of a burial ground after the ground has been once so appropriated. See Open Spaces Act, 1907, and as to the rating of burial-grounds, *Winstanley* v. *North Manchester Overseers*, 1910, A. C. 7, also *Chitty's Statutes*, tit. '*Burial*'; *Baker* or *Little on the Law of Burial*; and CREMATION.

A creditor cannot arrest or detain the body of the deceased debtor. See per Lord Ellenborough in *Jones* v. *Ashburnham*, (1804) 4 East, 455.

Burkism (from the name of its first perpetrator, who was executed at Edinburgh in January, 1829), the practice of killing persons for the purpose of selling their bodies for dissection. See preamble of the Anatomy Act, 1833 (2 & 3 Wm. 4, c. 75).

Burlaw. See BY-LAW.

Burnetta, or **Brunetta,** cloth made of dyed wool.—*Lyndewood.*

Burning in the hand. See BRANDING.

Burning of houses, outhouses, etc. See ARSON, and Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 1 *et seq.*

Burning to Death, an ancient punishment (1) of women for petty treason, last inflicted for murder of a husband in 1726; (2) of any person for heresy. See HÆRETICO COMBURENDO, DE.

Burrochium, a burrock, dam, or small weir over a river, where traps are laid for the taking of fish.

Bursar [fr. *bursarius*, Lat.; whence *purse*, and *purser*, a ship's officer], a treasurer of a college.

Bursaria, the exchequer of collegiate or conventual bodies; or the place of receiving, paying, and accounting by the bursars. Also stipendiary scholars, who live upon the burse, fund, or joint-stock of the college.

Burseholders. See HEADBOROUGH.

Busellas [fr. *bouts*, O. Fr., leathern vessels, for holding wine], a bushel.

Bushel [fr. *busse*, a box; *busken*, a little box], a dry measure containing eight gallons or four pecks.

Business Day. For the purposes of the Bills of Exchange Act, 1882, s. 92 provides that any day other than (*a*) Sunday, Good Friday, Christmas Day, (*b*) a bank holiday, (*c*) a day appointed by royal proclamation as a public fast or thanksgiving, is a business day.

Business Names. The Registration of Business Names Act, 1916, necessitates the registration of every firm or person carrying on business in the United Kingdom unless carried on in their true names. 'Business' includes profession. The Act imposes penalties for any period of non-registration or fraud when furnishing any statement required by the Act. Section 8 provides that any firm or person, in default of registration, shall be unable to enforce contracts made in relation to the business in respect of which the default has been made. Provisions are, however, made for obtaining relief in certain cases. Firms and persons obliged to register under the Act must set out in trade catalogues, business letters, etc., the true name or names of the person or persons trading under the business name. The fees payable on registration have been increased by s. 5 of the Fees Increase Act, 1923. See also the Companies Act, 1929, s. 145, which applies and extends the provisions of the Companies (Particulars as to Directors) Act, 1917, to certain limited companies registered in England or incorporated outside Great Britain and all carrying on business here as moneylending companies and obliges them to disclose the names, nationality, if not British, and changes of name and other particulars of their directors and to set out such names on trade catalogues, etc. No proceedings for penalties are to be instituted except by or by leave of the Board of Trade. The memorandum of every company must state the name of the company (Companies Act, 1929 (c. 23), s. 2), and see s. 344 *ibid.* in regard to particulars required by the Act from foreign and other companies incorporated outside Great Britain.

Busones comitatus, the barons of a county.—*Blount*; 2 *Reeves*, c. viii. p. 2.

Bussa, a ship.—*Blount.*

Busta, Bustus, and **Buscus,** browse or brushwood.

Butcher, a person who carries on the trade of killing animals, or of selling the flesh of such animals, for human consumption. No license is required, neither are any special regulations applicable. See, however, SLAUGHTER HOUSES; UNSOUND FOOD.

Buthscarle, mariners or seamen.—*Seld. Mare Clause.* 184.

Butler [fr. *bouteiller*, Fr., as if fr. *bouteille*, a bottle; or fr. *buttery*, *butt*, a barrel]. See BOTILER.

Butler's Ordinance, a law for the heir to punish waste in the life of the ancestor. Though it be on record in the Parliament Book of Edward I., yet it never was a statute, nor ever so received; but only some constitution of the king's council, or lords in parliament, which never obtained the strength or force of an Act of Parliament.—*Hale's Hist.* p. 18.

Butlerage, an ancient hereditary duty belonging to the Crown, much older than the customs. It was a right of taking two tuns of wine from every ship importing into England twenty tuns or more, and by King Edward I. was exchanged into a duty of 2*s.* for every tun imported by merchant strangers. It was called *butlerage*, because paid to the king's butler; and also *prisage*, because it was a *taking* or purveyance of wine to the king's use.—4 *Inst.* 30.

Butt, 108 gallons.

Butter Factory. 'Any premises on which by way of trade butter is blended, re-worked or subjected to any other treatment, but not so as to cease to be butter.' Such premises have to be registered and are open to inspection by any officer of the Board of Agriculture and Fisheries or of the Local Government Board, by virtue of the Butter and Margarine Act, 1907. See MARGARINE.

Butts, the ends of short pieces of land in arable ridges or furrows. Also the place where archers meet with their bows and arrows to shoot at a mark.

Butty, a local term in the North for the associate or deputy of another, chiefly used in connection with mines, where the 'butty-man' undertakes, with a gang of men selected by himself, to perform a particular piece of work; also of things used in common. See in this connection *Marrow* v. *Flimby & Co.*, 1898, 2 Q. B. 588.

Buyer [fr. *bycgan, bohte*, A.S.; *bygge*, O.E.; to purchase for money] a purchaser. See CAVEAT EMPTOR.

Buying of Pleas. See MAINTENANCE.

Buzonis, the shaft of an arrow before it is fledged or feathered.—*Jac. Law Dict.*

Bye [fr. *by*, Sax.], signifieth a dwelling.—*Co. Litt.* 5 *b.*

Bye-bil-wuffa, a deed of mortgage or conditional sale. See KUT-KUBALA.—*Indian.*

By-laws, or **Bye-laws** [fr. *bilagines*, from *by*, Sax., *pagus, civitas*, and *lagen, lex.*—*Spelm.*], the laws, regulations, and constitutions of corporations, for the government of their members. See per Lord Russell, C.J., in *Kruse* v. *Johnson*, 1898, 2 Q. B. 91. They are binding, unless contrary to law, or unreasonable, and against the common benefit, and then they are void.

No trading company is allowed to make by-laws which may affect the Crown, or the common profit of the people, under penalty of 40*l.*, unless they be approved by the chancellor, treasurer, and chief justices, or the judges of assize.—19 Hen. 7, c. 7.

County Councils and Borough Councils under Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 249; may make by-laws for the good rule and government of the whole or any part of the county or borough, as the case may be, and for the prevention and suppression of nuisances: Provided that by-laws made under this section by a County Council shall not have effect in any borough. The confirming authority shall be the Secretary of State or the Minister; when confirmed the validity shall not be questioned in any legal proceedings on the ground that the Secretary of State or Minister is not the confirming authority.

The council of an urban or rural district has power to enforce by-laws made by a county council which are for the time being in force in the district.

Sections 250–252 deals with the procedure for making by-laws and penalties for their breach, and evidence of their existence.

Railway Companies have the power of making by-laws, by the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), and uniform by-laws made under this power apply to every railway company. Like powers are contained in the Companies Clauses Consolidation Act, 1845, s. 124; Commissioners Clauses Act, 1847, s. 96; Markets and Fairs Clauses Act, 1846, s. 42; Harbours, Docks, and Piers Clauses Act, 1847, s. 83; Towns Improvement Clauses Act, 1847, ss. 126, 200; and Town Police Clauses Act, 1847, ss. 68, 71.

The Public Health Act, 1875, by ss. 182–6, regulated the making of by-laws under that Act, and these sections were incorporated by reference in the Factory and Workshop Act, and the Public Libraries Act of 1901. See also Public Health and Housing Acts, 1936.

By the Interpretation Act, 1889 (see that title), a statutory power to make by-laws includes a power to rescind, revoke, amend, or vary them (s. 32), and may be exercised at any time after the passing and before the commencement of the empowering Act, if the commencement be delayed (s. 37).

Bysax, the first month of the Bengal year, beginning on the 11th of April, and ending on the 11th of May.

C.

C, inscribed upon a ballot in the Roman Courts of Judicature, stood for *condemno.*—*Tay. C. L.* 192.

C.I.F.—'Cost, insurance, and freight.' Sometimes written C.F.I. These letters in a

mercantile contract denote that the price named includes the price of the goods (cost), their insurance during transit to the purchaser, and the carriage (freight). As to obligations of parties to a C.I.F. contract, see *Biddell Bros.* v. *Clemens Horst*, 1911, 1 K. B. at p. 952; 1912, A. C. 18; *Manbre Saccharine Co.* v. *Corn Products*, 1919, 1 K. B. 198; *Wilson Holgate* v. *Belgian Grain Co.*, 1920, 2 K. B. 1.

Cab. Abbreviated from the French *cabriolet*, a species of hackney-carriage (see that title) introduced in London in 1820. As to penalties for defrauding cabmen, see the London Cab Act, 1896 (59 & 60 Vict. c. 26). For the lawful fares of cabs, see London Cab and Stage Carriage Act, 1907; and the various orders made by the Secretary of State. As to disputes concerning the correct fare, see the London Hackney Carriage Act, 1853. Consult *Charley on Cabs*.

Cabal, a small association for the purpose of intrigue; an intrigue. This name was given to that ministry in the reign of Charles II. formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted a scheme for the restoration of popery. The initials of these five names form the word 'cabal'; hence the appellation.—*Hume*, ix. 69.

Caballst, a factor or broker in French commerce.

Caballa, belonging to a horse.—*Domesday.*

Caballaria [fr. *caballus*, Lat., a horse], pertaining to a horse. It was a feudal tenure of lands, the tenant furnishing a horseman suitably equipped in time of war or when the lord had occasion for his service.

Cabinet Council, a private and confidential assembly of the most considerable ministers of state (all being Privy Councillors), to concert measures for the administration of public affairs; first established by Charles I., and not expressly recognized by law. For a sketch of the history and functions of the Cabinet, see Lord Morley's *Walpole*, ch. vii.

Cable [fr. *cabl*, Welsh; *cabel*, Dut.], the great rope of a ship, to which the anchor is fastened. The proof and sale of chain cables and anchors, formerly regulated by the Chain Cable and Anchors Acts, 1864, 1871, and 1874 (27 & 28 Vict. c. 27), (34 & 35 Vict. c. 101), and (37 & 38 Vict. c. 51) (see *Chitty's Statutes*, tit. '*Shipping*'), are now regulated by the consolidating Anchors and Chain Cables Act, 1899 (62 & 63 Vict. c. 23), which simplifies and amends the law by providing more elaborate tests, the schedule containing which takes the place of Rules of the Board of Trade, by which Board, however, it can be altered from time to time.

Cablish [fr. *cado*, Lat., to fall; *cablis*, O. Fr.], brushwood, or more properly windfall-wood, according to *Spelman*.

Cachepolus, or **Cacherellas,** an inferior bailiff, or catchpole.—*Jac. Law Dict.*

Cachet, Lettres de, letters issued and signed by the kings of France, and counter-signed by a secretary of state, authorizing the imprisonment of a person, usually in the Bastille. Abolished during the revolution of 1789.

Cadastral, an official statement of the quantity and value of realty made for purposes of taxation.—*Fr. Law.*

Cadastre. (Fr.) A register of survey of lands.—*Cassell's Dict.*

Cade, a cask containing, of herrings 500, but of sprats 1,000.—*Book of Rates*, fol. 45.

Cadet [fr. *cadet*, Fr., the younger son of a family; said to be fr. *capitetum*, little chief.—*Wedgw.*], one who is trained for the army by a course of military discipline at Woolwich, Sandhurst, Halton Camp, etc., previously to obtaining a commission in the army. Also a younger brother.—*Encyc. Londin.*

Cadit quæstio: there is an end of the argument.

Caduca, the lapse of a testamentary disposition.—*Sand. Just.*

Caep gildum, restoring cattle or goods.

Caerleon, in Monmouthshire, an archbishopric which became subject to the Archbishop of Canterbury in the reign of Henry I.

Cæsarian Operation [fr. *Cæsar*, or rather *Cæso*, the first of that name, who was cut out of his mother's womb], a surgical operation whereby the *fœtus* is taken from the mother, with a view to save the lives of both or either of them. Consult *Tayl. Med. Jur.*

If this operation be performed after the mother's death, the husband cannot be tenant by the curtesy; since his right begins from the birth of the issue, and is consummated by the death of the wife; but if mother and child are saved, then the husband would be entitled after her death.

Cæterorum, a kind of administration granted after a limited administration for the rest of the estate.

Cagia, a cage or coop for birds.—*Rot. Claus.*; 38 Hen. 3.

Cairn's Act, for enabling the Court of Chancery to award damages, and try questions of fact with a jury, 21 & 22 Vict. c. 27,

repealed by Stat. Law Rev. and Civil Procedure Act, 1883, as having been superseded by s. 24 of the Judicature Act, 1873. See R. S. C. Ord. L., r. 6, and Judicature Act, 1925, s. 36.

Calangium and **Calangia,** a challenge, claim or dispute.—*Dugd. Mon.*, tom. 2, fol. 252.

Calcetum and **Calcea** [fr. *calx*, Lat. ; *chaux*, Fr., chalk], a causey, or common hard-way maintained and repaired with stones and rubbish.—*Kennet's Gloss.*

Calcutta, Bishop of, the metropolitan bishop of India.—3 & 4 Wm. 4, c. 85, s. 94 ; and see 53 Geo. 3, c. 155, s. 49 ; 34 & 35 Vict. c. 62, and Vict. c. 13. These have been replaced, see now the Government of India Act, 1915 (c. 61), ss. 115 *et seq.*, and the Indian Church Act, 1927 (c. 40), which defines as the occupant for the time being of the See of Calcutta, whether or not that See is constituted an Archiepiscopal See.

Caledonia, the northern part of Britannia. For the precise signification of the term consult *Smith's Dict. of Greek and Roman Geography.*

Calefagium, a right to take fuel yearly.

Calendar [fr. *calendarium*, Lat. ; fr. *calendæ*, the first day in the month in Roman reckoning], the order and series of months, together with the festivals and fasts, which make up the year. There are two modes of computing time—by the annual course of the sun, and by the periodical revolutions of the moon. The solar year consists of 365 days, 5 hours, 48′, 45″, 30‴ ; the lunar year of 354 days, 3 hours, 48′, 38″, 12‴. The Mohammedans adopt the lunar year. The solar year, calculated by the ancient Egyptians, has undergone various corrections and denominations.

The chief of the calendars now in use are the three following : (1) The Julian, so called because Julius Cæsar introduced into the Roman Empire the solar or Egyptian year, instead of the lunar year. The Russians and Greeks are the only nations that now use the Julian year. The common Julian year consists of 365 days, and the bissextile or leap-year (see that title), which returns every four years, of 366 days. This computation is faulty, inasmuch as it allows 365 days and six entire hours for the annual revolution of the sun, being an excess every year of 11′, 14″, 30‴, beyond the true time. This, in a course of ages had amounted to several days, and began at length to derange the order of the seasons. Leo X. paid some attention to this, but Gregory XIII. caused a new calendar to be drawn up, which is called (2) the Gregorian ; and because the civil year had gained ten days. he ordered, by a bull published in 1581, that these days should be expunged, so that instead of the 5th of October, 1582, it should be reckoned the 15th. The Catholic states adopted this new calendar, but the Protestants and the rest of Europe adhered to the Julian, and hence the distinction between the old and new style, to which it is necessary to attend in all public acts and writings since 1582. The difference until 1699 was ten days, and eleven from 1700 ; twelve days must be reckoned during 1800, so that the 1st of January of the old style answers to the 13th of the new. (3) The Reformed Calendar differs from the Gregorian, as to the method of calculating the time of Easter and other movable feasts. The Protestants of Germany, Holland, Denmark, and Switzerland adopted this in 1700, Great Britain in 1752, Sweden in 1753, but since 1776 the Protestants of Germany, Switzerland, and Holland have adopted the Gregorian.

In England the year commenced on the 25th of March until 1753, but by the Calendar (New Style) Act, 1750 (24 Geo. 2, c. 23), the beginning of the year was transferred to the 1st of January, and the 3rd of September, 1752, was reckoned the 14th of the same month in order to accommodate the English chronology to the new style. 6 *Rymer's Fœdera*, 119 ; 2 *Hall. Lit. Hist.* 56, 329 ; *Chitty's Statutes*, tit. ' *Time.*'

Calendar Month, a period of time consisting of 30 days in April, June, September, and November ; of 31 days in the remainder of the months, except February, which consists of 28 days, except in leap-year, when the intercalary day is added, making 29 days. See MONTH.

Calendar of Prisoners, a list of all the prisoners' names in custody in any prison for trial at assizes or sessions, to be delivered by the gaoler of the prison to the judges of assize and justices in quarter sessions, by virtue of s. 62 of the Prison Act, 1865 (28 & 29 Vict. c. 126). The judge's copy shows previous convictions. It is usual for the judge, but not obligatory upon him, to sign the calendar at the conclusion of the business.

Calends [fr. καλέω, Gk., to call], the first day of each month among the Romans.

Greek Calends, a term for a time that will never arrive, the Greeks having nothing which corresponded to the Roman calends.

Call, 1. (1) The election of students to the degree of barrister-at-law, hence (2) the

ceremony or epoch of election, and (3) the number of persons elected. See INNS OF COURT.

2. The demand for payment of an instalment other than payments due at fixed dates by the terms of the prospectus or agreement to take shares (*Croskey* v. *Bank of Wales*, (1863) 4, 9 Giff. 314), due upon shares. On the issue of shares a certain portion only of the issue price is usually demanded on allotment and at fixed dates thereafter: the balance is sometimes payable when demanded. In the case of limited companies the calls are limited to the total amount unpaid on each share. There is an implied promise by a purchaser of shares that he will indemnify the vendor against all future calls on shares (*Spencer* v. *Ashworth, Partington & Co.*, 1925, 1 K. B. 589). See COMPANY and CONTRIBUTORY; FLOATING CHARGE and TABLE A. (Articles 11 to 16).

3. A Stock Exchange term for the right to buy stock or shares at a fixed price on a certain date, which right is acquired by the payment of a percentage. See OPTION.

Call of the House, an imperative summons sent to every member of the House of Commons, on some particular occasion, when the sense of the whole House is deemed necessary. Members not attending when their names are called are reported as defaulters, and ordered to attend on another day, when, if they still be absent, and no excuse offered, they may be committed to the custody of the sergeant-at-arms. No such call has been enforced since 1836, when there was a call on Mr. Whittle Harvey's Motion on the Pension List. Since then calls have been ordered, but afterwards discharged or negatived. Motions for a call were negatived on July, 10, 1855, and March 23, 1882.—*May's Parl. Pr.* 11th ed. p. 182.

Calling the Jury, successively drawing out of a box, into which they have been previously put, the names of the jurors on the panels annexed to the *nisi prius* record, and calling them over in the order in which they are so drawn. The twelve persons whose names are first called, and who appear, are sworn as the jury, unless some just cause of challenge or excuse, with respect to any of them, shall be brought forward.

Calling upon a Prisoner. When a prisoner has been found guilty on an indictment, the clerk of the court addresses him and calls upon him to say why judgment should not be passed upon him. To this, he is strictly only entitled to point out a defect of law in the indictment or otherwise. See ALLOCUTUS.

Callis, the king's highway, according to old writers.—*Huntingdon*, lib. 1.

Calpes, a gift to the head of a clan, as an acknowledgment for protection and maintenance.—*Scots Law.*

Calumnia, the offence of a man who, in the language of Gaius, *intelligit non recte se agere sed vexandi adversarii gratiâ actionem instituit.—Sand. Just.*

Calumniators, false accusers.

Calvin's Case (*Calvin* v. *Smith*, 7 Rep. 1; 2 S. T. 559). A case decided in 1608 in which it was held that persons born in Scotland after the accession of James I. to the crown of England were not aliens but capable of inheriting land in England; see *Broom's Const. Law.*

Camalodunum, Maldon, in Essex.

Cambist [fr. *cambium*, Lat.], a person skilled in cambistry or exchanges; a trader or dealer in promissory notes and bills of exchange. Technical among merchants and bankers.

Cambridge. See UNIVERSITY.

Camera [fr. *καμάρα*, Gk.], the judge's chamber in Serjeants' Inn.—*Ken. Glos.*

The judge's private room behind the court.

A trial is said to take place *in camerâ* when the public are excluded from the court.

No criminal trial can take place *in camerâ*. Certain kinds of civil actions in the Chancery Division are heard *in camerâ*, e.g., cases concerning secret processes of manufacture.

It has recently been decided (contrary to what was commonly supposed to be the law) that no nullity suit or other matrimonial cause, whatever its nature, can be heard *in camerâ* unless justice cannot otherwise be administered; see *Scott* v. *Scott*, 1913, A. C. 417, where the whole question of hearings *in camerâ* is discussed at length by the House of Lords.

In a trial under the Official Secrets Act, by the 1920 Act (10 & 11 Geo. 5, c. 75), s. 8, the public may be excluded during part of the hearing (in certain cases) but the verdict must be pronounced in public.

By the Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 37, the judge is empowered to clear the court while a child or young person is giving evidence in the case of an offence against decency or morality, and all persons may be excluded except officers of the Court, parties, counsel, or certain newspaper representatives. And see JUVENILE COURTS.

Cameralistics, the science of finance or public revenue, comprehending the means of raising and disposing of it.

Camera Stellata, the Star Chamber. Its authority was enlarged and confirmed by *Rot. Parl.* 3 Hen. 7, n. 17, and abolished in the reign of Charles I. a little before the commencement of the civil wars.—*Hume*, iv. 96.

Cameronians, an extreme sect of the Presbyterian party in Scotland. They disowned altogether the King's authority and that of the Government, and renounced the title of all pretenders to the throne who would not subscribe to the Solemn League and Covenant and govern according to its principles. These doctrines were chiefly enforced by two preachers named Cargill and Cameron, from the latter of whom the name was derived.

Camisia, a garment belonging to priests, called the *Alb.*—*Pet. Blesensis.*

Camoca, a garment made of silk.—*Dugd. Mon.*, tom. 3, pl. 81.

Campaltum, a corn-field.—*Pet. in Parl.*, 30 *Ed.* 1.

Campana Bajula, a small hand-bell, used in the ceremonies of the Roman Church, and retained amongst the Protestants by sextons, parish clerks, and criers.—*Cumb. ap. Wharton Angl. Sacr.*, par. 2, p. 637.

Campartum, a part of a larger field or ground, which would otherwise be in gross or common.—*Prinne, His. Coll.*, vol. iii. p. 89.

Campbell's (Lord) Acts—(1) for amending the practice in prosecutions for libel (see that title), 6 & 7 Vict. c. 96 (the Libel Act, 1843); and (2) the Fatal Accidents Act, 1846, now, with its amending Acts, known as the Fatal Accidents Acts, 1846 to 1908, provided for the compensation of the families of persons killed by negligence (*q.v.*). To found an action the death must have resulted from the act, neglect, or default of the defendant against whom an action founded on such act, neglect, or default would have lain at the suit of the deceased had he not succumbed to his injuries. The damages recoverable are strictly on the basis of compensation (e.g., funeral expenses not recoverable: *Clark* v. *London General Omnibus Co.*, 1906, 2 K. B. 648). The action, which is to compensate the wife, husband, parent, or child of the deceased, may be commenced by the executor or administrator, but if not instituted within six months, then any person interested may commence the proceedings. The action must be started within 12 months after the death. The rights of persons to claim under this Act cannot be abrogated by a contract entered into by the deceased (*Nunan* v. *Southern Railway*, 40 T. L. R. 21). The remedies provided by the Law Reform (Misc. Prov.) Act, 1934 (24 & 25 Geo. 5, c. 41) (*q.v.*), are in addition to the remedies provided under the Fatal Accidents Acts, 1846–1908. Compare ACTIO PERSONALIS, etc.; and see *Grein* v. *Imperial Airways, Ld.*, (1936) 106 L. J. K. B. 49; also (3) 20 & 21 Vict. c. 83 (the Obscene Publications Act, 1857), for preventing the sale of obscene books, etc. See INDECENT PRINTS.

Campfight, the trial of a cause by combat of two champions in the field. If it were a crime deserving death, the campfight was for life or death; if the offence deserved only imprisonment, the campfight was accomplished when one combatant had subdued the other, so as either to make him yield or take him a prisoner. The accused might choose another to fight in his stead, but the accuser was obliged to fight in his own person. See BATTEL, WAGER OF. The combatants were armed with similar weapons. —3 *Inst.* 221.

Campus Mail, an anniversary assembly of our ancestors, held on May-day, when they confederated for the general defence of the kingdom.—*Leges Edw. Conf.*, c. 35.

Can, clearance, averment.—*Anc. Hist. Eng.*

Cana, a rod or distance in the measure of ground.

Canal. As to breaking down bank, dam, wall, etc., of, see Malicious Damage Act, 1861, s. 30; as to setting fire to buildings belonging to, see s. 4; as to stealing vessels from, see Larceny Act, 1916, s. 15.

By the Canal Tolls Act, 1845 (8 & 9 Vict. c. 28), canal companies may vary their tolls, but must charge the public equally; and by the Canal Carriers Act, 1845 (8 & 9 Vict. c. 42, they may act as carriers. The Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), as amended by the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), provides for the interchange of traffic between canal and railway companies, and for the due maintenance of canals by railway companies owning them; and the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), gives 'the Railway and Canal Commission' extensive control over the management of canals, more especially if owned by railway companies, and provides for a new classification and schedule of rates to be charged for canal traffic. The Act was amended by the Railway and Canal Traffic Acts of 1894 and 1913. See *Chit. Stat.*, tits. '*Canals*' and '*Railways.*'

As to the abandonment of unnecessary or derelict canals, see s. 45 of the Act of 1888.

In London, the Canal Protection (London) Act, 1898 (61 & 62 Vict. c. 16), empowers local authorities to request canal companies to fence, etc., dangerous parts on canals.

As to placing telegraph lines across canals, see Telegraph Construction Act, 1911.

The Ministry of Transport Act, 1919, transferred to that Ministry the powers and duties relating to canals previously vested in other Government Departments.

Canal Boats. The registration and inspection of canal boats used as dwellings, and the education of children living therein, provided for by the Canal Boats Act, 1877 (40 & 41 Vict. c. 60), partly repealed by the Public Health Act, 1936, made more stringent by the Canal Boats Act, 1884 (47 & 48 Vict. c. 75), repealed and replaced by the P. H. Act, 1936. See ss. 249 and 258 *ibid.* For the purposes of this Act 'canal' includes any river, inland navigation or lake or any other waters wholly or in part within a county or borough. Canal boat means any vessel used for the conveyance of goods except registered Thames barges, registered seagoing ships and pleasure vessels.

The Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 10, deals with education of children.

Cancellaria Curia, the ancient denomination of the Court of Chancery.

Cancellarii Angliæ dignitas est, ut secundus a rege in regno habetur. 4 *Inst.* 78.—(The dignity of the Chancellor of England is, that he is deemed the second from the sovereign in the kingdom.)

Cancellation, any manner of obliteration and defacement, as of an adhesive stamp in the manner prescribed by s. 8 of the Stamp Act, 1891 (54 & 55 Vict. c. 91), which enacts that—

(1) *Mode of Cancellation.* An instrument, the duty upon which is required or permitted by law [see ss. 22, 34, 49 (2), 52 (3), 64, 69 (3), 78 (1), 79 (2), 80 (2), 85 (1), 90, 99, 101 (2), 110 (1), and 111 (2)], to be denoted by an adhesive stamp, is not to be deemed duly stamped with an adhesive stamp, unless the person required by law to cancel the adhesive stamp cancels the same by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectively cancels the stamp and renders the same incapable of being used for any other instrument, or for any postal purpose, or unless it is otherwise proved that the stamp appearing on the instrument was affixed thereto at the proper time.

(2) *Plurality of Stamps.* Where two or more adhesive stamps are used to denote the stamp duty upon an instrument, each or every stamp is to be cancelled in the manner aforesaid.

(3) *Penalty for non-cancellation.* Every person who, being required by law to cancel an adhesive stamp, neglects or refuses duly and effectually to do so in the manner aforesaid, shall incur a fine of ten pounds.

This enactment (see *Re McMullen,* (1902) 71 L. J. Ch. 766) is less strict than s. 24 of the repealed Stamp Act, 1870, from which it was taken. Among the instruments to which it applies are agreements not specifically charged, and charged with a 6*d.* duty (s. 22), which are to be cancelled by the person by whom they are first executed; proxies (s. 80) which are to be similarly cancelled; and a receipt for 2*l.* or more (s. 101), which is to be cancelled by the person by whom the receipt is given before he delivers it out of his hands.

Actions for the cancellation of deeds or other written instruments are assigned to the Chancery Division of the High Court (Judicature Act, 1873, s. 34 (3)). Now replaced by s. 14 of the Judicature Act, 1925

Cancelli (lattice work), the rails or balusters inclosing the bar of a court of justice or the communion-table. Also the lines drawn on the face of a will or other writing, with the intention of revoking or annulling it.

Candidate [fr. *candidatus,* Lat., clothed in white], a competitor, one who solicits or proposes himself for a place or office. The name is derived from the *toga candida* in which competitors at Rome were habited. In the Corrupt Practices Acts the expression has a specially extensive meaning. See Corrupt and Illegal Practices Prevention Act, 1883, s. 63, by which, with a saving for a person nominated without his consent—

In the Corrupt Practices Prevention Acts, as amended by this Act, the expression 'candidate at an election' and the expression 'candidate' respectively mean, unless the context otherwise requires, any person elected to serve in Parliament at such election, and any person who is nominated as a candidate at such election, or is declared by himself or by others to be a candidate on or after the day of the issue of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued.

Making certain false statements about a candidate is an illegal practice, and may also be restrained by injunction; see Municipal Elections (Corrupt and Illegal Practices) Act, 1911.

Candle, sale by. See INCH OF CANDLE.

Candlemas-day, a festival appointed by the Church to be observed on the second day of February in every year, in honour

of the purification of the Virgin Mary; so called from the processions with lighted candles, and consecration of candles on that day for the service of the ensuing year. In some parts of the country agricultural tenancies date from this day.

Canes opertiæ, dogs with whole feet, not lawed, i.e., not having the fore-claws cut off, to disable them from running at deer.

Canestellus [*canistrum*, Lat.], a basket.

Canfari, a trial by hot iron.

Canon [fr κανών, Gk., a rule], a law or ordinance of the Church; also a residentiary member of a cathedral chapter.—3 & 4 Vict. c. 113. As to the resignation of canons, see 35 & 36 Vict. c. 8. As to sale of residence, see Cathedrals (Homes of Residents) Measure, 1936 (No. 2).

Canon Law. When Christian communities formed themselves into congregations (ἐκκλησίαι), certain resolutions were agreed upon for their government; these were termed rules (κανόνες, forma, disciplina); and the phrases *canonica sanctio, lex canonica,* and *canonum jura,* were not introduced until the ninth century, nor the phrase *jus canonicum* until the canon law began in the twelfth century to be treated as a science. The canon law, properly so called, denotes the ecclesiastical law, sanctioned by the Church of Rome. It borrows from the Roman Law many of its principles and rules of proceeding, though not servilely, nor without such variations as the independence of its tribunals and the different nature of its authorities might be expected to produce.—See *Hall. Lit. Hist.*

The canons made in England in 1603, and revised in 1866, are binding on the clergy only (see per Lord Hardwicke in *Middleton* v. *Croft,* (1737) 2 Str. 1056), some of them being very archaic, as canon 72, by which it is unlawful for any minister to attempt to cast out devils, except with the licence of the bishop of the diocese. They are made by Convocation, but by the Act of Submission (25 Hen. 8, c. 19), the Royal Licence is required for the making of any new canon. In 1888 canon 62 was amended into harmony with the Marriage Act, 1886, by which the legal hours for marriage were extended to 3 P.M. from 8 A.M., having previously been between 8 A.M. and noon. Canons 75 and 109, prohibiting misconduct on the part of the clergy, are given special force to by s. 12 of the Clergy Discipline Act, 1892, and a new canon was made after that Act enabling the bishop of the diocese to declare vacant the benefice of any priest declared disqualified by reason of any crime or immorality proved against him under that Act. In 1922 a new canon was made dealing with the constitution of the Lower Houses of Convocation. Canon 59 directs catechizing (see CATECHISE). Consult *Maitland's Roman Canon Law in the Church of England; Mylne's Canon Law.*

Canonical, agreeable to the canons of the Church.

Canonical Obedience, that duty which a clergyman owes to the bishop who ordained him, to the bishop in whose diocese he is beneficed, and also to the metropolitan of such bishop.

Canonist, a professor of ecclesiastical law.

Canons of Inheritance. See INHERITANCE.

Cantel, or **Cantle** [fr. *chantel,* Fr.], a lump, or that which is added above measure; also a piece of anything, as '*cantel of bread,*' or the like.—*Blount.*

Canterbury, Archbishop of, the Primate of All England: the Chief Ecclesiastical Dignitary in the Church; his customary privilege is to crown the kings and queens of England; he is an *ex-officio* trustee of the British Museum. The Archbishop of Canterbury has, by 25 Hen. 8, c. 21, the power of granting dispensation in any case not contrary to the Holy Scriptures and the law of God, where the Pope used formerly to grant them, which is the foundation of his granting special licenses to marry at any place or time. By the Jews Relief Act, 1858, (21 & 22 Vict. c. 49), s. 4, the right of exercising the official ecclesiastical patronage of a Jew is vested in the Archbishop for the time being.

Cantred, or **Kantress** [fr. *cant,* or *cantre,* Brit., a hundred, and *tre,* a town or village], a hundred Welsh villages.—*Dugd. Mon.* pt. 1, p. 319; 28 Hen. 8, c. 3.

Canute, Laws of. An Anglo-Saxon code promulgated by King Canute, more properly Cnut (1016–35).

Cap of Maintenance, one of the regalia or ornaments of State belonging to the sovereigns of England, before whom it is carried at the coronation and other great solemnities. Caps of maintenance are also carried before the mayors of several cities in England.

Capax doli, capable of committing crime.

Cape, a judicial writ touching a plea of lands or tenements, divided into *cape magnum,* or the *grand cape,* which lay before appearance to summon the tenant to answer the default and also over to the demandant; the *cape ad valentiam* was a species of grand cape; and *cape parvum,* or *petit cape,* after appearance or view granted, summoning the

tenant to answer the default only. —*Termes de la Ley; Steph. Com.*

The proceedings in real actions were abolished by 3 & 4 Wm. 4, c. 27, s. 36, and 23 & 24 Vict. c. 126, s. 26.

Capella, an oratory, or depending place of divine worship; also a chest, cabinet, or other depository of precious things, especially of religious relics.—*Ken. Paroch. Antiq.* 580.

Capellus, a cap, bonnet, helmet, or other covering for the head.

Capias (that you take). The writ of *capias* (which was a writ directing the sheriff to take the body of the defendant), as a means of commencing an action at Common Law, was altogether abolished, and a new writ, called a 'capias on mesne process,' or 'bailable process,' was introduced by the Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 3, which limited the application of the writ to cases in which the cause of action amounted to 20*l.* or upwards, and the debtor was about to quit England, unless forthwith apprehended; see now the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 6, abolishing arrest on mesne process; and see MESNE PROCESS.

Capias ad audiendum judicum (that you take to hear judgment). This writ is awarded and issued, in case the defendant be found guilty of a misdemeanour (the trial of which may happen in his absence), to bring him up to the Court to receive sentence.

Capias ad respondendum (that you take to answer). A process issued in cases of injury accompanied with force, or otherwise, against the defendant's person, when he neglected to appear upon the former process of attachment, or had no substance whereby to be attached, subjecting his person to imprisonment.—3 *Bl. Com.* 281. See 48 Geo. 3, c. 58.

Capias ad satisfaciendum (that you take to satisfy); called in practice a *ca. sa.* A writ of execution of the highest nature, inasmuch as it deprived a person of liberty, till the satisfaction awarded be made. The writ was addressed to the sheriff, commanding him to take the body of the defendant and have him at Westminster on a day therein named, or immediately after the execution of the writ, to make the plaintiff satisfaction for his demand, or remain in custody till he did. The general rule was that any person might be arrested under this writ who was not privileged from being held to bail under a *capias ad respondendum.* By 7 & 8 Vict. c. 96, s. 57, this kind of execution was abolished 'in any action for the recovery of any debt wherein the sum recovered shall not exceed 20*l.*, exclusive of the costs recovered by such judgment,' and by the Debtors Act, 1869, (32 & 33 Vict. c. 62), in any action whatever, unless the defendant could, but would not, pay. See IMPRISONMENT FOR DEBT, and DEBT.

Capias in withernam (that you take by way of reprisals). If the goods before an action of replevin had been concealed, so that the sheriff could not replevy them, then, upon plaint being levied in the County Court by the plaintiff, the plaintiff might issue this writ directing the sheriff to take goods or cattle of the defendant, to the value of those taken by him, and deliver them to the plaintiff, who gave a bond with sureties, conditioned to prosecute his suit and to return the goods, etc., so to be delivered to him, if a return of them should be afterwards adjudged. Goods taken *in withernam* could not be replevied till the original distress was forthcoming.

Also, after verdict and judgment for defendant in replevin, and the usual writ of execution *de retorno habendo* had been sued out, to which the sheriff had returned that the goods, etc., were concealed or eloigned, i.e., conveyed to places unknown to him, so that he could not execute the writ, the defendant might then sue out a *capias in withernam,* requiring the sheriff to take other goods, etc., of the plaintiff to the value of the goods, etc., eloigned, and deliver them to the defendant, to be kept by him until the plaintiff deliver to him the goods, etc., originally replevied. The whole process has long been obsolete. See REPLEVIN.

Capias pro fine, or **Misericordia** (that you take for the fine *or* in mercy). Formerly, if the verdict was for the defendant, the plaintiff was adjudged to be amerced for his false claim; but if the verdict was for the plaintiff, then in all actions *vi et armis,* or where the defendant, in his pleading, had falsely denied his own deed, the judgment contained an award of a *capiatur pro fine;* in all other cases the defendant was adjudged to be amerced. The insertion of the *misericordia,* or of the *capiatur* in the judgment, has long been unnecessary. Abolished by 5 & 6 Wm. & M., c. 12.

Capias utlagatum (that you take the outlaw). This writ is either general, against the person only; or special, against the person, lands, and goods. Outlawry is abolished in civil proceedings; but survives (though long practically disused) for criminal purposes, and a form of the writ (No. 62) may be found in the Appendix to the Crown Office

Rules of 1906, which also (by Rules 88–110) provide for procedure to outlawry and in reversal of outlawry.

Capiatur, judgment *quod.* See CAPIAS PRO FINE, or MISERICORDIA.

Capita [M. Lat.], abuttals or boundaries.

Capita, Per (by heads). Distribution of personalty *per capita* (professedly borrowed from the civilians, and enacted in the Statute of Distribution) happens when all the claimants claim in their own right, in equal degree of kindred, and not *jure representationis* (*per stirpes*), in the right of another person, as if the next of kin be the intestate's three children, A., B., and C.; here the intestate's personalty is divided into three equal portions, and distributed *per capita*, one to each. The expression '*per capita*' does not occur in the Administration of Estates Act, 1925, which repealed the Statute of Distribution and altered and diminished family rights in the distribution of intestate estates. See WIDOW in regard to all deaths after 1925.

Capital [fr. *capitalis*; *caput*, Lat.]. The corpus of property of any description which may or may not be the source of a periodical or other return (fructus, produce or income). The word 'capital' when employed in Company Law is used in different senses. Nominal capital is the capital of a company so stated for the purposes of division into shares. It implies nothing more than that the company is possessed of money or assets of a stated value at the company's own valuation which may be, and often is, exaggerated or illusory. Working capital means the amount employable for the purposes of a company or any other undertaking or business. See ALTERATION OF CAPITAL, COMPANY, PROSPECTUS, DIRECTORS. In the Settled Land Act, 1925, capital money arising under the Act means capital money arising under the powers or provisions of that Act or Acts which it replaces, receivable for the purposes of a settlement and includes securities representing capital money. Elaborate provisions are contained in the Act, see ss. 73–82 relating to the investment and attribution of returns to capital in the case of minerals, and timber. See SETTLED LAND. In commerce, and as applied to individuals, it is understood to mean the sum of money which a merchant, banker, or trader adventures in any undertaking, or which he contributes to the common stock of a partnership.

Capital Offences, those crimes upon conviction of which the offender is condemned to be hanged. The only crimes now punishable with death are high treason; murder; destruction of H.M. ships, arsenals, etc. (12 Geo. 3, c. 24); piracy when accompanied by attempted murder (Piracy Act, 1837 (7 Wm. 4 & 1 Vict. c. 88), s. 2). See PIRACY.

Originally all felonies were capital, but early in the 19th century, mainly through the exertions of Sir Samuel Romilly, the severity of the law was mitigated by rapid steps in this respect. Larceny in a dwelling-house up to the value of 40*s.* was long a capital offence, with the result that juries, to save a prisoner's life, would often falsely find that valuable goods stolen were of the value of 39*s.*

Sentence of death cannot be pronounced on or recorded against a young person under 18 (Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 53).

Capital Offences (Scotland). The Criminal Procedure (Scotland) Act, 1887 (50 & 51 Vict. c. 35), by s. 56 enacts that 'a capital sentence shall no longer be competent except on conviction of murder or of offences against the Act (10 Geo. 4, c. 38), which statute by s. 1 makes it a capital crime either to attempt to discharge any kind of loaded firearms at a person or maliciously to stab with intent to murder or maim, or to administer poison, with intent to murder, disable or do grievous bodily harm, or (by s. 2) to throw any sulphuric acid, etc., with intent to murder or maim.

Capital Punishment, inflicted in pursuance of the Capital Punishment Amendment Act, 1868 (31 & 32 Vict. c. 24) (before which executions were public), within the prison in which the offender is confined at the time of execution, in the compulsory presence of the sheriff, gaoler, chaplain, and surgeon, and such other officers of the prison as the sheriff requires, and also in the discretionary presence of any justice of the peace for the county, etc., and of such 'relatives of the prisoner, or other persons as it seems to the sheriff or visiting justices proper to admit within the prison.'—*Chitty's Statutes*, tit. '*Criminal Law*,' where see the Rules of 1888 under the Act. See SENTENCE OF DEATH.

The mode in the United Kingdom is hanging, but for high treason the Crown may alter it to beheading: see the Treason Act, 1814 (54 Geo. 3, c. 146), as amended by s. 31 of the Forfeiture Act, 1870.

Capitale, a thing which is stolen, or the value of it.—*Blount.*

Capitale vivens, live cattle.—*Ibid.*

Capitation, a tax on each person in consideration of his labour, office, rank, etc.

Capitation Fee. A fee for each person dealt with by the person who receives it; as where a schoolmaster, in addition to his salary, or instead of it, is paid one pound per annum for each boy in the school.

Capite, Tenure in, lands held by tenants immediately from the king. It was the most honourable tenure, and was of two kinds, either *ut de honore*, where the land was held of the king, as proprietor of some honour, castle, or manor, or *ut de coronâ*, where it was held in right of the Crown itself. When these tenants *in capite* granted portions of their lands to inferior persons, they were called *mesne* (middle) lords or barons, with regard to such inferior tenants, who were styled tenants *paravail*, the lowest tenants, because they were supposed to make 'avail' or profit of the lands. This tenure is abolished, so that tenures now created by the Crown are in common socage.—12 Car. 2, c. 24.

Capitilitium, poll-money.

Capititium, a covering for the head.—1 Hen. 4.

Capitula itineris, articles of inquiry.—2 *Reeves*, c. viii. p. 4.

Capitula ruralia, assemblies or chapters, held by rural deans and parochial clergy, within the precinct of every deanery; which at first were every three weeks, afterwards, once a month, and subsequently once a quarter.—*Cowel's Law Dict.*

Capitulary, a code of laws.

Capitulation [fr. *capitulo*, Lat., to treat upon terms; fr. *capitulum*, a little head or division], the treaty which determines the conditions under which a besieged place is surrendered to the commanding officer of the besieging army; (2) an agreement by which the prince and the people, or those who have the right of the people, regulate the manner of government.

Capitulation. An arrangement between states providing certain immunities for or reserving jurisdiction over subjects of one state within the territory of another. See the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37), Preamble.

Capituli agri, head-lands, lands lying at the head or upper end of lands or furrows.—*Ken. Par. Ant.* 137.

Captator, a person who obtains a gift or legacy through artifice.

Caption, that part of a legal instrument, as a commission, indictment, etc., which shows where, when, and by what authority it is taken, found, or executed.—*Arch. Crim. Plead.*, tit. '*Caption*.'

Capture, the arrest or seizure of a person or thing, particularly applied to the seizure of ships by an enemy in time of war. On 16th April, 1856, a treaty or declaration was signed at Paris between the powers of Great Britain, Austria, France, Russia, Sardinia, and Turkey, by which privateering is abolished, so far as those powers are concerned. See LETTERS OF MARQUE, PRIZE OF WAR.

Caputagium, head or poll-money.

Caput anni, the first day of the year.

Caput baroniæ, the castle or chief seat of a baron.

Caput jejunii, the beginning of the Lent Fast, i.e., Ash Wednesday.

Caput lupinum, a wolf's head. An outlawed felon was said to be *caput lupinum*, and might be knocked on the head, like a wolf.

Caput mortuum, dead; obsolete.

Car, and **Char** [fr. *caer*, Brit., city], names of places beginning with these words signify city, as Carlisle, Cardiff, etc.

Carat, a weight equal to three and one-sixth grains; the measure of purity of gold, pure gold being 24 carats.

Carcan, a pillory.

Carcanum, a prison.—*Leg. Canut. Reg.*

Carcatus, loaded, a ship freighted.

Carcelage, prison fees.

Cards. To keep a common house for card-playing is unlawful.—Gaming Houses Act, 1854 (17 & 18 Vict. c. 38); and see GAMING. Cheating at cards is punishable by the Gaming Act, 1845 (8 & 9 Vict. c. 100), s. 17. An excise duty of 3*d.* a pack—i.e., any quantity not exceeding 52—on home-made cards is levied by 25 & 26 Vict. c. 22, and a customs duty of 3*s.* 9*d.* per dozen packs on imported cards by the Customs Tariff Act, 1876 (39 & 40 Vict. c. 36).

Carecta and **Carectata,** a cart and cartload.—*Dugd. Mon.* tom. 2, p. 340.

Caretarius, or **Carectarius,** a carter.—*Blount.*

Caretta, a carriage, cart, or wain-load.

Cargo [fr. *cargo*, Sp., the load of a ship; *charge*, Fr.], the lading of a ship, the merchandise or wares contained and conveyed in a ship.

Caristia, dearth, scarcity, dearness.—*Cowel.*

Caritas, or **Karite,** a grace cup, an extraordinary allowance of wine or liquor.

Cark, a quantity of wool, whereof thirty make a sarplar.—27 Hen. 6, c. 2.

Carle. See KARLE.

Carnal Knowledge. As to meaning, see Offences against the Person Act, 1861, s. 63; *R.* v. *Marsden*, 1891, 2 Q. B. 149, and *R.* v. *Russen*, (1777) 1 East, P. C. 438. See tits. RAPE; ABUSING CHILDREN.

Carno, an immunity or privilege.—*Cowel.*

Caroome, a license by the Lord Mayor of London to keep a cart.

Carpemeals, a coarse cloth.—7 Jac. 1, c. 16.

Carrels, closets, or apartments for privacy or retirement.

Carricle, or **Carracle,** a ship of great burden.

Carriage by Air Act, 1932 (22 & 23 Geo. 5, c. 26), was passed to give effect to the Convention for the Unification of Certain Rules relating to International Carriage by Air. The rules constitute a code of the law of carriage of passengers, luggage and goods consigned, and the liabilities of the carrier and rights and liabilities of passengers and consignors. The act is to come into force by Order in Council.

Carriage of Goods by Sea Act, 1924 (14 & 15 Geo. 5, c. 22), embodies the Hague Rules for the unification of bills of lading (*q.v.*).

Carrier, in its general sense, a person who undertakes to transport the goods of other persons from one place to another for hire. It is not, however, every person who undertakes to carry goods for hire that is deemed a common carrier.

A carrier of passengers is liable only for negligence and not as an insurer (*Redhead* v. *Midland R. Co.*, (1869) L. R. 4 Q. B. 379).

To bring a person within the description of a common carrier, he must exercise it as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to transport goods for hire, as a business, not as a casual occupation, *pro hâc vice.*

The two obligations of a common carrier of goods are (1) to carry for everybody, and (2) to answer for all things carried as an insurer, unless lost or injured by the act of God or the King's enemies.

The second obligation, that of an insurer, is restricted by the Carriers Act, 1830 (11 Geo. 4 & 1 Wm. 4, c. 68), which protects carriers from liability in case of the loss of certain specified articles, e.g., jewellery, pictures, plate, and silks, exceeding the value of ten pounds (excepting loss by the felony of the carrier's servants or his own personal default), unless the party delivering the goods declare the value, and offer to pay, if required, an extra charge for carriage.

Railway companies (see RAILWAY) carry under the 86th section of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), canal companies under the Canal Carriers Act, 1845 (8 & 9 Vict. c. 42). The Act extends to carriage by land only; as to carriage by sea, or partly by land and partly by sea, see SHIPOWNER. See *Macnamara on Carriers*; *Chitty on Contracts*; CARRIAGE BY AIR.

Carry over, a term used in the Stock Exchange to denote the process of postponing the completion of a contract, either for the purchase or sale of stocks or shares, to a later date than that originally fixed. When this happens the buyer usually pays the seller interest on the capital involved, the seller retaining the stocks or shares till the transaction is ultimately completed. This interest is called a 'contango.' If, on the other hand, the buyer is anxious to pay for and take up the stocks or shares but the seller is unable to deliver, the buyer would not pay interest to the seller, but on the contrary exacts a payment from him, as consideration for postponing the completion of the contract. This payment is called a 'backwardation,' or shortly a 'back.'

Carte blanche, a white card, or free permission, signed at the bottom with a person's name, and sometimes sealed, giving another person power to subscribe what conditions he pleases. Applied generally in the sense of unlimited authority being granted.

Carte-bote. See BOTE.

Cartel [fr. *cartella*, It., pasteboard], a piece of pasteboard with some inscription on it, hung up in some place, and to be removed.—*Florio's Dict.*, *voce* '*Cartella.*' Hence a written challenge openly hung up; afterwards any written challenge. See CHARTEL.

An agreement between or conventional grouping of producers of raw materials or goods.

Cartel-ship, a vessel commissioned in time of war to exchange the prisoners of two hostile powers; also to carry any particular proposal from one to another; for this reason the officer who commands her is particularly ordered to carry no cargo, ammunition, or implements of war, except a single gun for signals.

Cartulary [fr. *carta*, Lat., paper], a place where papers or records are kept.

Caruca [fr. *carr*, old Gallic], a plough. See AVERIA CARUCÆ.

Carucage, a tax imposed on every plough for the public service.

Carucatarius, he that held lands in *carvage*, or plough-tenure.—*Paroch. Antiq.* 354.

Carucate [fr. *carucata terræ*], **Carvage,** or **Carve of land,** a plough-land of 100 acres, or according to Skene, as much land as may be tilled in a year and a day by one plough.—*Ken. Glos.* 'And one plowland, *carucata terræ*, or a hide of land, *hida terræ* (which is all one), is not of any certain content, but as much as a plow can by course of husbandry plough in a year.'—*Co. Litt.* 69 *a*. This quantity varies in different counties from 60 to 120 acres.

Case. (1) A trial. (2) A trial involving some point of law so important as to be published in Law Reports (see that title) for future use as a precedent. (3) A statement of facts and documents, raising a point of law, submitted for the opinion of counsel. See PRECEDENTS.

Case, Action on the. The action on the case lay where a party sued for damages for any wrong or cause of complaint (such as negligence, or breach of contract not under seal) to which covenant or trespass did not apply. Statutory sanction was obtained for this form of action under the Statute of Westminster 2 (13 Edw. 1, c. 24), which regulated and limited the increasing practice of framing new writs by officers of the Crown and empowered the Clerks in Chancery to frame new writs *in consimili casu* with writs then in existence, see *Pollock on Torts* and *Law Quarterly Review*, Vol. 52, p. 68. Under the statutory sanction many new writs which were analogous to the writ of trespass, or *in consimili casu* with that action, were invented and issued under the appellation of 'trespass on the case' (*brevia 'de transgressione super casum'*) as being founded on the particular circumstances of the case thus requiring a remedy, and to distinguish them from the old writ of trespass; and the injuries themselves, which are the subject of such writs, were not called trespasses, but had the general name of torts. Slander in the Limitation Act, 1623 (21 Jac. 1, c. 16), is termed 'an action on the case for words' as well as slander, two years being fixed as its limitation of time, six years being fixed for other actions on the case, whereas four were fixed for trespass, except to land, in which case the limit was six.

But another instance of the exercise of the statutory authority was the issue of the writ '*indebitatus assumpsit*, and although this cause of action has been assigned to the breach (a tort) of a promise and therefore in trespass the writ may also plausibly be ascribed to have been founded on fact *in consimili casu* with those required to support the legal action of 'debt' (also founded, by implication, on failure to pay), see the Chancery writ, *consimili casu*, and ORIGINAL WRIT.

As the technical mode of pleading at Common Law was abolished by the Judicature Acts, 1873 and 1875, the term 'action on the case' only continues to exist as a convenient mode of expression, and has ceased to be a term of art.

For different kinds of actions of trespass on the case, see MALICIOUS PROSECUTION; NEGLIGENCE; DECEIT; LIBEL; SLANDER; SEDUCTION; LIGHTS; WAYS; SEDUCING FROM SERVICE.

Case for the Opinion of Courts of Law. Prior to 16 & 17 Vict. c. 86, s. 61, the Court of Chancery used to direct cases to be submitted for the opinion of a court of law; but that Act gave the Court of Chancery the power of deciding questions of law.

Case stated, a narrative (agreed upon by both parties to an action, or drawn up by an impartial person agreed upon by them or settled by the Court or a judge) setting forth the facts and points in dispute, with a view to a prompt decision. By R. S. C. 1883, Ord. XXXIV., the parties after writ may concur in stating questions of law in the form of a special case, or if it appear to the Court or a judge from the pleadings or otherwise that there is a question of law which it would be convenient to have decided in that manner, they or he may order a special case to be stated. See SPECIAL CASE.

As to cases stated by justices of the peace on points of law only for the High Court, see Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), Review of Justices Decisions Act, 1872 (35 & 36 Vict. c. 26), and Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 33; see also ARBITRATION; *Chitty's Statutes*, tit. '*Justices*'; and see *R.* v. *Woodcock*, 1907, 2 K. B. 104.

Cash [fr. *caisse*, Fr., a chest], money, properly ready money of the current coin of the realm, including Bank of England notes. See the Coinage Act, 1870, s. 6.

Cashier, a person entrusted with the monetary interest of an individual, a firm, or a public company; also, to deprive of office.

Cashlite, a mulct.

Cassation [fr. *casser*, Fr., to quash], a making null and void any unjust or illegal act or decision: also a decision in the last

resort.—*Fr. Law.* The ' Cour de Cassation ' is the Highest Court of Appeal in France.

Cassatum and **Cassata,** a house, with land sufficient to maintain one family.

Cassetur breve (that the writ be quashed). When the defendant pleaded sufficient matter in abatement and the plaintiff could not deny it, he could either obtain leave to amend his declaration, or he might at once enter on the roll a *cassetur breve,* or judgment upon his prayer that his writ might be quashed, to the intent that he might sue out a better.—2 *Chit. Arch. Prac.* Pleas in abatement are, however, now abolished by the Judicature Act, 1875. See ABATEMENT.

Cassidile, a little sack, purse, or pocket.

Cassock, or **Cassula** [fr. *casag,* Gael., a long coat], a garment worn by a priest.

Cast, defeated at law, condemned in costs or damages.

Castel, or **Castle** [fr. *castellum,* dim. of *castrum,* Lat.], a fortress in a town ; a principal mansion of a nobleman.—*Co. Litt.* 31.

Castellain, the lord, owner, or captain of a castle ; the constable of a fortified house ; a person having the custody of one of the Crown mansions ; an officer of the forest.—*Bract.* ; *Manw.*

Castellarium, the precinct or jurisdiction of a castle.

Castellarum operatio, castle-work, or service and labour done by inferior tenants for the building and upholding of castles of defence ; towards which some gave their personal assistance, and others paid their contributions. See TRINODA NECESSITAS. *Castleward* was the service of guarding or watching at such castle.

Caster and **Chester** [fr. *castrum,* Lat.]. The places ending with either of these words are, as a rule, the sites of the *castra* (fortified camps) built by the Romans.

Castigatory, a certain engine of correction, otherwise called the tre-bucket, *tumbrel tymborella,* cucking-stool, scolding-stool, ducking-stool, *goginstole,* and *cokestole,* corrupted from choaking-stool. It was a punishment provided for scolding women, wherein they were plunged or soused overhead in the water.

In Domesday Book it is called *Cathedra Stercoralis,* and by the Saxons *scealfing stole.* It was also anciently inflicted on brewers and bakers transgressing the laws, who were ducked *in stercore* (in stinking water).—*Jac. Law Dict.*

Casting an Essoin. See ESSOIN.

Casting Vote, the vote given by the chairman or president of a deliberative assembly when the suffrages of the meeting are equal. The chairman, though not disqualified by law from voting (*Nell* v. *Longbottom,* 1894, 1 Q. B. 767), is usually not entitled to vote in the first instance.

The Speaker of the House of Commons (though he has no vote in the first instance) has a casting vote, and by the practice of the House gives it in favour of a motion or bill, so as to give opportunity for further consideration. So has the mayor or other chairman at a meeting of a town council (Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 22, and Sched. II., r. 11), and the chairman of a county council (Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 75), and the chairman of a parish meeting, or parish council (Local Government Act, 1894 (56 & 57 Vict. c. 73), Sched. I., Pt. 2, r. 8, and Pt. 3, r. 10). These Acts have been replaced, except in regard to London, by the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51) ; see s. 75, and the Provisions of Parts I. to V., of the Third Schedule. By Part V., r. 1 (2), in the case of equality of votes, the person presiding at the meeting shall have a second or casting vote ; the same applies to Parish Meetings by Part VI., r. 5 (3). The Municipal Corporations Act, 1882, still applies to London, see s. 22.

By the Companies Clauses Act, 1845, the chairman of directors has a casting vote (s. 92), as has the chairman of a committee (s. 96), and the chairman of a general meeting (s. 76), and see Art. 52 of Table A. under the Companies Act, 1929.

Castle-ward, an imposition laid upon persons living within a certain distance of a castle towards the maintenance of those who watch and ward the same.—*Magna Charta,* cap. 15, 20 ; 32 Hen. 8, c. 48.

Casual Ejector, the fictitious *Richard Roe* in the mixed action of ejectment, before the fiction was abolished by the C. L. P. Act, 1852. See EJECTMENT.

Casual Pauper (*obsolete term*). Any destitute wayfarer or wanderer applying for or receiving relief. See Pauper Inmates Discharge and Regulation Act, 1871 (34 & 35 Vict. c. 108), and Casual Poor Act, 1882 (45 & 46 Vict. c. 36). These Acts were repealed and replaced by the Poor Law Act, 1927 (17 & 18 Geo. 5, c. 14), which was further consolidated by the Poor Law Act, 1930 (19 & 20 Geo. 5, c. 17) ; and the term used is ' Casual Poor Person ' or ' Casual Poor.' The Poor Law Act, 1930 (19 & 20 Geo. 5, c. 17), ss. 41 to 44, deals with provisions of casual wards and treatment of casual poor.

Casualty of Wards, the mails and duties due to the superior in ward-holdings.

Casu consimili, a writ of entry, granted where tenant by the courtesy, or tenant for life, alienated in fee, or in tail, or for another's life, and was brought by him in reversion against the party to whom such tenant so alienated to his prejudice, and in the tenant's lifetime.—*Termes de la Ley.* Abolished.

Casu proviso, a writ of entry, given by the Stat. of Gloucester, c. 7, where a tenant in dower alienated in fee, or for life, etc., and it lay for him in reversion against the alienee.—*Fitz. N. B.* 207. Abolished.

Casus belli, an occurrence giving rise to or justifying war.

Casus fœderis, a case stipulated by treaty, or which comes within the terms of a compact.

Casus omissus, a point unprovided for: if by statute, the omission can be remedied by another statute only (*Mersea Docks case,* (1888) 13 App. Cas. 602, per Lord Halsbury); and see *Reg.* v. *Arnold,* (1864) 5 B. & S. 322; *Hardcastle on Statutes* and *Maxwell on Statutes.*

Cat. (1) A cat is not the subject of larceny at Common Law: for the punishment for stealing a cat, see Larceny Act, 1861, s. 21; for maliciously killing or wounding, see Malicious Damage Act, 1861, s. 41; and for painful experiment on, see Cruelty to Animals Act, 1876, s. 5. See further as to cruelty, ANIMALS.

(2) The instrument (cat o' nine tails) with which criminals are flogged in England. [See WHIPPING.] It consists of nine lashes of whipcord tied on to a wooden handle.

Cat and Mouse Act, a popular term for the Prisoners (Temporary Discharge for Ill-health) Act, 1913 (3 Geo. 5, c. 4).

Catalla, chattels. The word among the Normans primarily signified only beasts of husbandry, or, as they are still called, 'cattle'; but in a secondary sense the term was applied to all movables in general, and not only to these, but to whatever was not a fief or feud.

Catallis captis nomine districtionis, an obsolete writ that lay where a house was within a borough, for rent issuing out of the same, and which warranted the taking of doors, windows, etc., by way of distress.—*Old Nat. Brev.* 66.

Catallis reddendis, an obsolete writ that lay where goods delivered to a man to keep till a certain day were not upon demand re-delivered at the day.—*Reg. Brev.* 39.

Catals, goods and chattels. See CATALLA.

Catapulta, a warlike engine to shoot darts; a crossbow.

Catascopus, an archdeacon.—*Du Cange.*

Catching Bargain, a purchase from an expectant heir, for an inadequate consideration. See EXPECTANT HEIR.

Catchland. Land in Norfolk, so called because it is not known to what parish it belongs, and the minister who first seizes the tithes of it, by right of pre-occupation, enjoys them for that year.—*Cowel.*

Catchpole, a sheriff's officer or bailiff, so called.

Catechise. Ministers of the Church of England, by Canon 59, headed '*Ministers to catechise every Sunday,*' are directed 'upon every Sunday and holy-day, before Evening Prayer' 'for half an hour or more' to 'examine and instruct the youth and ignorant persons' of their parishes 'in the Ten Commandments, the Articles of the Belief and in the Lord's Prayer,' on pain of sharp reproof upon the first complaint for neglect of duty, suspension for the second offence, and, 'there being little hope that the minister will be therein reformed,' of excommunication for the third, to continue until reformation; and see also the Rubrics subjoined in the Prayer Book to the Church Catechism.

Categorical, direct; unqualified, unconditional.

Category [fr. *κατηγορία,* Gk.], a series or order of all the predicates or attributes contained under a genus.

Cathedral [fr. *καθέδρα,* Gk., a seat], the church of the bishop and head of the diocese, in which is his seat of dignity. The Cathedral Acts and Measures are 3 & 4 Vict. c. 113, 4 & 5 Vict. c. 39, 6 & 7 Vict. c. 77, 16 & 17 Vict. c. 35, 27 & 28 Vict. c. 70, 36 & 37 Vict. c. 39, 21 & 22 Geo. 5, No. 7, and 24 & 25 Geo. 5, No. 3; and as to Wales, see 6 & 7 Vict. c. 77, and Welsh Church Act, 1914.

Our cathedrals and collegiate churches have been divided into four classes:—1st, consisting of 13, being the cathedrals of the old foundation, or *Ecclesiæ Cathedrales Canonicorum Secularium;* 2nd, consisting of eight conventual cathedrals, constituted with deans and chapters by Hen. VIII.; 3rd, containing the five cathedrals founded, together with new bishoprics, by Hen. VIII.; 4th, the new cathedrals constituted since that time. See BISHOPRIC.

Cathedral Preferments, all deaneries, archdeaconries, and canonries, and generally all dignities and officers in any cathedral or

collegiate church, below the rank of a bishop. Consult *Stephens on the Clergy.*

Cathedratic, a sum of 2*s.* paid to the bishop by the inferior clergy; but from its being usually paid at the bishop's *synod*, or visitation, it is commonly named *synodals.*—*Burn's Dict.*

Catholics. See ROMAN CATHOLIC.

Cato Street Conspiracy, an extraordinary plot to assassinate the entire Cabinet and get possession of London by means of an armed mob. The scheme was divulged to the authorities by an informer, and the conspirators, the chief of whom was a man named Thistlewood, were apprehended, and five of them brought to trial and executed. See *R.* v. *Thistlewood,* (1820) 33 St. Tr. 681; *Martineau's History of the Thirty Years' Peace,* Bk. II. c. i.

Cattle [derived by Skinner, Menage, and Spelman fr. *capitalia, quæ ad caput pertinent,* personal goods; in which sense *chattels* is yet used. Mandeville uses *Catele* for price], beasts of pasture, either wild or domestic.

The term, though often limited to horned domestic animals, may include (see *Wright* v. *Pearson,* L. R. 4 Q. B. 582) horses and sheep; and also pigs and asses (*R.* v. *Chapple,* Russ & Ry. 77; *R.* v. *Whitney,* 1 Mood. 3).

As to injury to cattle by a dog, see Dogs Act, 1906, in which, by s. 7, 'cattle' includes 'horses, mules, asses, goats and swine.' See DOG.

As to larceny of cattle, see Larceny Act, 1916, s. 3, and as to killing cattle, etc., with intent to steal the carcase, skin, or any part of the animal killed, see s. 4.

As to the malicious wounding of cattle, see Malicious Damage Act, 1861, ss. 40 and 41.

As to the prevention of cattle plague, pleuro-pneumonia, and foot and mouth disease, by slaughtering or preventing the movement of infected animals and restricting the importation of foreign cattle, see Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57), repealing and re-enacting the Contagious Diseases (Animals) Act, 1878, repealing and replacing an Act of 1869 having the same title, and itself repealing eight prior Acts *in pari materiâ,* from 38 Geo. 3, c. 65, to 30 & 31 Vict. c. 125. It has further been amended by the Diseases of Animals Act, 1927 (17 & 18 Geo. 5, c. 13). The law of this subject has always depended for its effectual working upon orders to be made from time to time by a Government Department, now the Ministry of Agriculture and Fisheries. See AGRICULTURE AND FISHERIES, MINISTRY OF.

The weighing of cattle at markets and fairs is provided for by the Markets and Fairs (Weighing of Cattle) Acts of 1887 and 1891 (50 & 51 Vict. c. 27), and (54 & 55 Vict. c. 70).

As to cruelty to cattle, see the Protection of Animals Acts, 1911 and 1912. See ANIMALS.

Cattle-gate, common for one beast.

Catzurus, a hunting-horse.

Cauda terræ, land's end, or the bottom of a ridge in arable land.

Caulceis, ways pitched with flint or other stones. See CALCETUM.

Caurcines, Italians that came into England about the year 1235, terming themselves the Pope's merchants, but driving no other trade than letting out money; see *Jac. Law Dict.*

Causa causans, the immediate cause; the last link in the chain of causation. Not the cause of which the proximate cause is an effect but the nearest cause of the damage or effect for which relief is sought (see *Reischer* v. *Borwick,* 1894, 2 Q. B. 548; *Dudgeon* v. *Pembroke,* (1874) 2 A. C. 284). See *Cullerne* v. *London, etc., Building Society,* (1890) 25 Q. B. D. 485.

Causa matrimonii prælocuti, a writ which lay where a woman gave lands to a man in fee simple, etc., to the intent he should marry her, and he refused to do so in any reasonable time, being thereunto required.—*Reg. Brev.* 66. Abolished by 3 & 4 Wm. 4, c. 27.

Causâ mortis (in case of death). See DONATIO MORTIS CAUSA.

Causa proxima, the same as causa causans. See IN JURE NON REMOTA CAUSA SED PROXIMA SPECTATUR.

Causam nobis significes quare, a writ to a mayor of a town, etc., who was by the king's writ demanded to give seisin of lands to the king's grantee; on his delaying to do it, requiring him to show cause why he so delayed the performance of his duty.

Cause, a suit or action; motive or reason; that which produces an effect.

Cause of Action, a right to sue. All the facts which are necessary to establish the plaintiff's right to the remedy which he claims. As to joinder of causes of action, see that title.

Cause-list, a printed roll of actions to be tried in the order of their entry, with the names of the solicitor for each litigant.

Causea [fr. *chaussée,* Fr., a paved road], a causeway.

Causes célèbres, a work containing reports of the decisions of interest and importance

in French Courts in the 17th and 18th centuries. The first series, in 22 vols., is by Gayot de Pitival; the second, called the *Nouvelles Causes Célèbres*, in 15, by Des Essarts. Compare Howell's *State Trials* in England. The word is applied to any English case of great interest and importance, as the Tichborne case (see TICHBORNE CASE), Queen Caroline's case, etc.

Cautio pro expensis, security for costs.

Caution, a species of bail; security. When used in this sense, the word is pronounced 'cayshon.'—*Scots Law.* In England, any warning. A prisoner or accused person is 'cautioned' before making a statement, that such statement may be used in evidence upon his trial.

Caution.—Under the Land Registration Act, 1925, ss. 54 to 56, is a notice to the Registrar in the nature of a caveat to the effect that the cautioner is entitled to be served with a notice of any application for the registration of an interest in registered land affecting the cautioner. Registration, as a rule, will not be effected until a reasonable time (usually 14 days) has elapsed after service of notice, or the cautioner has entered an appearance. Cautions may be lodged against first registration to protect unregistered mortgages, contracts for purchase, the vesting of equitably settled estates and other purposes. Cautions to protect unregistered mortgages under s. 106 of the L. R. Act, 1925, confer a priority for the mortgage. Other cautions do not affect priority. See *Fortescue - Brickdale and Stewart-Wallace* on the Land Registration Act, 1925. See also PRIORITY CAUTION.

Cautione admittenda, a writ that lies against a bishop who holds an excommunicated person in prison for contempt, notwithstanding he offers sufficient caution or security to obey the orders and commandment of the church for the future.—*Reg. Brev.* 66.

Cautioner, a security.

Cauzi, Cazi, Kazi, a Mohammedan official. —*Indian.* See KAZY.

Caveat (let him take heed), a warning or caution. If a person desired to stop the enrolment of a decree in Chancery, in order to present a petition of appeal to the Lord Chancellor, he entered a *caveat* with his lordship's secretary, which prevented the enrolment for 28 days. See APPEAL. It is sometimes entered to prevent the issuing of a lunacy commission. It is also entered to stay certain proceedings in Admiralty, the probate of a will, letters of administration, a license of marriage, or an institution of a clerk to a benefice. Also a synonym for a CAUTION (*q.v.*), under the Land Registration Act, 1925.

In Scotland any one who expects certain proceedings to be taken by another may lodge with the Clerk of Court a '*caveat*.' He is then entitled to be informed by the Clerk if and when the proceedings are taken.

Caveat actor. The Criminal Law of England supposes that a man intends the natural and probable consequences of his act. But in civil matters there is no rule of common law that a man 'acts at his peril,' except the case of one who harbours or collects a dangerous thing, or anything likely to do mischief if it escapes, *Rylands* v. *Fletcher*, (1866) L. R. 1 Ex. 265; (1868) L. R. 3 H. L. 330; with that exception in which nothing short of an act of God, or the victim's default, will excuse him, if a person suffers injury he must found his action either on contract or tort, e.g., trespass or negligence on the part of the defendant. This is the theory of the law, though in practice a very small amount of malice or negligence will suffice. See MALICE and RES IPSA LOQUITUR.

Caveat emptor. *Hob.* 99.—(Let the purchaser beware.)

The rule of '*caveat emptor*' as to purchase of goods and animals with its existing modifications was thrown into statutory shape by s. 14 of the Sale of Goods Act, 1893, by which 'subject to the provision of this Act and of any statute in that behalf' (as, e.g., the Fertilisers and Feeding Stuffs Act, 1926 (16 & 17 Geo. 5, c. 45), s. 1), 'there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale,' except (1) on a purchase in reliance on the seller's skill; or (2) on a purchase by description from a seller who deals in goods of that description, in which case there is an implied warranty that the goods shall be of merchantable quality; or (3) by usage of trade.

As to the implied condition of the right of a seller to sell the goods, see s. 12, *ibid.*

Caveat viator (let the traveller beware), meaning that he must use reasonable care for his own safety; but a traveller or passer-by on premises on or over which he has a right to be or to pass is entitled to be protected from the negligence of those who are under some duty to passers-by or users of the premises. The degree of duty varies according to whether the victim of the accident has a contract involving care or

even absolute assurance or warranty on the part of the defendant in regard to the soundness of the premises or otherwise, or whether the plaintiff was a visitor or licensee. See *Indermaur* v. *Dames*, (1866) L. R. 1 C. P. 274, *Latham* v. *Johnson*, 1913, 1 K. B. 398, and *Norman* v. *Great Western Railway Company*, 1915, 1 K. B. 584, 2 C. P. 311. The case of a trespasser is quite different, but even then the owner of the land or person in possession has no right to lay a trap for him or commit any other wilful injury, see *Bird* v. *Holbrook*, (1828) 4 Bing. 628, with that exception, the owner of the premises is not obliged to ensure a trespasser's safety or to warn him of danger, *Great Central Railway Co.* v. *Bates*, 1921, 3 K. B. 578, but the trespasser does not lose his rights as a member of the public if the defendant was guilty of a public nuisance towards the person injured, *Barnes* v. *Ward*, (1850) 9 C. B. 392; and see also *Cooke* v. *Midland Great Western Railway of Ireland*, 1909, A. C. 229, and cases there cited.

Cavers, persons stealing ore from mines in Derbyshire, punishable in the berghmote or miner's Court: also officers belonging to the same mines.

Cavil, to use a captious argument.

Ceap, a bargain: anything for sale; chattel: also cattle, as being the usual medium of barter. Sometimes used instead of Ceapgild. See next title.

Ceapgild [fr. *ceap.*, Sax., cattle, and *gild*, payment], payment in cattle, market price.

Celibacy [fr. *cælibilatus*, Lat.], an unmarried or single state of life.

Cellar. As to prohibitions and restrictions upon use as a dwelling-house, see Housing Act, 1936, s. 12; and as a bakehouse, see Factory Act, 1901, s. 101.

Cellerarius, a butler in a monastery: sometimes in universities called manciple or caterer.

Cemetery [fr. κοιμητήριον, Gk., fr. κοιμάω, to set to sleep], a place of burial differing from a churchyard by its locality and incidents; by its locality, as it is separate and apart from any parochial church, though it has ordinarily a chapel of its own for the performance of a burial service; by its incidents, as it is usually the property of some private company, incorporated by special Act of Parliament, empowered to take land compulsorily, and subject to the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65) (see *Chitty's Statutes*, tit. '*Burial*'), by which, amongst other things, provision is made for obtaining a burial place in perpetuity.

Cenegild [fr. *cinne*, Sax., relation, and *gild*, payment], an expiatory mulct paid by one who killed another, to the kindred of the deceased.

Cenninga, notice given by a buyer to a seller that the thing sold was claimed by another, that he might appear and justify the sale.—*Jac. Law Dict.*

Censaria [fr. *cense*, Fr.], a farm or house and land let at standing rent.

Censarii, farmers.—*Blount.*

Censor. A person who regulates or prohibits the publication of any newspaper or the production of any play or any part thereof. There is ordinarily no censorship of the press in England; but by ss. 12 and 14 of the Theatres Act, 1843 (6 & 7 Vict. c. 68), a copy of every new stage play must, before it is acted for hire at any theatre in Great Britain, be sent to the Lord Chamberlain of His Majesty's Household, who will issue a license for its production or forbid it for the 'preservation of good manners, decorum, or the public peace.' See THEATRE; CINEMATOGRAPH.

Censuales, a species or class of the *oblati* or voluntary slaves of churches or monasteries, i.e., those who, to procure the protection of the Church, bound themselves to pay an annual tax or quit-rent out of their estates to a church or monastery. Besides this, they sometimes engaged to perform certain services.—*Jac. Law Dict.*

Censumethidus, a dead rent, like that which is called *mortmain.*—*Blount.*

Censure [fr. *census*, Lat.] a custom observed in certain manors in Devon and Cornwall, where all persons above the age of sixteen years are cited to swear fealty to the lord, and to pay 1*d.* per poll, and 1*d.* per annum ever after; these thus sworn are called censores. *Surv. of the Duch. of Corn.* Also a judgment which condemns some book, person, or action; more particularly a reprimand from a superior.

Census, a numbering of the people. It formerly took place in this country once in every 10 years. The first was taken in 1801 under 41 Geo. 3, c. 15; that of 1891 on Sunday, 5th April, 1891, under the Census Acts, 1890 (53 & 54 Vict. c. 61 (England), c. 38 (Scotland), and c. 46 (Ireland)), and that of 1911 under the Census (Great Britain) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 27), and the Census (Ireland) Act, 1910. The Census Act, 1920, provides that a census may be taken, if so directed by an Order in Council, at any time, provided that five years have elapsed since the last census, and provided

that a draft order has been laid before Parliament for 20 days. The early Census Acts only got at the numbers, occupations, etc., by a series of questions to overseers, clergymen, etc. The Act of 1840 (3 & 4 Vict. c. 99), was the first to get at the name, etc., of every person in every house. The Act (s. 11 (3)) makes it penal for a person employed in the census to communicate, without lawful authority, any information acquired in the course of his employment.

Population, for a particular purpose, is sometimes expressly directed to be ascertained 'by the last published census for the time being'; see, e.g., Licensing (Consolidation) Act, 1910, s. 109.

Census Regalis, the annual revenue or income of the Crown.

Centenarii, petty judges, under-sheriffs of counties, that had rule of a hundred, and judged smaller matters among them.—1 *Vent.* 211.

Centeni, the principal inhabitants of a district composed of different villages, originally in number a hundred, but afterwards only called by that name.

Central Criminal Court. This Court was created by the Central Criminal Court Act, 1834 (4 & 5 Wm. 4, c. 36), for the trial of all cases of treasons, murders, felonies, and misdemeanours committed within the county of Middlesex, and in certain specified parts of the counties of Essex, Kent, and Surrey, all of which constitute one county for the purpose of the Act, and also commissions of gaol delivery to deliver the gaol of Newgate of the prisoners therein charged with any of the offences aforesaid. The Court consists of the Lord Mayor and Aldermen and also of the Judges; and there are twelve sessions held in every year, at times fixed by four or more of the judges of the High Court, (Judicature Act, 1925, s. 74). The 17th section of the Act authorizes the Court to try offences committed on the high seas; and the Central Criminal Court Act, 1856 (19 & 20 Vict. c. 16) (see PALMER'S ACT), authorizes the King's Bench Division of the High Court to order any indictment for any felony or misdemeanour supposed to have been committed out of the jurisdiction of the Central Criminal Court upon removal by certiorari into the King's Bench Division, to be tried at the Central Criminal Court, if it appear that it is expedient that a trial there would be 'expedient to the ends of justice'—a provision generally put in force in cases of local prejudice against a person charged with crime of peculiar enormity. For mode of application for the order, see Rule 19 of the Crown Office Rules of 1906, and for form of writ to remove indictment 'for certain reasons,' see No. 9 of the forms scheduled to those rules. All the judges of the High Court of Justice, except such as were appointed before the Jud. Act, 1873, and were not liable then to serve (s. 11), may be in the commission for the Central Criminal Court, and by the same Act (ss. 16 and 29) the Court became a branch of the High Court (see per Wills, J., in *R.* v. *Davies*, 1906, 1 K. B. at p. 46), and Judicature Act, 1925, ss. 18, 70. The King's Bench Division of the High Court cannot issue a writ of certiorari to remove an order of this court, *R.* v. *Central Criminal Court Justices, Ex parte London County Council*, 1925, 2 K. B. 43. The less important offences are tried by either the recorder or common serjeant or the judge of the City of London Court; on every occasion the lord mayor or some of the aldermen being also present on the bench.

Central Office of Supreme Court. Established by Jud. (Officers) Act, 1879 (42 & 43 Vict. c. 78). See R. S. C. Ord. LXI.

Ceola, a large ship.—*Blount.*

Cepi corpus et paratum habeo (I have taken the body and have it ready), a return made by the sheriff upon an attachment, *capias*, etc., when he has the person, against whom the process was issued, in custody.—*Fitz. N. B.* 26.

Cepit in alio loco, a plea in replevin, when the defendant took the goods in another place than that mentioned in the declaration.

Ceppagium, the stumps or roots of trees which remain in the ground after the trees are felled.—*Fleta*, c. xli.

Ceragrum, a payment to find candles in the church.—*Blount.*

Cerne Abbas. See ABBAS.

Certificando de recognitione stapulæ, a writ commanding the mayor of the staple to certify to the Lord Chancellor a statute-staple taken before him where the party himself detains it, and refuses to bring in the same. There is a like writ to certify a statute-merchant, and in divers other cases. —*Reg. Brev.* 148, 151, 152.

Certificate, a testimony given in writing to declare or verify the truth of anything. Certificates are frequently referred to or required by Statute. A certificate is the usual evidence of the title to shares in a company. See Companies Act, 1929, ss. 67 and 68; for Certificate of Incorporation, see ss. 15 and 329, *ibid.*; and commencement

of business, s. 94, *ibid.*, and s. 82, *ibid.*, as to registration of charges. Also ALIENS and SHARE CERTIFICATE; and see LAND CERTIFICATE.

Trial by certificate, which has long been obsolete, took place in those cases in which the evidence of the person certifying was, by custom or otherwise, the only proper criterion of the point in dispute; see 3 *Bl. Com.* 333.

As to when certificates and examined copies are admissible in evidence, consult *Taylor on Evidence*, and the Documentary Evidence Act, 1845 (8 & 9 Vict. c. 113).

As to the Master's Certificate in Chambers in the Chancery Court, see Ord. LV., part xiii.

As to the obligation of solicitors, conveyancers, notaries public, and others to take out annual certificates, see Stamp Act, 1891, ss. 43—48.

Certification, in Scotch judicial procedure, is the assurance given to a party of the course to be followed in case he does not appear to obey the order of the Court.—*Bell's Dict.*

Certification of Assize, a writ anciently granted for the re-examining or re-trial of a matter passed by assize before justices, now entirely superseded by the remedy afforded by means of a new trial.

Certified Copy. As to when admissible in evidence, see *Taylor on Evidence*, and the Documentary Evidence Act, 1868 (31 & 32 Vict. c. 37), as to certain official documents.

Certifying Surgeons. See ss. 122 to 124 of the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22).—*Chitty's Statutes*, tit. '*Factories.*'

Certiorari (to be more fully informed of), an original writ issuing out of the Crown side of the King's Bench Division of the High Court of Justice, addressed, in the king's name, to judges or officers of inferior courts, commanding them to certify or to return the records of a cause depending before them, to the end that justice may be done.

Certiorari lies to remove into the High Court of Justice, King's Bench Division, which, superseding the King's Bench, is the sovereign Court of justice in criminal causes, all indictments, coroners' inquisitions, summary convictions by magistrates, orders of removal of paupers, and of poor's rates, also orders made by commissioners of sewers and other commissioners, town councils, and railway companies, for the purpose of being examined and 'quashed,' if contrary to law. The writ may be granted either at the instance of the prosecutor or the defendant. A prosecutor was formerly entitled to a writ of *certiorari* as a matter of right, but a defendant could only obtain it by express leave of the Court, and upon his entering into recognizances; but to prevent abuses, by the wanton and improvident application for it, the Acts 5 & 6 Wm. 4, c. 33, and 16 & 17 Vict. c. 30, s. 5, provide that a prosecutor must obtain the previous leave of the Court to issue it, and enter into recognizances; and these and other statutory provisions are incorporated in the Crown Office Rules, 1906, Rules 12–39, superseding Rules 28–42 of the Rules of 1886 (see *Chitty's Statutes*, tit. '*Certiorari*'). The Statute Law Revision Act of 1888 repeals 13 Geo. 2, c. 18, so that procedure on *certiorari* in a very great measure depends on Rules of Court alone. For the very numerous cases in which the writ has been granted or refused, see *Mews's Digest*, tit. '*Crown Office* (*Certiorari*)'; and for a review of the authorities as to procedure on *certiorari*, see *R.* v. *Nat Bell Liquors*, 1922, 2 A. C. 128, and see the Administration of Justice (Miscellaneous Provisions) Act, 1933 (23 & 24 Geo. 5, c. 36), s. 5, providing for the simplification of procedure.

An appeal does not lie unless it be expressly given by statute, but *certiorari* always lies unless it be expressly taken away by statute, and special clauses in modern statutes have frequently taken it away. See, e.g., Public Health Act, 1875, s. 262; Railways Clauses Consolidation Act, 1845, s. 156; but even such clauses do not apply to cases where a decision is impeached for substantial want of jurisdiction (*R.* v. *Cheltenham Commissioners*, (1841) 1 Q. B. 467). See also Housing Act, 1936, 2nd Sched.

A *certiorari* to remove a conviction or order made by justices of the peace must be applied for within six months.—Crown Office Rule 21.

A writ of *certiorari* to remove an action from an inferior court to the High Court issues as of right (*Edwards* v. *Liverpool Corporation*, (1902) 86 L. T. 627).

The removal of County Court actions by *certiorari* is regulated by s. 126 of the County Courts Act, 1888, reproduced in County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), s. 111, but an order made under the bankruptcy jurisdiction is not removable (*Skinner* v. *Northallerton County Court* (*Judge of*), 1898, 2 Q. B. 680).

The long disused 'Bill of Certiorari' to remove into Chancery a suit in some inferior

court having equity jurisdiction was an analogous procedure in equitable matters.

There is power to grant costs to a successful applicant for a *certiorari* (*R.* v. *Woodhouse*, 1906, 2 K. B. 501). See *Corner's Crown Practice*; *Shortt and Mellor's Crown Practice*.

Cert Money, *quasi* certain money. Head-money paid yearly by the residents of several manors to the lords thereof, for the certain keeping of the leet, and sometimes to the hundred. It is called *certum letæ* in ancient records.

Certum est quod certum reddi potest. 9 *Rep.* 47.—(That is certain which can be rendered certain.) Therefore, although to support a distress for rent the rent must be specific, it is enough if it be definitely ascertainable, as was held in a case where the rent for a marl and brickfield depended on the amount of marl got and bricks made (*Daniel* v. *Gracie*, (1844) 6 Q. B. 145).

Cerura, a mound, fence, or inclosure.

Cervisarii [fr. *cerevisia*, Lat., ale], tenants who paid a duty called by the Saxons *drinclean*, i.e., *retributio potus*.—*Domesday*.

Cess [fr. *asseoir*, Fr., to fix), an assessment or tax. In Ireland it was anciently applied to an exaction of victuals, at a certain rate, for soldiers in garrison, and in modern times is equivalent to the English 'Rate.'

Cessante ratione legis cessat ipsa lex. *Co. Litt.* 70 *b.*—(The reason of the law ceasing, the law itself ceases.) For illustration of this rule, see *Broom's Lrg. Max.*

Cessavit, a writ which lay (by the Statute of Gloucester, 6 Edw. 1, c. 4, and Westminster 2, 13 Edw. 1, c. 21), when a man who held lands by rent or other services neglected or ceased to perform his services for two years together, or where a religious house had lands given to it, on condition of performing some certain spiritual services, as reading prayers, giving alms, etc., and neglected it; in either of which cases, if the cesser or neglect had continued for two years, the lord or donor, and his heirs, had a writ of cessavit to recover the land itself.—*Fitz. N. B.* 208. This writ was abolished by 3 & 4 Wm. 4, c. 27.

Cesser, Proviso for. Where terms for years are raised by settlement, it is usual to introduce a proviso that they shall cease when the trusts end. This proviso generally expresses three events:—(1) the trusts never arising; (2) their becoming unnecessary or incapable of taking effect; (3) the performance of them. See ATTENDANT TERM.—*Sug. V. & P.*, 14th ed. 621–3.

Cesset processus, a stay of proceedings entered on the record.

Cessio bonorum (a surrender of goods). By the Roman Law a *cessio bonorum* of the debtor was not a discharge of the debt, unless the property ceded was sufficient for that purpose. It otherwise operated only as a discharge *pro tanto*, and exonerated the debtor from imprisonment. Huberus informs us that in Holland a *cessio bonorum* does not even exempt from imprisonment unless the creditors assent; and Heineccius proclaims the same as the law of some parts of Germany. The Scottish Law conforms to the Roman code in its leading outlines, and the modern code of France adopts the same system.—*Story's Conflict of Laws*, 492; and see 2 *Br. & Had. Com.* 623.

Cessio in jure, a fictitious suit, in which the person who was to acquire a thing claimed (*vindicabat*) the thing, the person who was to transfer it acknowledged the justice of the claim, and the magistrate pronounced it to be the property (*addicebat*) of the claimant.—*Sand. Just.*

Cession, a ceasing, yielding up, or giving over. By 21 Hen. 8, c. 13 (repealed by the Pluralities Act, 1838 (1 & 2 Vict. c. 106), if any one having a benefice of 8*l. per annum*, or upwards, accepted any other, the first was adjudged void, unless he obtained a dispensation. A vacancy thus made, for want of a dispensation, was called cession. See PLURALITY.

Cessionary Bankrupt, one who gave up his estate to be divided amongst his creditors.

Cessment, an assessment or tax.

Cessor, he who ceases or neglects so long to perform a duty that he thereby incurs the danger of the law.—*Old Nat. Br.* 136.

Cessure, or **Cessor,** ceasing, giving over, departing from.

Cestui que Trust, the person (now frequently termed 'beneficiary,' as in s. 62 of the Trustee Act, 1925, who possesses the equitable right to property and receives the rents, issues, and profits thereof, the legal estate being vested in a trustee. The remedy of the *cestui que trust*, if the trustee fails in his duty, is by an action in the Chancery Division (in the majority of cases instituted by way of an Originating Summons). The phrase *cestui que trust* is Norman-French. In Roman Law obligations analogous to trusts could only be created by testament; the trustee was (Heres) 'fiduciarius'; the beneficiary, 'fideicommissarius.' *Sandars, Inst. Lib.* 2 *tit. XXIII.*

Cestui que use, in old law tracts *cestui à*

que use, the person in whose favour a use was declared. See USES.

Cestui que vie, the person for whose life any lands, tenements, or hereditaments are held by another, who is called the *tenant pur autre vie*. See AUTRE VIE.

Chacea, a station of game, more extended than a park, and less than a forest; also the liberty of chasing or hunting within a certain district; also the way through which cattle are driven to pasture, otherwise called a drove-way.—*Blount; Bract.* l. 4, c. xliv.

Chaceare *ad lepores vel vulpes*. To hunt hares or foxes.—*Cart. Abb. Glast. MS.* 87.

Chacurus [fr. *chasseur*, Fr.], a horse for the chase, or a hound, dog, or courser.

Chaff-cutting Machines are required, for prevention of accidents, if worked by any motive power other than manual labour, to have their feeding mouths so contrived as to prevent the hand of the person feeding them from being drawn between the rollers to the knives.—Chaff-Cutting Machines (Accidents) Act, 1897 (60 & 61 Vict. c. 60).

Chaffery, traffic; the practice of buying and selling.

Chaffwax, an officer in Chancery, who fitted the wax to seal writs, commissions, and other instruments. The office was abolished by 15 & 16 Vict. c. 87, s. 23.

Chain Cables. See CABLE.

Chaldron, Chaldern, or **Chalder,** twelve sacks of coals, each holding three bushels, weighing about a ton and a half. In Wales they reckon twelve barrels or pitchers a ton or chaldron, and 29 cwt. of 120 lbs. to the ton.

Chalking, or **Caulking,** stopping the seams in a ship or vessel.—*Rot. Parl.*, 50 *Edw.* 3.

Challenge [fr. *challenger*, O. F., to accuse of], an exception taken either against things or jurors.

In civil actions, when a full jury appear, either party may challenge them for cause, as well the talesmen as the jurors originally returned. Challenges are of two kinds: (1) to the array; (2) to the polls; and each of these is again subdivided into principal challenges, and challenges to the favour.

(1) A challenge to the array is an exception to all the jurors returned by the sheriff collectively, not for any defect in them, but for some partiality or default in the sheriff or his under-officer who arrayed the panel; this is either (α) a principal challenge, as that the sheriff or other returning officer is of kindred or affinity to the plaintiff or defendant, if the affinity continue; that one or more of the jury are returned at the nomination of the plaintiff or defendant; that an action of battery is pending at the suit of the plaintiff or defendant against the sheriff, or at the suit of the sheriff against the plaintiff or defendant; that the sheriff or returning officer holds land depending upon the same title with that in litigation between the parties; that the sheriff, etc., is under the distress of the plaintiff or defendant; that the sheriff, etc., is employed by or is the special friend of either party or is an arbitrator in the same matter, and has treated thereof. (β) A challenge for favour, being such as implies at least a probability of bias or partiality in the sheriff, but does not amount to a principal challenge, as that the plaintiff or defendant is tenant to the sheriff, or that the parties are connected by marriage, etc. It seems very doubtful if the array in special jury cases can be challenged. Challenges to the array are, however, seldom resorted to, since, for the causes above named, the jury-processes may be directed to the coroner, or they would be grounds for a new trial.

(2) A challenge to the polls, which is an exception to one or more of the jurors who have appeared individually: Either (α) a principal challenge, which may be subdivided into (a) challenge *propter honoris respectum*, as, if a lord of Parliament be called, he may challenge himself or he may have his writ of privilege, but it is doubtful if either party can challenge him; (b) challenge *propter defectum*, that the juror is not qualified; (c) challenge *propter affectum*, by reason of some supposed bias or partiality; (d) challenge *propter delictum*, when for some act of the juror he has ceased to be, in consideration of the law, *probus et legalis homo*. (β) A challenge to the polls for favour is of the same nature with the principal challenge *propter affectum*, but of an inferior degree.

No challenge can be made before a full jury have appeared; a challenge to the polls is made *ore tenus*, that to the array in writing.

The trial of challenges to the array is entirely in the discretion of the Court; sometimes they are tried by two of the coroners, sometimes by two of the jury, sometimes by the Court itself. Challenges to the polls, if to the favour, are tried by two jurors, who have been sworn; if two have not been sworn, the Court appoints two indifferent persons to try them, thence called triers, who are superseded as soon as two jurors are sworn; a principal challenge to the polls is tried by the Court itself.—1 *Chit. Arch. Prac.*

In criminal cases, challenges may be made,

either on the part of the Crown, or on that of the prisoner, and either to the whole array, or to the separate polls for the very same reasons that they may be made in civil causes. In capital cases the prisoner, *in favorem vitæ*, is allowed an arbitrary and capricious species of challenge, without showing any cause at all, limited, in cases of treason, to thirty-five, and in felonies to twenty.—County Juries Act, 1825 (6 Geo. 4, c. 50), s. 29. Criminal Law Act, 1827 (7 & 8 Geo. 5, c. 28), s. 3. See *Archbold's Criminal Pleading*.

Challenges to fight, either by word or letter, or to the bearer of such challenges, are misdemeanours, punishable by fine and imprisonment. See DUEL.

Chamber, the place where certain assemblies are held; also the assemblies themselves.

Chamber Clerks, of the Judges. As to their positions since the Judicature Acts, see Jud. Act, 1873, s. 79, amended by Jud. Act, 1875, s. 35.

Chamber of Agriculture, Chamber of Commerce, an assembly of (1) agriculturists or (2) merchants and traders, where affairs relating to agriculture or trade are treated of. Chambers of such kind are recognized by s. 7 (1) (b) of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), as having a *locus standi* before the Railway and Canal Commission to complain of any infringement of the Railway and Canal Traffic Acts, upon obtaining a certificate from the Board of Trade of being 'a proper body' to complain.

Chamberdekins, or **Chamber-deacons,** certain poor Irish scholars, clothed in mean habit, and living under no rule; also beggars banished from England, 1 Hen. 5, cc. 7 and 8.

Chamberlain [fr. *chambellan*, Fr., *custos cubiculi, cubicularius*, Lat.], a person who has the management or direction of a chamber or chambers. It is variously used in our laws, statutes, and chronicles. Among the most important are (1) *The Lord Great Chamberlain*, an hereditary officer of the Crown, whose chief duties are performed at a Coronation, and who can appoint a deputy subject to the approval of the king (see CENSOR). (2) *The Lord Chamberlain of the Household*, an officer appointed by the sovereign, on the nomination of the Prime Minister; he has the oversight of all officers belonging to the king's household, and by the Civil List Act, 1781 (22 Geo. 3, c. 82), s. 13, the care of the royal furniture, pictures and plate. He has also by the Theatres Act, 1843 (see THEATRE), the control of the London Theatres.

The places in the House of Lords of 'the great Chamberleyn' and 'the Kinge's Chamberleyn' respectively are fixed by 31 Hen. 8, c. 10. (3) *The Chamberlain of London* keeps the city money, presides over the affairs of the citizens and their apprentices, etc.

Chambers are *quasi*-private rooms, in which the judges or masters dispose of points of practice and other matters not sufficiently important to be heard and argued in court. See SUMMONS; ORDER.

The jurisdiction of a judge in chambers depends partly on Statute and partly on the Common Law. An appeal lies to a Divisional Court or to a judge sitting in court according to the practice of the Division of the High Court to which the matter in question is assigned (Jud. Act, 1873, s. 50. See now Jud. Act, 1925, ss. 31 (8) and 62). By R. S. C. 1883, Ord. LIV., the masters in the King's Bench Division, and the registrars in the Probate, Divorce, and Admiralty Division may exercise the jurisdiction of a judge in chambers (subject to appeal to a judge), except in matters relating to crime or to the liberty of the subject, and certain other matters set out in the order. As to Chambers in the Chancery Division, see Ord. LV.

Chambers of the King (*Regiæ cameræ*). The exclusive territorial jurisdiction of the British Crown over the inclosed parts of the sea along the coasts of the island of Great Britain has immemorially extended to those bays called the *King's chambers*: that is, portions of the sea cut off by lines drawn from one promontory to another.—*Wheat. Int. Law*, 234.

Chambre depeinte, anciently St. Edward's Chamber, called the Painted Chamber, destroyed by fire with the Houses of Parliament in October, 1833.

Champart, field-rent; champerty.

Champarty or **Champerty** [fr. *champ parti*, Fr.; *campi partitio*, Lat., a division of the land], properly a bargain between a plaintiff or defendant in a suit and a third person, *campum partire*, to divide between them the land or other matter sued for in the event of the litigant being successful in the suit, whereupon the champertor is to carry on the party's suit or action at his own expense; or it is the purchasing the right of action or suit of another person; illegal by Common Law, and also by 3 Edw. 1, c. 25; 13 Edw. 1, st. 1, c. 49; and 32 Hen. 8, c. 9. It is an aggravated form of maintenance. See *Hutley* v. *Hutley*, (1873) L. R. 8 Q. B. 112; *In re Attorneys and Solicitors Act*, 1870, (1875) 1

Ch. D. 573; *Holden* v. *Thompson*, 1907, 2 K. B. 489; *Haseldine* v. *Hoskin*, 1933, 1 K. B. 822; and MAINTENANCE.

Champertors, persons who move pleas or suits, or cause them to be moved, either by their own procurement, or by others, and sue them at their proper costs, in order to have part of the land in variance, or part of the gain.—33 Edw. 1, c. 2.

Champion of the King (or **Queen**), an ancient officer, whose duty (hereditary in the family of Scrivelsby in Lincolnshire) it was to ride armed *cap-à-pie* into Westminster Hall at the coronation, while the king was at dinner, and by the proclamation of a herald, make a challenge, 'that if any man shall deny the King's title to the crown, he is there ready to defend it in single combat.' The king drank to him, and sent him a gilt cup covered, full of wine, which the champion drank, retaining the cup for his fee. The ceremony, long discontinued, was revived at the coronation of George IV., but not afterwards.

Chance, misfortune, accident, deficiency of will. Where a man commits an unlawful act by misfortune and chance, and not by design, his will not co-operating with the deed, such act wants one main ingredient of a crime. If an accidental mischief should follow from the performance of a lawful act, the party stands excused from all guilt; but if the act be felonious, and a consequence ensues not foreseen or intended, as the death of a man or the like, his want of foresight shall be no excuse, for, being guilty of one offence, in doing antecedently what is in itself unlawful, he is criminally guilty of whatever consequence may follow.

But a very important distinction is made in such cases, viz., whether the unlawful act is also in its original nature wrong and mischievous; for a person is not answerable for the incidental consequences of an unlawful act which is merely *malum prohibitum;* as, where any unfortunate accident happens from an unqualified person being in pursuit of game, he is amenable only to the same extent as a man duly qualified.—*Fost.* 259; 1 *Hale's P. C.* 475. See MANSLAUGHTER.

Chance, Game of, playing at, in a public place is punishable under Vagrant Act Amendment Act, 1873 (36 & 37 Vict. c. 38); applied to a 'pari mutuel'—a machine whereby the element of chance is added to the element of matching one horse against another—in *Tollett* v. *Thomas*, (1871) L. R. 6 Q. B. 514. And see GAMING; LOTTERY.

Chancel, the part of a church in which the communion table stands; it belongs to the rector or the impropriator.—2 *Br. & Had. Com.* 420. As to a pew in a chancel, see *Parker* v. *Leach*, (1866) L. R. 1 P. C. 312; and as to property in a chancel generally, see *Chapman* v. *Jones*, (1869) L. R. 4 Ex. 273; *Duke of Norfolk* v. *Arbuthnot*, (1880) 5 C. P. D. 390. For the liability to repair a chancel, see the Ecclesiastical Dilapidations Measure, 1923 (14 & 15 Geo. 5, No. 3), s. 52, and the Chancel Repairs Act, 1932 (22 Geo. 5, c. 20).

Chancellor, Lord, properly, 'the Lord High Chancellor of Great Britain' [fr. *cancellarius*, low Lat., *cancelli*, Lat., latticework], the highest judicial functionary in the kingdom, and superior, in point of precedency, to every temporal lord. He is appointed by the delivery of the king's Great Seal into his custody. He may not be a Roman Catholic (10 Geo. 4, c. 7, s. 12). He is a cabinet minister, a privy councillor, and prolocutor of the House of Lords by prescription (but not necessarily, though usually, a peer of the realm), and vacates his office with the ministry by which he was appointed, but is entitled to a pension. When royal commissions are issued for opening the session, for giving the royal assent to bills, or for proroguing parliament, the Lord Chancellor is always one of the commissioners, and reads the royal speech on the occasion. To him belongs the appointment of all justices of the peace throughout the kingdom, and the appointment and removal of county court judges (see COUNTY COURTS), and (see s. 8 of the Coroners Act, 1887) the power to remove coroners. He is one of the three *ex-officio* trustees of the British Museum. Being, in the earlier periods of our history, usually an ecclesiastic (for none else was then capable of an office so conversant in writings), and presiding over the royal chapel, he became keeper of the sovereign's conscience, visitor, in right of the Crown, of the hospitals and colleges of royal foundation, and patron of all the Crown livings under the value of twenty marks *per annum* in the king's books. He is the general guardian of all infants, idiots, and lunatics, and has the general superintendence of all charitable uses—and all this, over and above the vast and extensive jurisdiction which he exercises in his judicial capacity in the Supreme Court of Judicature, of which he is the head. An ex-Chancellor is by virtue of the Judicature Act, 1925, s. 6, an *ex-officio* judge of the Court of Appeal. See CHANCERY; SUPREME COURT OF JUDICATURE. The Chancellorship of Scotland was abolished

at the Union, and that of Ireland by the Irish Free State (Consequential Provisions) Act, 1922, s. 2.

The multifarious duties of the Lord Chancellor and the excessive work entailed by them were fully dwelt upon by Lord Herschell in a statement to members of the House of Commons who had called attention to the appointment of magistrates, which statement is reproduced in the *Law Times* of 17th November, 1906, from *The Times* of the 16th November, 1893. See also Chapter X. of the Report of the Machinery of Government Committee, 14th December, 1918. See *Lives of the Lord Chancellors of England*, by Lord Campbell.

Chancellor of a Cathedral, one of the *quatuor personæ*, or four chief dignitaries, of the Cathedrals of the Old Foundations. The duties assigned to the office by the statutes of the different chapters vary; but they are chiefly of an educational character, with special reference to the cultivation of theology.

Chancellor of a Diocese, or **of a Bishop,** a law officer, appointed to hold the Bishop's Court in his diocese, and to adjudicate upon matters of ecclesiastical law. He is the vicar-general of the bishop, and by Canon 127 must be at least 26 years old, must be learned in the Civil and Ecclesiastical Laws, must be at least a Master of Arts or Bachelor of Law, and 'reasonably well practised in the course thereof, as likewise well affected, and zealous bent to religion, touching whose life and manners no evil example is had.' By the same canon, he must take the Oath of Supremacy and subscribe the Thirty-nine Articles of Religion (see that title).

Chancellor of the Duchy of Lancaster, an officer before whom, or his Deputy, the Court of the Duchy Chamber of Lancaster is held. This is a special jurisdiction concerning all matters of equity relating to lands held of the Crown in right of the Duchy of Lancaster; which is a thing very distinct from the county palatine (which has also its separate chancery for sealing of writs or the like), and comprises much territory lying at a vast distance from it, as particularly a very large district surrounded by the city of Westminster. This Court has been inactive for more than a century. See COUNTY PALATINE.

Chancellor of the Exchequer, a Minister of State having special care of the revenue, who is entitled to precedence in the High Court on the nomination of sheriffs.

Chancellor of the Order of the Garter, and other military orders, an officer who seals the commissions and the mandates of the chapter and assembly of the knights; keeps the register of their proceedings, and delivers their acts under the seal of their order.—*Stow's Annals*, 706.

Chancellors of the Universities of Oxford and Cambridge, the titular heads of those bodies, the office being honorary.

The Chancellor of the University of Oxford, by virtue of certain ancient charters confirmed by statute, enjoys the sole jurisdiction (in exclusion of the King's Courts) when a scholar or privileged person is the defendant, over all civil actions and suits whatsoever, excepting where a right of freehold is concerned, and of all injuries and trespasses against the peace, mayhem and felony excepted (*Brown* v. *Renouard*, (1810) 12 East, 12; *Thornton* v. *Ford*, (1812) 15 East, 634; *Ginnett* v. *Whittingham*, (1886) 16 Q. B. D. 761); and these he is at liberty to try and determine, either according to the Common Law of the land, or according to the University Statutes and customs, at his discretion. The judge of the Chancellor's Court at Oxford is the Vice-Chancellor, or his deputy. By 25 & 26 Vict. c. 26, amending 17 & 18 Vict. c. 81, s. 45, the Court of the Vice-Chancellor of Oxford is now governed by the Common and Statute Law of the realm and no longer by the rules of the Civil Law. See Order in Council, August, 1894, applying the Rules of the Supreme Court relating to appeals from County Courts to this Court. See COUNTY COURT. And see 18 & 19 Vict. c. 36; 20 & 21 Vict. c. 25; and Judicature Act, 1925, s. 208.

A similar privilege was formerly enjoyed by the University of Cambridge, but the right of the University, or any member thereof, to claim conusance of any actions or criminal proceedings wherein any person who is not a member of the University is a party, has ceased.—19 & 20 Vict. c. xvii., s. 18, and see County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), s. 192, which saves the rights, privileges and jurisdiction of the Chancellors of both University Courts. As to the disciplinary jurisdiction over women formerly exercised at Cambridge, see SPINNING HOUSE.

Chance-medley [fr. *chaude meslée*, Fr.; fr. *chaud*, hot, and *meslée*, fray, *mesler*, *meler*, to mingle, *mescolare*, It. When the element *chaud* lost its meaning to ordinary English ears, it was replaced by *chance* in accordance with the meaning of the compound.—*Wedgw.*], a casual affray. Such killing of a

person as happens either in self-defence on a sudden quarrel, or in the commission of an unlawful act without any deliberate intention of doing any mischief.—1 *Hawk. P. C.* c. xxx., s. 1. It is sometimes termed *chaud-medley*, which more properly signifies an affray in the *heat* of blood or passion.

Chancery [fr. *cancelli*, lattice-work, Lat.; *chancellerie*, Fr.]. The Court of Chancery, which administered equity (see that title) so far as distinct from law, was the highest court of judicature in this kingdom next to parliament.

Its powers and jurisdiction were in 1875 transferred to (I.) The High Court of Justice, and (II.) The Court of Appeal (Jud. Act, 1873, ss. 16–18).

(I.) There is by the Judicature Act, 1873, replaced by the Judicature Act, 1925, s. 4, a Division of the High Court of Justice called the Chancery Division. To this Division are assigned (1) matters in which the Court of Chancery had exclusive statutory jurisdiction (except County Court appeals), of these, the jurisdiction under the Charitable Trusts Acts, 1853–1869, is practically the only portion now remaining, the other jurisdictions having become exercisable under subsequent legislation. (Note : *A. P.* 1934, p. 2374), and (2) causes and matters for the administration of estates of deceased persons, dissolutions of partnerships, or taking of partnership or other accounts; redemption and foreclosure of mortgages, raising of portions or other charges on land; sale and distribution of proceeds of property subject to a lien or charge; execution of trusts, charitable or private; rectification, setting aside, or cancelling deeds or other written instruments; specific performance of contracts between vendors and purchasers of real estates, including contracts for leases; partition or sale of real estates; wardship of infants and care of their estates and many other matters assigned by Statute, e.g., Companies (Companies Act, 1929), Law of Property (Settled Land and Trustee) Acts, 1925, Land Registration Act, 1925, Life Assurance Companies Act, 1896, and Patents and Designs Acts, 1907 and 1919.

Also all matters within the jurisdiction of the High Court under the Bankruptcy Act, 1914, and certain matters relating to the appointment of new trustees and vesting orders of property in connection with persons of unsound mind, see s. 54, T. Act, 1925, and T. A. Rules (Jurisdiction in Lunacy), 1925.

(II.) The powers and jurisdiction of the Court of Appeal in Chancery, formerly consisting of the Lord Chancellor and Lords Justices of Appeal in Chancery, are transferred to the Court of Appeal (Jud. Act, 1873, s. 18, sub-s. 1), replaced by Jud. Act, 1925, s. 26. See APPEAL, COURT OF.

As to the investment of and the mode of dealing with money paid into the Chancery Division of the High Court, see the Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), now repealed and replaced by the Jud. Act, 1925, and Supreme Court Funds Rules, 1927.

Chancery Amendment Act, 1858 (21 & 22 Vict. c. 27 (' Cairns's Act '), giving the Court power to award damages to a party injured either in addition to or in substitution for specific performance, and to try questions of fact or to have damages assessed by a jury before the Court itself; repealed by the same Act as the Chancery Regulation Act, 1862 (see below), and for the same reason.

Chancery Common Law Seal, for the sealing of writs, etc., out of the Petty Bag Office. —12 & 13 Vict. c. 109, ss. 11, 14. See now R. S. C., Ord. LXI.

Chancery Court of the County Palatine of Durham. A Court possessing an unlimited jurisdiction of the Chancery Division and concurrent with it, within the area of the County Palatine of Durham. Appeals lie to the Court of Appeal, see Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47), and Judic. Act, 1925, s. 28 (as to appeals). The Chancellor, appointed by Royal Warrant, is the sole Judge of the Court.

Chancery Court of Lancaster. By Royal Charter and by Statute, a Court conferred on the County Palatine of Lancaster, having the same and concurrent jurisdiction within its area as the Chancery Division of the High Court, see Chancery of Lancaster Act, 1890 (53 & 54 Vict. c. 23); appeals lie to the Court of Appeal (Judic Act, 1925, s. 28). The Court is presided over by a Vice-Chancellor appointed by the Chancellor of the Duchy and County Palatine.

Chancery Court of York. See 37 & 38 Vict. c. 85, s. 7, and ARCHES COURT.

Chancery (Great Seal [Offices] Abolition Act). See 37 & 38 Vict. c. 81.

Chancery Regulation Act, 1862 (25 & 26 Vict. c. 42), ' Rolt's Act,' by which the Court became bound to determine every question of law and fact; repealed by the Statute Law Revision and Civil Procedure Act, 1883, as having been superseded by the Judicature Act, 1873, s. 24, and now by Jud. Act, 1925, s. 36.

Chancery, Sheriff of, a Scottish official

whose jurisdiction is to deal with petitions for the service of heirs (*q.v.*).

Chandala, the most degraded Hindoo caste.

Chandos Clause, the 20th section of the Representation of the People Act, 1832 (2 & 3 Wm. 4, c. 45), giving the right of voting in counties to leaseholders: introduced by the Marquis of Chandos, afterwards Duke of Buckingham, in the House of Commons.

Change of Solicitor. Before 1883 no solicitor could be changed without the order of a judge, but by R. S. C. 1883. Ord. VII., r. 2, the change can be effected by mere notice.

Channel Islands. Jersey, Guernsey, Alderney, and Sark, part of the ancient Duchy of Normandy, annexed to the kingdom of England by William the Conqueror: by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 18 (1) (b), included in the expression British Isles. They are governed by their own laws and not bound by any statute of the British parliament, unless expressly named therein. An appeal lies from their Courts to the Judicial Committee of the Privy Council.

Chanter. The chief singer in the choir of a cathedral. Mentioned in 13 Eliz. c. 10.

Chantry, or **Chauntry** [fr. *cantaria,* Lat.], a little church, chapel, or particular altar, endowed with lands, or other revenues, for the maintenance of priests to sing mass, etc., for the souls of the donors, etc. See 1 Edw. 6, c. 14, abolishing them.

Chapel [fr. *chapelle,* Fr.]. a building either adjoining to a church, for performing divine service, or separate from the mother-church, where the parish is large, and then called a *chapel of ease,* for the accommodation of those parishioners who dwell at a distance from the parish church. These may be parochial, and have a right to sacraments and burials, and to a distinct minister, by custom, though subject in some respects to the mother-church.—2 *Inst.* 363.

In an Act of Parliament 'chapel' means a Church of England chapel only, unless words be used as in the Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18), s. 23, showing that places of worship which do not belong to the Established Church are to be included. In ordinary parlance 'chapel' means a place of worship for dissenters, formerly (and more properly) called a 'meeting-house.'

Chapelry, the precints and limits of a chapel.

Chaperon, a hood or bonnet anciently worn by the Knights of the Garter, as part of the habit of that noble order; also a little escutcheon fixed in the forehead of horses drawing a hearse at a funeral.

Chapitre [fr. *capitula,* Lat., chapters of a book], a summary of matters to be inquired of or presented before justices in eyre, justices of assize, or the peace, in their sessions.—*Britton,* c. iii.

Chaplain [fr. *capellanus,* Lat.], an ecclesiastic who performs divine service in a chapel; but it more commonly means one who attends upon a king, prince, or other person of quality, for the performance of clerical duties in a private chapel.—4 *Rep.* 90.

Chapman [fr. *ceapman,* Sax.]. a cheapener, one that offers as a purchaser; also a seller.—*Webster.*

Chapter [fr. *capitulum,* Lat.], a congregation of ecclesiastical persons in a cathedral church, consisting of canons or prebendaries whereof the dean is the head, all subordinate to the bishop, to whom they act as assistants in matters relating to the church, for the better ordering and disposing the things thereof, and the confirmation of such leases of the temporality and offices relating to the bishopric, as the bishop shall make from time to time. And they are termed *capitulum,* as a kind of head, instituted not only to assist the bishop in manner aforesaid, but also anciently to rule and govern the diocese in the time of vacation.—*Burn's Dict.*

Character. Witnesses to speak to the good character of a prisoner may be called by him in his defence, and, if they speak to nothing else, it is the custom that the counsel for the prosecution should not reply. It is not allowable to state any particulars of the prisoner's conduct, either in proof of his good or bad character; but if he call witnesses to his good character, a previous conviction against him may be put in evidence. Witnesses to the bad character of a prisoner can be called only to contradict witnesses to his good character, and evidence so called must be confined to general reputation (*R.* v. *Rowton,* (1865) 34 L. J. M. C. 57). But a previous conviction may then be given in evidence in many cases, as in any case of an offence against the Larceny Act, 1861 (24 & 25 Vict. c. 96), by s. 116 of that Act.

Questioning of Witness.—A witness may also be questioned as to whether he has been convicted of any felony or misdemeanour, and proof of his conviction may be given if he either denies or does not admit the fact,

or refuses to answer.—Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), applicable both to civil and criminal cases, and to all courts.

Questioning of Accused.—By s. 1 (f) of the Criminal Evidence Act, 1898 (see that title), a person charged with an offence, and called as a witness under that Act, must not be asked, and if asked need not answer, any question tending to show his commission of an offence not charged or that he is of bad character, unless (i.) proof of such offence is evidence of his guilt of the offence charged; or (ii.) 'he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution' (see *R.* v. *Bridgwater*, 1905, 1 K. B. 131); or (iii.) 'he has given evidence against any other person charged with the same offence.'

No Obligation to give Servant Character.—A master is under no legal obligation (except in Ireland) to give his servant a character when asked, but if he gives one he must do so honestly, and his answer is *primâ facie* privileged.

False Characters.—Giving false characters, whether verbal (*R.* v. *Connolly*, 1910, 1 K. B. 28) or not, to servants, is punishable under the Servants Characters Act, 1792, (32 Geo. 3, c. 56), and the forgery of seamen's or soldiers' certificates of service or discharge, under the Seamen and Soldiers False Characters Act, 1906 (6 Edw. 7, c. 5).

Charge (i) the instructions of a judge to a jury; the judge's summing up of the evidence at a trial by jury; the periodical address of a bishop or archdeacon to his clergy; the taking proceedings against a prisoner; a commission.

(ii.) To lay a duty upon any one, to acquaint any with the nature of their duty. See CHARGE SHEET. The clerk of arraigns gives the prisoner 'in charge' to the jury, by reading an abstract of the indictment, and they are bound to proceed to deliver him until they are discharged. To prefer an accusation against any one.

(iii.) A burden, duty, or trust; when attached to property; see MORTGAGES AND CHARGES, DEBENTURE, LAND CHARGES, ADMINISTRATION, REGISTRATION OF LAND.

Charge and Discharge, the old mode of taking accounts in Chancery.—*Daniell's Chancery Practice*, 2nd ed.

In Scotland the accounts of the intromissions of trustees are commonly called Accounts of Charge and Discharge.

Chargé d'affaires, a diplomatic representative of a foreign court, to whose care are confided the affairs of his nation.

Charges, expenses, costs. A trustee is entitled as a matter of right to his costs, charges and expenses properly incurred in relation to the trust, and they constitute a first charge on the trust property, both capital and income; see *Stott* v. *Milne*, (1884) 25 Ch. D. 710.

Charge-sheet, a paper kept at a police-station to receive each night the names of the persons brought and given into custody, the nature of the accusation, and the name of the accuser in each case. It is under the care of the inspector on duty. Unless the accuser is willing to sign the charge-sheet, the accused will generally not be detained.

Charging Order, an order obtained from a court or judge under the Judgments Acts, 1838 and 1840 (1 & 2 Vict. c. 110), s. 14, and (3 & 4 Vict. c. 82), s. 1, and R. S. C. 1883, Ord. XLVI., charging the stocks or funds of a judgment debtor with the judgment debt.

Solicitors' Costs.—The Solicitors' Act, 1932 (22 & 23 Geo. 5, c. 37), s. 69, enables any Court in which a solicitor has been employed to prosecute or defend a suit to make a charging order in favour of the solicitor of the successful party for his taxed costs upon the property 'recovered or preserved' through the instrumentality of such solicitor, and the Court may make such orders for taxation of and for raising and payment of such costs out of the property as shall appear just and proper, and all conveyances and acts done to defeat, or which shall operate to defeat, such charge, unless made to a *bonâ fide* purchaser for value without notice, will be absolutely void as against the charge; but no such order may be made in any case in which the right to recover payment of the costs is barred by any statute of limitations. See *Cordery on Solicitors; Atkinson on Solicitors' Lien.*

Partners.—Under s. 23 of the Partnership Act, 1890, separate judgment creditors of a partner may obtain an order charging his interest in the partnership property: the other partner or partners may redeem the interest charged, or in case of sale, purchase the same. See R. S. C., June, 1891, Ord. XLVI. (1a).

Charitable Uses and Trusts. 9 Geo. 2, c. 26, commonly called 'The Mortmain Act,' 1735, after reciting that gifts or alienations of land in mortmain (see MORTMAIN) were pro-

hibited by Magna Charta and other wholesome laws as prejudicial to the common utility, and that such public mischief had greatly increased by many large and improvident dispositions, made by languishing or dying persons to charitable uses, to take place after their deaths to the disherison of their lawful heirs, enacted that no lands or other hereditaments whatsoever, nor money, or personal estate to be laid out in land should be given to any person or bodies corporate, or charged by any person in trust, for any charitable uses, unless such gift, etc., should be made by deed (thus entirely excluding gifts by will) executed twelve months before the death of the donor and be enrolled in the Court of Chancery within six calendar months after execution, and be without any power of revocation for the benefit of the donor.

The Settled Land Act, 1925, s. 29 (4), however, provides that assurances of land or personal estate to be laid out in land or separate instruments declaring the charitable trusts executed after 1925 need not be so enrolled, but that they must be sent to the Charity Commissioners within six months or such extended time as the Commissioners may allow to be recorded in their books: this enactment does not apply to registered land or to instruments required to be sent to the Board of Education by s. 117 of the Education Act, 1921 (11 & 12 Geo. 5, c. 51).

The Mortmain Act of 1735 excepted dispositions of lands to or in trust for either of the universities of Oxford and Cambridge, or any of the colleges therein, or to or in trust for the colleges of Eton, Winchester, or Westminster, for the better support and maintenance of the scholars upon the foundations thereof; and various Acts of Parliament passed from time to time have also specially exempted devises of lands or moneys charged thereon to the trustees of the British Museum for the benefit of that institution (5 Geo. 4, c. 39, s. 3); or to the governors of Queen Anne's Bounty (2 & 3 Anne, c. 11, s. 4; 43 Geo. 3, c. 136, s. 1; and 45 Geo. 3, c. 84, s. 3); the commissioners of Greenwich Hospital, and of the Royal Navy Asylum; the members of the Seamen's Hospital Society; the governors of St. George's Hospital, and of the Foundling Hospital (13 Geo. 2, c. 29); and of public schools (32 & 33 Vict. c. 58, s. 2); also public parks, museums, or libraries (34 & 35 Vict. c. 13); together with a few other public charities.

The strictness of the Act was further relaxed in the case of gifts of land for charitable purposes, such as parks, universities, schools, museums, places of worship, endowment or augmentation of livings, literary and scientific institutions, etc. A list of the various statutes enabling land to be acquired for charitable purposes will be found in *Bourchier and Chilcott*, and by 24 Vict. c. 9, which provided that a conveyance for charitable uses should not be void by reason of containing certain stipulations for the donor's benefit, and dispensed with a deed in the case of copyholds. The Mortmain Act itself, together with eight amending Acts, is repealed by the consolidating Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), which re-enacts them in substance, though the phraseology is much altered; and see the Charitable Trusts Act, 1914 (4 & 5 Geo. 5, c. 56).

An important amendment of the law of charitable uses was effected by the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), to the effect that money secured on land and other personal estate arising from or connected with land (which, as 'savouring of the realty' had been held to be within the Act of Geo. 2) may be devised to charitable uses, and that even land itself may be so devised, though the Act provides that it must be sold within one year from the death of the testator unless the Court or the Charity Commissioners allow it to be retained. The Settled Land Act, 1925, has effected some further changes chiefly affecting the formalities of conveyance and the transmission of legal estate without altering the substantive incidents of the law relating to gifts of land to charities or their right to hold or convey it.

As a rule, trustees of charities cannot sell land unless it is wholly maintained by voluntary contributions; see Charitable Trusts Acts, 1853 (16 & 17 Vict. c. 137), s. 241, and 1855 (18 & 19 Vict. c. 124), s. 29, without the authority of a Statute or the Court, or under an authorized scheme or with the approval of the Charity Commissioners, of whom many of the powers relating to education were transferred to the Board of Education (O. C., 11th August, 1902).

Charities, or Public Trusts. One of the earliest fruits of the Emperor Constantine's zeal, or pretended zeal, for Christianity, was a permission to his subjects to bequeath their property to the Church. This permission was soon abused to so great a degree as to induce the Emperor Valentinian to enact a Mortmain Act by which it was restrained.

But this restraint was gradually relaxed; and in the time of Justinian it became a fixed maxim of civil law that legacies to pious uses (which included all legacies destined to works of charity, whether they related to spiritual or temporal concerns) were entitled to peculiar favour, and to be deemed privileged testaments.

Lord Thurlow was clearly of opinion that the doctrine of charities grew up from the civil law; and Lord Eldon, in assenting to that opinion, has judiciously remarked, that at an early period the ordinary had the power to apply a portion of every man's personal estate to charity; and when afterwards the statute compelled a distribution, it is not impossible that the same favour should have been extended to charity in wills, which by their own force purported to authorize such a distribution.

Charity (as Sir William Grant has justly observed), in its widest sense, denotes all the good affections men ought to feel towards each other; in its more restricted and common sense, relief to the poor. In English law it means a general public use (*Commissioners for Income Tax* v. *Pemsel*, 1891, A. C. 531), and comprehends 'relief of aged, impotent, and poor people; maintenance of sick and maimed soldiers and mariners, schools of learning, free schools, and scholars of universities; repairs of bridges, ports, havens, causeways, churches, sea-banks, and highways; education and preferment of orphans; the relief, stock, or maintenance of houses of correction; marriages of poor maids; supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; relief or redemption of prisoners or captives; and aid or ease of any poor inhabitants, concerning payments of fifteenths, setting out of soldiers, and other taxes.' These are the words of the preamble to 43 Eliz. c. 4, which is amongst the many statutes repealed by the consolidating Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 52); but s. 13, sub-s. 2, of that Act recites this definition at length, and provides that 'whereas in divers enactments and documents reference is made to charities within the meaning of the said Act,' references to such charities shall be construed as 'references to charities within the meaning of the said preamble.'

In general the question whether a gift is charitable depends not on whether it may, but whether it *must* be applied to purposes strictly charitable; see *Morice* v. *Bishop of Durham*, (1904) 9 Ves. 399, 406; *Re Davidson*, 1909, 1 Ch. 667, and see *A.-G.* v. *National Provincial Bank*, 1924, A. C. 262; and *Verge* v. *Somerville*, 1924, A. C. 496; if there is any option in the matter, the gift will be void. To be valid a charitable bequest must be for the public benefit and the trust must be capable of being administered and controlled by the Court: whether gift or trust is for the public benefit is a question for the Court (*In re Hummeltenberg, Beatty*, v. *London Spiritualistic Alliance, Ltd.*, 1923, 1 Ch. 237). There are certain uses which, though not within the letter, are yet deemed charitable within the equity of the statute. Such is money given to maintain a preaching minister; to maintain a school master in a parish; for the setting up a hospital for the relief of poor people; for the building of a sessions-house for a city or county; for the making of a new, or for the repairing of an old, pulpit in a church; or for the buying of a pulpit-cushion, or pulpit-cloth; or for the setting of new bells where there were none, or for the mending of them when they are out of repair; or to pay ringers who should ring a peal of bells on the anniversary of the restoration of Charles II. (*Re Pardoe*, 1906, 2 Ch. 184). City companies are not 'charities' in any legal sense of the word (*Re Meech*, 1910, 1 Ch. 426). A charitable gift pays legacy or succession duty at 10 per cent., but charities, generally speaking, are exempt from income tax. By the Charitable Trusts Act, 1925 (15 & 16 Geo. 5, c. 27), the Trustees or Charitable Funds have become incorporated. See *Tyssen's Charitable Bequests*, 2nd ed., and preceding title.

Charity Commissioners. The Charity Commissioners for England and Wales are a body appointed under the provisions of the Charitable Trusts Acts, 1853 to 1925, and their powers and duties are to be found in these Acts. They exercise very extensive powers of management and control over charities, including power to authorize sales, exchanges, leases and mortgages of charity property; to frame new schemes where the original terms of the trust can no longer be literally or beneficially complied with; to investigate the accounts of charitable trusts; to sanction proceedings by the trustees and give them advice, and many other powers. There are, however, certain institutions exempted from their jurisdiction, e.g., certain universities and colleges, registered places of worship, and charities wholly supported by voluntary contributions; see s. 62 of the Act of 1853,

the construction of which has given rise to great difficulties, and the judgment of Davey, L.J., in *Re Clergy Orphan Corporation*, 1894, 3 Ch. 145. By the Charitable Trusts Act, 1914 (4 & 5 Geo. 5, c. 56), power is given to the Commissioners and also to the High Court to extend the area and objects of town charities in certain cases.

All powers and authorities, by the Endowed Schools Acts (see that title), vested in the Endowed Schools Commissioners by the Endowed Schools Act, 1874, were transferred to the Charity Commissioners. And by Orders in Council made under the Board of Education Act, 1899, the powers of the Commissioners over all endowments held for purely educational purposes have been transferred to the Board of Education (see that title).

Charre of Lead, thirty pigs of lead.

Charta Chyrographata, or **Communis,** an indenture. See that title.

Charta de Forestâ is taken from the roll of 25 Edward I., and has a confirmation of that date prefixed to it, similar to that prefixed to Magna Charta. This charter, though of infinite importance at the time it was made, contains in it nothing interesting to a modern lawyer, any further than as it gives some specimen of the nature of the institution of Forest Laws, and the burthens thereby brought on the subject. It contains 16 chapters.—1 *Reeves*, c. v. 254.

Charta de una parte, a deed-poll. See Deed Poll.

Chartæ libertatum are Magna Charta (see that title) and Charta de Forestâ.

Chartel or **Cartel** [fr. *cartel*, Fr.], a letter of defiance or challenge to a single combat; also, an instrument or writing between two states for settling the exchange of prisoners of war.

Charter [fr. *charta*, Lat.; *chartre*, Fr.], an evidence in writing of things done between man and man. Charters of the Sovereign are written instruments granting certain privileges or exemptions to any person or body politic (*Jacob's Law Dict.*) (see, e.g., the Municipal Corporations Act, 1882, s. 210) or corporations; e.g., to 'chartered' banking or other trading companies (see 7 Wm. 4 & 1 Vict. c. 73, and Chartered Companies Act, 1884 (47 & 48 Vict. c. 56)), or to a college or university (see College Charter Act, 1871 (34 & 35 Vict. c. 63)), or to a City company, as the Apothecaries Company, whose charter, granted by James I., is cited in the Apothecaries Act, 1815 (55 Geo. 3, c. 194). See Letters Patent. The word also meant deeds and other documents of title belonging to private owners.—*Jacob's Law Dict.*

Chartered Accountant. See Accountant.

Chartered Civil Engineer. See Civil Engineer.

Chartered Ship, a ship hired or freighted.

Charterer, a person who charters or hires a ship for a voyage or for a certain period; also a Cheshire freeholder.—*Sir P. Ley's Antiq.* f. 356.

Charter-land, otherwise called *bookland*, property held by deed under certain rents and free-services. It in effect differs nothing from the free socage lands, and hence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same.—2 *Bl. Com.* 90.

Charter-party [fr. *charta partita*, Lat., a divided charter; *charte partie*, Fr.]. When notaries were less common there was only one instrument made for both parties; this they cut in two, and gave each his portion; an agreement in writing by which a ship-owner agrees to let an entire ship, or part thereof, to a merchant, for the carriage of goods on a specified voyage, or during a specified period, for a sum of money which the merchant agrees to pay as freight for their carriage. By such an agreement the ship is said to be chartered to the merchant, who is called the charterer. There are certain terms usually to be found in all charter-parties, e.g., a statement of the burthen of the ship, an undertaking by the ship-owner that the ship, being seaworthy and furnished with necessaries, shall be ready by a certain day to receive the cargo, shall sail when loaded, and deliver her cargo at her port of destination (the act of God or the king's enemies excepted), the charterer undertaking to load and unload the ship, within a certain number of days, called the lay or running days, and if he detain her longer, to pay demurrage, i.e., a certain sum of money for each extra day, and also to pay freight agreed. In the absence of a charter-party or bill of lading, the ship-owner becomes a common carrier and remains liable as such (see *Hill* v. *Scott*, 1895, 2 Q. B. 713). See *Leggett* or *Scrutton on Charter-parties*; *Abbott on Shipping*; *Carver, Carriage by Sea*. As to stamp (6*d.*), see ss. 49–51 of the Stamp Act, 1891 (54 & 55 Vict. c. 39).

Chartis reddendis, an ancient writ which lay against one who had charters of feoffment entrusted to his keeping and refused to deliver them.—*Reg. Brev.* 159.

Chase [fr. *chasse*, Fr.], a privileged place for the preservation of deer and beasts of the forest, of a middle nature between a forest and a park. It is commonly less than a forest and not endowed with so many liberties, as officers, laws, courts; and yet it is of larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differs from a park in that it is not enclosed, yet it must have certain metes and bounds, but it may be in other men's grounds as well as in one's own.—*Manw.* 49.

Chastisement. As to legality of correction of a child by its parent, an apprentice or scholar by his master, or a criminal by an officer, see s. 24 of the Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), replaced by the Prevention of Cruelty to Children, 1904 (4 Edw. 7, c. 15), and see 8 Edw. 7, c. 67. The Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 1 (7), preserves the right of parent, teacher, or persons having lawful control to administer punishment. As to criminals, the Prisons Act, 1898 (61 & 62 Vict. c. 41), and rules thereunder. By s. 5, *ibid.*, the order must be confirmed by the Secretary of State, and (as to scholars) *Cleary* v. *Booth*, 1893, 1. Q. B. 465; and *Mansell* v. *Griffin*, 1908, 1 K. B. 160, 947; *R.* v. *Newport (Salop) J.J., ex parte Wright*, 1929, 2 K. B. 416. A husband cannot inflict chastisement on his wife, and all ancient *dicta* to the contrary are now unsound (*R.* v. *Jackson*, 1891, 1 Q. B. 671). See *Lush on Husband and Wife; Macdonell on Master and Servant.*

Chastity, an imputation on the chastity of a woman is now actionable without special damage. See SLANDER.

Chattels or **Catals** [fr. *catalla*, Lat.; *chatel*, Fr.; *chaptel*, Old Fr.]. The word 'catalla' among the Normans primarily signified only beasts of husbandry or, as they are still called, cattle, but in a secondary sense the term was extended to all movables and not only to these but to whatsoever was not a fief or feud or, at a later date, in the nature of freehold or parcel of it. The distinction in the class of chattels survives in the legal meaning of the terms, 'personal chattels,' denoting movable property and 'chattels real,' which concern the realty, such as terms of years of lands or tenements, wardships, the interest of tenant by statute staple, by statute merchant, by *elegit*, and such like.—*Co. Litt.*, 118 *b*.

Chattels personal or in a more narrow and more modern sense, 'chattels' (cf. 'goods and chattels' in the writ of *fieri facias*) (*q.v.*), means movable property or effects which belong personally to the owner and for which if they are injuriously withheld from him he has, in general, no other remedy than by personal action (see TROVER), while a mixed action of *ejectment* (*q.v.*), in which the plaintiff could recover the specific property was available in the case of 'chattels real.' The Administration of Estates Act, 1925, s. 55 (x) provides a definition of 'personal chattels' upon an intestacy. The statutory definition excludes chattels used at the death of the intestate for business purposes, and money or securities for money.

Chattels Real are estates or interests in or arising out of lands. The difference between real estate or freeholds and chattels real consists for the most part in the fixity or non-fixity of their duration. It is the latter property, viz., uncertainty of duration, that characterizes a freehold; it is the former, certainty, that characterizes a chattel real or chattel interest in realty. Hence, every tenancy of a definite duration is a term, i.e., a period accurately ascertained, during which the estate or interest is to endure, and it is immaterial that the interest may come to an end sooner; e.g., a lease for 99 years if A. shall so long live is a chattel interest or chattel real, for it cannot under any circumstances last beyond the 99 years, although it will determine earlier by A.'s death, while a lease for the life of A. was until 1926 (L. P. Act, 1925) a freehold estate. The L. P. Act, 1925, has preserved as equitable interests many of the incidents of former freehold estates, but it has enacted (s. 1) that the only estates in land which are capable of subsisting or of being conveyed or created at law are an estate in fee simple absolute in possession and a term of years absolute, and by s. 149 a lease at a rent or in consideration of a fine for the life of A. is to take effect as a lease for 90 years determinable after the death of A. by notice as provided by the Act. Before 1926 the most important consequence of the distinction between chattels real and freeholds which were not limited to a life or lives was that freeholds of inheritance devolved at law upon the heir or devisee, while chattels real devolved on the personal representatives of the deceased. This difference has now been abolished, firstly, by s. 1 of the Administration of Estates Act,

1925 (replacing the Land Transfer Act, 1897), which assimilated the devolution to personal representatives of real estate to that of chattels real and, secondly, by s. 45 of the A. E. Act, 1925, which abolished all the existing rules of descent to land belonging to persons dying after 1925 other than entailed interests, while s. 46 provides for the same rules of succession to real and personal estate without distinction in case of intestacies of persons dying after 1925. Another consequence of the difference between chattels real and freeholds is that freeholds are considered to be greater estates than leaseholds, and therefore if a term of 1,000 years and an estate for life were to vest in the same persons in the same right, the term would merge and be extinguished in the life estate unless an intervening estate operated to prevent the union of interests, but the importance of this principle has been lessened by s. 25 (4) of the Judicature Act, 1873, replaced by s. 185 of the Law of Property Act, 1925, under which there is no merger at law if there is no merger in equity (*Capital & Counties Bank, Ltd.* v. *Rhodes*, 1903, 1 Ch. at p. 653), and see MERGER.

Another difference between chattels real and freeholds personal was that chattels real could not be settled in succession but vested absolutely at birth in the first tenant-in-tail (*Foley* v. *Burnell*, 1 Bro. C. C. 274). But now, by s. 130 of the L. P. Act, 1925, an entailed interest may be created by way of trust in any property real or personal, subject to statutory requirements. See TAIL.

Among chattels real five species of legal or equitable estates may be enumerated: (*a*) for years; (*b*) from year to year; (*c*) at will; (*d*) by *elegit*; and (*e*) on sufferance. See also HEIRLOOMS.

Chaud-medley. See CHANCE-MEDLEY.

Chaumpert, an ancient tenure.—*Blount.*

Chauntry. See CHANTRY.

Cheap, *subst.* purchase, bargain; *adj.* low in price. The word cheap, forming part of the name of a place, denotes that in that place there was a market, e.g., Cheapside, Eastcheap, Westcheap.

Cheap Trains. Early in the history of railways the companies were compelled by the Railway Regulation Act, 1844 (7 & 8 Vict. c. 85), sometimes called the Cheap Trains Act, to run one train a day at a penny a mile fare; in respect of which trains (ss. 6, 7) termed 'parliamentary trains,' or 'Government trains,' the companies were exempt from the passenger duty otherwise chargeable. Disputes arising between the companies and the Government as to the extent of this exemption, the Cheap Trains Act, 1883 (46 & 47 Vict. c. 34), abolished the duty altogether on all fares not exceeding one penny per mile and empowered the Board of Trade to require any company to provide proper accommodation at such fares, and also reasonable accommodation for workmen going to and returning from their work. See *Browne* or *Theobald on Railways*.

Cheaters, or **Escheators,** were officers appointed to look after the king's escheats, a duty which gave them great opportunities of fraud and oppression, and in consequence many complaints were made of their misconduct. Hence it seems that a *cheater* came to signify a fraudulent person, and thence the verb *to cheat* was derived.—*Wedgw.*

Cheats, deceitful practices, in defrauding or endeavouring to defraud another of his known rights, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice, by causing an illiterate person to execute a deed to his prejudice, or reading it over to him in words different from those in which it is written; selling one commodity for another, or using false weights and measures, and the like.—1 *Hawk.* 188. 'If a person in the course of his trade or business, openly and publicly carried on, put a false mark or token upon an article so as to pass it off as a genuine one, when in fact it is only a spurious one, and the article is sold and money obtained by means of that false mark or token, that will be a cheat at Common Law.'—Per Cockburn, C.J., in *R.* v. *Closs*, (1857) 27 L. J. M. C. 54. See also *R.* v. *Vreones*, 1891, 1 Q. B. 360; *R.* v. *Hamilton*, 1901, 1 K. B. 740.

Cheating at play is punishable in like manner as obtaining money by false pretences under the Gaming Act, 1845, s. 17. See *Russell on Crimes*.

Check. See CHEQUE.

Check-roll, a list or book containing the names of such as are attendants on, or in the pay of, the sovereign or other great personages, as their household servants.—19 Car. 2, c. 1.

Check-weigher. A person appointed under ss. 13 and 14 of the Coal Mines Regulation Act, 1887, by the majority ascertained by ballot of the persons employed in a coal mine who are paid according to the weight

of the mineral gotten by them, and stationed at their own cost at each place appointed for the weighing of the mineral to take a correct amount of the weight. See Check-weighing in Various Industries Act, 1919 (9 & 10 Geo. 5, c. 51). See *Date* v. *Gas Coal Collieries*, 1914, 3 K. B. 1175.

Chemists and Druggists. The Pharmacy Act, 1933, provides for registration and abrogates certain provisions of the Pharmacy Acts of 1852, 1868 and 1869, the Poisons and Pharmacy Act, 1908, the Dangerous Drugs Acts, 1920, 1923 and 1925, which otherwise regulate the business of chemists and druggists, and provide for their examination. Any registered person is entitled to sell drugs, other than poisons which are contained in the Schedules to the Act of 1933 or added thereto under the provisions of that Act. Others must not falsely imply that they are registered members of the Pharmaceutical Society or use the description of chemist, druggist, pharmacist, etc. Only authorized persons may sell poisons. It is an offence to use such titles unless authorized by the Pharmacy Acts. Medical practitioners, qualified veterinary surgeons, and certain other persons, as, for example, those selling certain scheduled poisonous substances for agricultural purposes, are not within the above-mentioned prohibition imposed upon persons other than chemists and druggists respecting the sale of scheduled poisons. The Pharmaceutical Society of Great Britain, which was incorporated in 1843 by Royal Charter and received a supplementary charter in 1901, is the examination and registration authority for chemists and druggists. There was a similar society in Ireland, see 38 & 39 Vict. c. 57. See POISONS; and consult *Halsbury's Laws of England*, vol. xx., tit. '*Medicine and Pharmacy*'; and *Chitty's Statutes*, tit. '*Medical Acts.*'

Cheque. An order addressed to a banker requesting him to pay to (*a*) the person therein mentioned, or his order, or (*b*) the person therein mentioned, or the bearer of the cheque, the sum of money therein mentioned; defined in the Bills of Exchange Act, 1882, s. 73—by which such provisions of that Act as are applicable to a bill of exchange payable *on demand* apply also to a cheque—as a 'bill of exchange drawn on a banker payable on demand.

A warrant for the payment of half a year's interest on 5 per cent. War Stock, 1929–47, made out in the usual form of the Bank of England, signed by the Bank's chief accountant, to the order of a specified person was held to be a cheque 'within the meaning of that word in the Bills of Exchange Act, 1882 (*Slingsby* v. *Westminster Bank, Ltd.*, 1931, 1 K. B. 173). Section 82 of the Act affords the banker protection when 'in good faith and without negligence he receives payment for a customer of a cheque crossed generally or specially to himself and the customer has no title or a defective title thereto.' But see *Underwood, Ltd.* v. *Bank of Liverpool*, 1924, 1 K. B. 775; and *Lloyds Bank, Ltd.* v. *Savory & Co.*, (1933) 49 T. L. R. 116.

As to the effect of stopping a cheque, see *Cohen* v. *Hale*, (1878) 3 Q. B. D. 371; and of alteration, *Slingsby* v. *District Bank*, 1932, 1 K. B. 544. See *Watson on Cheques*; *Chalmers on Bills of Exchange*. See CROSSED CHEQUE.

Chester was declared to be no longer a county palatine by 11 Geo. 4 & 1 Wm. 4, c. 70, s. 13. As to Chester Courts, see 30 & 31 Vict. c. 56.

Chevage, Chevagium, or **Cherage** [fr. *chef*, Fr.], a tribute sum of money formerly paid by such as held land in villeinage to their lords in acknowledgment, and was a kind of head or poll money.—*Bract.* l. 1, c. x.

Chevantia [fr. *chevance*, Fr.], a loan or advance of money upon credit; also goods, stock, etc.—*Cowel.*

Chevisance [fr. *chevir*, i.e., *venir à chef de quelque chose*, Fr., to come to the end of a business], an agreement or composition; an end or order set down between a creditor and debtor; an indirect gain in point of usury, etc.; also an unlawful bargain or contract.—*Jac. Law Dict.*

Cheze, a homestead or homesfall which is accessory to a house.—*Div. of Purl.* 162, *note.*

Chicane [fr. *chicaner*, Fr., to wrangle], the use of tricks and artifice.

Chief Baron of the Exchequer, the presiding judge in the Court of Exchequer, and afterwards in the Exchequer Division of the High Court of Justice. In 1881, after the death of Lord Chief Baron Kelly, the office was abolished by Order in Council under s. 31 of the Jud. Act, 1873, and merged in that of Lord Chief Justice of England.

Chief Clerks of Judges in Equity, appointed under 15 & 16 Vict. c. 80, s. 16, to act in the place of the abolished Masters in Chancery. They were continued in office, under the judges of the Chancery Division of the High Court of Justice, by Jud. Act, 1873, ss. 77–86. In 1897 the title of 'Chief Clerk' was altered to that of 'Master of the Supreme Court.'

See R. S. C., Ord. LV., and Judicature Act, 1925, ss. 110–130.

Chief Justice of England, the presiding judge in the King's Bench Division of the High Court of Justice, and, in the absence of the Lord Chancellor, President of the High Court, and also an *ex-officio* judge of the Court of Appeal (Jud. Act, 1873, s. 5; Jud. Act, 1875, s. 6) (now Judicature Act, 1925, s. 6 (2)). The full title is, 'Lord Chief Justice of England,' abbreviated L.C.J.

The 'Lives of the Chief Justices of England' down to that of Lord Mansfield (who was appointed in 1756, resigned in 1788, and died in 1793) was brought out by Lord Campbell in 1849.

Chief Justice of the Common Pleas, the presiding judge in the Court of Common Pleas, and afterwards in the Common Pleas Division of the High Court of Justice, and one of the *ex-officio* judges of the High Court of Appeal (Jud. Act, 1873, s. 5, and Jud. Act, 1875, s. 4). He had five (formerly four, until 31 & 32 Vict. c. 125, see s. 11) *puisne* judges associated with him. In 1881, after the promotion of Lord Chief Justice Coleridge to the office of Lord Chief Justice of England, the office was abolished by Order in Council under s. 31 of the Jud. Act, 1873, and merged in that of Lord Chief Justice of England.

Chief-rents [fr. *reditus capitales*, Lat.], the annual payments of freeholders of manors; also denominated quit rents (*quieti reditus*), because thereby the tenant goes free of all other services. See MANOR.

Chief, Tenants in, persons who held their lands immediately under the king (*in capite*), in right of his Crown and dignity.—2 *Bl. Com.* 60.

Chiefrie, a small rent paid to the lord paramount.

Chievance, usury.

Child-bearing. The English law admits of no presumption as to the time when a woman ceases to bear children, though this enters into most other codes, and the practice of the Courts in treating women of a certain age as past child-bearing is not a rule of law but is a mere rule of convenience in the administration of estates; there is no legal impossibility in a woman 100 years old bearing a child; see *Farwell on Powers*, p. 295 and cases there referred to; *Co. Litt.* 40 *b*. The possibility of bearing a child after the age of fifty-four was recognized by the Court of Appeal in *Croxton* v. *May*, (1878) 9 Ch. D. 388, in a case where the woman had been married only three years.

Children. The word child in legal documents means a legitimate child unless otherwise declared by statute. See *Morris* v. *Britannic Assurance Co.*, 1931, 2 K. B. 125. 'Child' is defined by the Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 107, as meaning, for the purposes of the Act, a person under fourteen years of age. The Children and Young Persons (Scotland) Act, 1932 (22 & 23 Geo. 5, c. 47), makes provisions for Scotland similar to those of the corresponding English Act.

Registration of Birth, and Vaccination.—It is the duty, by s. 1 of the Births and Deaths Registration Act, 1874 (37 & 38 Vict. c. 88), of the father and mother of every child born alive, and in their default of other persons (see BIRTHS), to give information to the registrar within forty-two days; the Public Health Act, 1936, ss. 2 and 3, provides for compulsory notification of births to the Medical Officer of Health (see BIRTHS), and the child must be vaccinated in ordinary cases (see VACCINATION) within six months.

Education.—The Education Act, 1921, now forms a code of the law on the subject of compulsory education for children. See EDUCATION.

Employment.—As to the employment of children under *twelve* in factories, workshops, etc., see FACTORY, and consult *Abraham and Davies, Austin, Bowstead, Redgrave*, or *Ruegg and Mossop on the Factory Acts*.

The Coal Mines Act, 1911 (1 & 2 Geo. 5, c. 50), s. 91, prohibits the employment in mines below ground of boys under fourteen and girls of any age, and s. 92 regulates the employment of girls and boys above ground.

The employment of boys under *sixteen* and girls under *eighteen* in dangerous public performances is punishable under the Children and Young Persons Act, 1933 (c. 12), ss. 23, 24, and the employment of children generally is restricted by s. 18 and bye-laws of local authorities under that Act, which prohibits (s. 20) the employment in 'street trading' of a child under sixteen. A local authority may make bye-laws respecting the employment of children under fourteen (s. 18), and as to street trading under eighteen (s. 20), and respecting the employment of persons under eighteen subject to certain exceptions (s. 19). The regulation of the employment of children in public entertainments is dealt with by s. 22. By sub-s. (3) a licence can under certain circumstances be obtained for a child over twelve, and invests any officer

charged with the execution of the Act with all the powers of a factory inspector under that Act to enter and examine any place of public entertainment.

Employment abroad.—As to the restrictions on children being taken out of the United Kingdom with a view to singing, playing, performing, or being exhibited for profit, see ss. 25 and 26.

Sale of Liquor.—Intoxicating Liquor (Sale to Persons under Eighteen) Act, 1923 (which repeals s. 67 of the Licensing (Consolidation) Act, 1910), prohibits the sale to and purchase by persons under the age of eighteen of intoxicating liquor to be consumed *on* the premises. A person over sixteen may, however, buy beer, porter, cider or perry for consumption with a meal to be consumed in a place usually set apart for the service of meals, i.e., not the bar. The Act also contains provisions to prevent the consumption of intoxicating liquor by persons under eighteen in the bar and the purchase of intoxicating liquor for that purpose.

Sale of Tobacco.—The sale of tobacco to children under sixteen is penalized by s. 7 of the Children and Young Persons Act, 1933 (c. 12), which also (sub-s. (3)) allows cigarettes to be taken away from a person under sixteen who is smoking in any street or public place. See TOBACCO.

Infant Life Protection.—The Children Act, 1908 (8 Edw. 7, c. 67) (sometimes termed the 'Children's Charter'), as amended by the Children and Young Persons Act, 1932 (c. 46), ss. 65 to 69, consolidates and amends in Part I. thereof the provisions relating to the protection of infant life. A person undertaking (s. 1) for reward the nursing or maintenance of an infant must give notice to the local authority, and provision is made (s. 2) for the appointment of inspectors and visitors. An insurance policy (s. 7) on the life of an infant kept for reward is void, and it is an offence both on the part of the insurer and the insurance company to enter or attempt to enter into such a policy. See also P. H. Act, 1936, Part VII., ss. 200–220.

Cruelty.—The Children and Young Persons Act, 1933 (see *supra*), consolidates and amends in Part I. thereof the law with regard to cruelty to children. Special penalties are provided (s. 1) for the ill-treatment of children under sixteen by persons over sixteen having custody of them (including a father who having deserted his wife fails to pay any part of his earnings for the support of his children: see *R.* v. *Connor*, 1908, 2 K. B. 26), giving power to increase the penalties up to 200*l.* where the offender is interested pecuniarily in the death of the child; and also penalties for causing (s. 4) children under sixteen to beg in the streets, or exposing (s. 11) children under seven to the risk of burning, or allowing (s. 3) persons between the ages of four and sixteen to be in brothels, or encouraging or favouring (s. 2) the seduction or prostitution, or unlawful carnal knowledge of a girl under sixteen. The Court can presume (s. 99) the age of a child or young person and deal with the case accordingly. See ABUSING CHILDREN.

To unlawfully abandon or expose a child under two to the danger of life or probability of permanent injury to health is a misdemeanour by s. 27 of the Offences against the Person Act, 1861, as to which see *Reg.* v. *Falkingham*, (1870) and *Reg.* v. *White*, (1871) L. R. 1 C. C. R. 222, 311.

Evidence.—The admissibility of the evidence of a child of tender years depends upon the degree of understanding it possesses, and the religious education it has received. Under s. 38 of the Children and Young Persons Act, 1933, the evidence of a child not understanding the nature of an oath may be received if he has sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

Responsibility.—Above fourteen a child is presumed to be *doli capax*, but between eight and fourteen a child is presumed to be *doli incapax*; though the rule prevails that '*malitia supplet ætatem.*' It is conclusively presumed that no child under eight can be guilty of any offence (s. 50). See AGE.

Punishment.—Sentence of death cannot (s. 3 (1)) be pronounced on or recorded against a person under eighteen and a young person under seventeen cannot (s. 52 (2) (3)) be sent to penal servitude and can only be imprisoned if of an unruly or depraved character, and a child under fourteen can (s. 52 (1)) under no circumstances be sentenced to imprisonment or penal servitude. Sections 53 to 59 give categorically the different methods of dealing with children under sixteen who have committed any offence. See INDUSTRIAL SCHOOLS; REFORMATORY SCHOOLS.

As to the custody of children by persons other than their parents, see *Reg.* v. *Barnardo*, 1891, 1 Q. B. 194, C. A., and the Custody of Children Act, 1891 (54 & 55 Vict. c. 3), and now ss. 206–220 of the Public Health Act, 1936. This Act also,

see ss. 204–205, provides for maternity and child welfare.

Sections 45 to 49 relate to Juvenile Courts created for the purpose of hearing charges against children and young persons; and the court may (s. 55) order the parent or guardian of a child under sixteen to pay the fine, damages, or costs imposed. See JUVENILE COURTS. For responsibility, see AGE.

And see INFANTS; YOUNG PERSON; and *Chitty's Statutes*, tit. '*Infants and Children*.'

Child living. The rule extending the meaning of 'child living' to include for the purposes of the child's benefit a child *en ventre sa mère* does not apply to s. 21 of the Finance Act, 1920, which provides for certain deductions in respect of income tax if a claimant has a child living at the commencement of a financial year: *Jackson* v. *Voss*, 39 T. L. R. 445.

Child-stealing. See the Offences against the Person Act, 1861, s. 56, which applies to children under fourteen, and punishes decoying either by force or fraud.

Childwite, the right to take a fine of a bondwoman gotten with child without her lord's consent.—*Termes de la Ley*; *Jac. Law Dict.*

Chiltern Hundreds. A member of the House of Commons cannot resign his seat. He may, however, become disqualified by acceptance of an office of profit under the Crown. A member therefore usually vacates his seat by the acceptance of the stewardship of the Chiltern Hundreds, or some other nominal office in the gift of the Chancellor of the Exchequer. The practice began about the year 1750; but the duties and profits of the stewardship have long since ceased, and the office is only retained to serve this particular purpose. The Chiltern Hills, a range of chalk eminences separating the counties of Bedford and Hertford, were formerly covered with thick beechwood, and sheltered numerous robbers; to put these marauders down, and protect the inhabitants of the neighbourhood from their depredations, an officer was appointed under the Crown called the Steward of the Chiltern Hundreds, which were Burnham, Desborough and Stoke.

The Crown, for the convenience of the House at large, is ordinarily ready to confer on any member the Stewardship of the Chiltern Hundreds, or of the Manor of Poynings, of East Hendred or Northstead. The office is retained until the appointment is revoked to make way for the appointment of another holder. Acceptance vacates the seat of the member. The office can be granted during a recess, but the statutory power of the Speaker for the issue of a writ during recess to fill up a vacancy caused by acceptance of office does not apply.—*May's Parl. Pr.*; and see the explanation given by Sir William Harcourt in Parliament on 31st Jan., 1893 (8 *Parl. Deb.* 4th series, 50; *The Times*, 1st Feb., 1893, p. 6).

Chimin [fr. *chemin*, Fr.], a way, either the King's highway (*chiminus regis*), or a private way.—*Co. Litt.* 56.

Chiminage, or **Pedagium,** toll due by custom for having a way through a forest.—*Co. Litt.* 56.

Chimney. Sections 30, 31 of the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), which are applied to all urban districts by s. 171 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), impose penalties (up to 5*l.* and 10*s.* respectively) on any person wilfully setting a chimney on fire, or an occupier allowing a chimney to be on fire—the latter penalty not to be incurred if the occupier prove that the fire was in nowise owing to omission, neglect, or carelessness of himself or his servant.

Minute rules for the construction of chimneys in London are laid down by the London Building Act, 1930 (21 Geo. 5, c. clviii.), ss. 69 to 72. Elsewhere, see Public Health Act, 1875, s. 157, as amended by the Public Health Act, 1936. The funnel of a steam-tug is a chimney (*Tough* v. *Hopkins*, 1904, 1 K. B. 804).

Chimney-money, or **Hearth-money,** a Crown duty for every fireplace in a house.—14 Car. 2, c. 2. It appears to have been a most odious tax (see *Macaulay's Hist. of Eng.* ch. iii.) and was repealed by 1 Wm. & M. sess. 1, c. 10.

Chimney-sweeps, prohibition for minors to ascend chimneys, requirement of certificates for master chimney-sweepers, and general regulations.—3 & 4 Vict. c. 85; 27 & 28 Vict. c. 37; consolidated with amendments by the Chimney-Sweepers Act, 1875 (38 & 39 Vict. c. 70). The Chimney-Sweepers Act, 1894 (57 & 58 Vict. c. 51), imposes a penalty for noisy solicitation of employment as a chimney-sweeper by ringing a bell or otherwise.

Chinese. The Australian colonies (see especially the Chinese Immigration Restriction Act, 1888, of New South Wales) have passed many Acts restricting Chinese immigration, and in *Musgrove* v. *Chung Teeong Toy*, 1891, A. C. 272, it was held by the Judicial Committee of the Privy Council

that a Chinese immigrant or other alien has no right enforceable by action to enter British territory.

Chip, Cheap, Chipping, signify the place to be a market town, as Chippingham, Chipping Norton, Chipping-Wicomb.—*Blount.*

Chippingavel, or **Cheapingavel,** toll for buying and selling.

Chirchgemot, Chirgemot, Kirmote, a synod, a meeting in a church or vestry.—*Blount.*

Chirograph [fr. χείρ, a hand, and γράφω, Gk., to write], a deed or other public instrument in writing, which anciently was attested by the subscription and crosses of witnesses: afterwards, to prevent frauds and concealment, people made their deeds of mutual covenant in a script and rescript, or in a part and counterpart, and in the middle between the two copies they drew the capital letters of the alphabet, and then tallied or cut asunder, in an *indented* manner, the sheet or skin of parchment; which, being delivered to the two parties concerned, were proved authentic by matching with and answering one another. Deeds thus made were denominated *syngrapha* by the canonists, and with us *chirographa*, or hand writings. Chirograph was also used for a fine, the manner of engrossing which and cutting the parchment into two pieces was observed in the chirographer's office of the Court of Common Pleas until those assurances by matter of record were abolished by the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74).—2 *Bl. Com.* 296; 2 *Inst.* 468; *Kenn. Antiq.* 177; *Dugd. Mon.* t. 2, p. 94.

Chirographa, writings emanating from a single party, the debtor.—*Civil Law.*

Chirographer, an officer of the Common Pleas, who kept the fines. Abolished.

Chirographum apud debitorem repertum præsumitur solutum.—(A deed found with the debtor is presumed to be paid.)

Chirurgeon [fr. χειρουργός, Gk.], the ancient denomination of a surgeon.

Chivalry, Court of, anciently held as a court of honour merely, before the Earl-Marshal, and as a criminal court before the Lord High Constable, jointly with the Earl-Marshal. It had jurisdiction as to contracts and other matters touching deeds of arms or war, as well as pleas of life or member. It also corrected encroachments in matters of coat-armour, precedency, and other distinctions of families. It has long grown entirely out of use. See 3 *Bl. Com.* 68, 103; 13 Ric. 2, c. 2.

Chivalry, Guardian in. See TENURE.

Chloroform, administering. It is a felony for any person to administer or attempt to administer chloroform, or other stupefying drug, with intent to enable himself or another to commit, or to assist another in the commission of, any indictable offence.—Offences against the Person Act, 1861, s. 22. Procuring defilement of a woman by administering drugs, see Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), s. 3.

Choke, Attempt to. See Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 21, and GARROTTING.

Choky, Chokee, a chair, seat, guard, watch. The station of a guard or watchman. A place where an officer is stationed to receive tolls and customs.—*Indian.*

Cholera Act (2 Wm. 4, c. 10), continued by 3 & 4 Wm. 4, c. 75. It has expired, and has not been revived; but the Public Health Act, 1936, s. 143, replacing s. 134, P. H. Act, 1875, gives power to the Minister of Health to make regulations for the prevention of 'any epidemic disease.'

Chop-church [*ecclesiarum permutatio*, Lat.], changing benefices.—9 Hen. 6, c. 95.

Chorepiscopi, bishops of the country in the early times of the church.

Chose [Fr., a thing]; it is used in divers senses, of which the four following are the most important:—

(1) *Chose local*, a thing annexed to a place, as a mill, etc.

(2) *Chose transitory*, that which is movable, and may be taken away, or carried from place to place.

(3) *Chose in action*, otherwise called *chose in suspense*, a thing of which a man has not the possession or actual enjoyment, but has a right to demand by action or other proceeding, as a debt, bond, etc. A well-known rule of the Common Law was that no possibility, right, title, or thing in action, could be assigned to a third party, for it was thought that a different rule would be the occasion of multiplying litigation: as it would in effect be transferring a lawsuit to a mere stranger, though the assignee might, at law, and was assisted in equity to sue the debtor in the name of the assignor. At law, therefore, with the exception of negotiable instruments, an *interesse termini*, and some few other securities, this until 1873 continued to be the general rule, unless the debtor assented to the transfer; if he assented, then the right of the assignee was complete at law, so that he might maintain an action against the debtor, upon the implied promise to pay him the debt, which results from such

assent. In equity, however, this rule of the Common Law was entirely disregarded, and from a very early period choses in action of all kinds were held to be freely assignable for valuable consideration; see *Ryall* v. *Rowles*, W. & T. L. C. and notes thereto.

By the L. P. Act, 1925, s. 136 (1), replacing the Jud. Act, 1873, s. 25 (6), any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt, or other legal thing in action of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to claim such debt, etc., is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice (*a*) the legal right to such debt or thing in action; (*b*) all legal and other remedies for the same; and (*c*) the power to give a good discharge for the same without the concurrence of the assignor, subject to certain provisions contained in the section. See also the Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144). This s. 136 of the J. A. Act, 1925, is not confined to the assignment of legal choses in action; it includes any right which was properly assignable in equity See *Torkington* v. *Magee*, 1902, 2 K. B. at p. 430, and 1903, 1 K. B. 644, for cases on the construction of the section.

The above enactment does not, however, impair or affect the validity of equitable assignments in any way, and there may still be a good equitable assignment quite outside the statute (*William Brandt's Son* v. *Dunlop Rubber*, 1905, A. C. 454); but see *Performing Right Society* v. *London Theatre of Varieties*, 1922, 2 K. B. 433, as to parties. As to the assignment of contracts, see *Tolhurst* v. *Portland Cement Manufacturers*, 1903, A. C. 414; *Kemp* v. *Baerselman*, 1906, 2 K. B. 604. In *Re Park Gate Waggon Company*, (1881) 17 Ch. D. 234, it was held that a 'thing in action' under s. 95 of the Companies Act, 1862 (see now s. 191 (2) of the Companies Act, 1929), included claims in a winding-up against directors for misfeasance.

Part of a debt is not assignable in law under this enactment but the assignee of the part is entitled to it in equity (*Bank of Liverpool & Martins, Ltd.* v. *Holland*, (1926) 43 T. L. R. 29). Section 136, L. P. Act, 1925, transfers the legal right: it should not be confused with the rule on *Dearle* v. *Hall*, 3 Rus. 1, and s. 137, which regulates the priorities of assignments without affecting the legal right. See NOTICE, and the section does not apply to assignments which require special formalities by law or under the Companies Act, 1929, such as an assignment of shares, under that Act, if the Memorandum or Articles of Association prescribe the formalities.

(4) *Choses in possession*, where a person has not only the right to enjoy but also the actual enjoyment of the thing.

Chout, a fourth, a fourth part of sums litigated: **Mahratta chout,** a fourth of the revenues exacted as tribute by the Mahrattas. —*Indian.*

Chrematistics [fr. χρῆμα, Gk.], the science of wealth.

Chrismati denarii [fr. κρῖσμα, Gk.], chrisom pence, paid to the diocesan or his suffragan by the parochial clergy about Easter. It is otherwise called *quadragesimals*, or *paschals*, or *Easter-pence*. Obsolete.

Christian Name, the name given at the font distinct from the surname. It has been said from the bench, that a Christian name may consist of a single letter. See NAME.

Christianity. 'There is abundant authority for saying that Christianity is part and parcel of the law of the land'—per Kelly, C.B., in *Cowan* v. *Milbourn*, (1867) L. R. 2 Ex. 230; but the statement must not be taken too literally; see *Encyc. of the Laws of England*, 2nd ed., vol. iii., and consult *Odgers on Libel*, 5th ed., pp. 477 *et seq.*

Christmas-day, a festival of the Christian Church observed on the 25th of December, in memory of the birth of Jesus Christ. It is one of the usual quarter-days for the payment of rent and salaries; it is also a day on which the offices of the Supreme Court are closed (R. S. C. 1883, Ord. LXIII., r. 6), and it is not reckoned in the computation of time where less than six days is limited for doing anything by a rule of the Supreme Court (Ord. LXIV., r. 2). With respect to this, and also to the closing of public-houses, and the payment of bills of exchange, it stands in the same position as Good Friday.

Church. The Church of England is a distinct branch of Christ's Church, and is also an institution of the State (see the first clause of Magna Charta), of which the sovereign is the supreme head by Act of Parliament (1 Eliz. c. 1), but in what sense is not agreed. According to Sir William Anson, the sovereign is head of the Church, 'not for the purpose of discharging any spiritual function, but because the Church

is the National Church, and as such is built into the fabric of the State' (*Law and Custom of the Constitution*). 'The establishment of the Church by law,' says Lord Selborne, 'consists essentially in the incorporation of the law of the Church into that of the realm, as a branch of the general law of the realm, though limited as to the causes to which, and the persons to whom it applies; in the public recognition of its Courts and Judges, as having proper legal jurisdiction; and in the enforcement of the sentences of those Courts, when duly pronounced according to law, by the civil power' (*A Defence of the Church of England against Disestablishment*, by *Roundell, Earl of Selborne*, 5th ed., p. 10). These words 'established by law,' as applied to the Church of England, do not mean that the Church was founded, or set up, or moulded into its actual form, by the State; but, that the temporal legislature has recognized and added certain sanctions to the institutions and laws of the Church. One of the leading senses of the word 'establish' is, 'to settle in any privilege or possession, to confirm'; and of the word 'establishment,' 'confirmation of something already done, ratification'; and the use of these words, with reference to the Church of England, in Acts of Parliament and other public documents, has always been according to that sense (*ibid.* p. 69). The standard of doctrine and practice is settled by the Thirty-nine Articles (see ARTICLES OF RELIGION) agreed on by convocation in London in 1562, and confirmed by 13 Eliz. c. 12, in 1571; by the 141 Canons of 1603 agreed upon by the convocations of Canterbury and York, and ratified by James I.; and by the Prayer Book presented by those convocations to Charles II., and ratified in 1662 by the Act of Uniformity, 14 Car. 2, c. 4, but the State has in various ways acknowledged the existence of non-conforming bodies. See WELSH CHURCH; CLERGY; DISSENTERS.—Consult *Cripps's Law of the Church and Clergy; Phillimore's Ecclesiastical Law; Chitty's Statutes*, tit. '*Church and Clergy*'; and *Lely's Church of England Position, as appearing from Statutes, Articles, Canons, Rubrics, and Judicial Decisions.*

Church Building Acts. For the purpose of building and promoting the building of additional churches in populous parishes numerous Acts, commencing with the Church Building Act, 1818 (58 Geo. 3, c. 45), have been passed from time to time. For a list of eighteen of these Acts up to 1869, see the schedule to the New Parishes Acts and Church Building Acts Amendment Act, 1884 (47 & 48 Vict. c. 65).

In the year 1856 the powers of the Church Building Commissioners were, by 19 & 20 Vict. c. 55, transferred to the Ecclesiastical Commissioners, a body incorporated by 6 & 7 Wm. 4, c. 77. See ECCLESIASTICAL COMMISSIONERS.

Church Discipline Act, 1840 (3 & 4 Vict. c. 86) (repealing 1 Hen. 7, c. 4), under which 'it shall be lawful for' the bishop of the diocese (but not obligatory on him: see *Julius* v. *Bishop of Oxford*, (1880) 5 App. Cas. 214) on the application of any party complaining to proceed against any clerk in holy orders 'charged with offence against the laws ecclesiastical or concerning whom there may exist scandal or offence against the said laws' (whether concerning doctrine (see *Voysey* v. *Noble*, (1870) L. R. 3 P. C. 357; *Bishop of St. Albans* v. *Fillingham*, 1906, P. 163), ritual or moral misconduct), first by inquiry before commissioners nominated by the bishop, and then if the commissioners report that there is a *primâ facie* case against him, by inquiry before the bishop with assessors, with an ultimate appeal to the Judicial Committee of the Privy Council (*Bishop of Lincoln* v. *Wakefield*, 1921, A. C. 813). The Act is repealed and superseded as to offences against morality by the Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), and as to ritual offences it has been, though not repealed, superseded in practice by the Public Worship Regulation Act, 1874 (see that title).

Church of Scotland. The authority and jurisdiction of the Pope were abolished in 1567, and since then, except for some intervals at first, Presbytery has been the form of Church Government in Scotland. The Church has independent power to legislate and to adjudicate finally in all matters of doctrine, worship, government, and discipline within itself. Its Supreme Court is the General Assembly, which consists of ministers and elders elected by the Presbyteries, Universities, and the Royal Burghs and by the Church in India. Its sittings are attended by a Lord High Commissioner, representing the King, and it is presided over by a Moderator, who is nominated each year by a selection committee. The tenure of ecclesiastical property and endowments was reorganized by the Church of Scotland (Property and Endowments) Act, 1925 (15 & 16 Geo. 5, c. 33), the general effect of which was to transfer all ecclesiastical property and endowments, as well as

the responsibility, for their maintenance and control, from the heriters to the Church itself.

In 1929 union took place between the Church of Scotland and the United Free Church of Scotland, the latter Church being itself the amalgamation of the greater part of the Free Church, formed in 1843, and of the United Presbyterian Church which represented most of the earlier secession movements.

Churchesset [fr. *churchset, ciricseat*, Sax.], corn paid to the Church. Fleta says it signifies a certain measure of wheat, which in times past every man, on St. Martin's day, gave to holy church, as well in the times of the Britons as of the English; yet many great persons after the coming of the Romans gave their contributions according to the ancient law of Moses, in the name of first fruits; as in the writ of King Canutus sent to the Pope is particularly contained, in which they call it *chirchsed.—Seld. Hist. Tithes*, 216.

Church Estate Commissioners, a committee of the Ecclesiastical Commissioners. See 13 & 14 Vict. c. 94, ss. 1, 3.

Church Patronage (Scotland) Act, 1874 (37 & 38 Vict. c. 82).

Church-rates, tributes, by which the expenses of the church are to be defrayed; made by the parishioners at large, that is, by the majority of those present at a vestry summoned for that purpose by the churchwardens, formerly recoverable in the Ecclesiastical Court or, if the arrears did not exceed 10*l.* and no questions were raised as to the legal liability, before two justices of the peace.

Compulsory church-rates were abolished by the Compulsory Church Rate Abolition Act, 1868 (31 & 32 Vict. c. 109), except so far as partly applicable to any secular purpose.

The Parochial Church Councils (Powers) Measure, 1921 (11 & 12 Geo. 5, No. 1), gave to Parochial Church Councils power to levy a voluntary church-rate.

Church-scot, customary obligations paid to the parish priest; from which duties the religious sometimes purchased an exemption for themselves and their tenants.

Churchwardens, anciently styled Church Reeves or *Ecclesiæ Guardiani*, the guardians or keepers of the church, and representatives of the body of the parish; but though in some sort ecclesiastical officers, they are always lay persons. They are a *quasi* corporation for certain purposes (*Withnell* v. *Gartham*, (1795) 6 T. R. 388, 396), and in the City of London they are a corporation for the purpose of holding lands; but beyond that they are only annual officers (*Fell* v. *Official Trustee of Charity Lands*, 1898, 2 Ch. 59). They are sometimes appointed by the minister, sometimes by the Vestry and Parochial Church Meeting sitting together (see 11 & 12 Geo. 5, No. 1, s. 13), sometimes by the minister and the meeting together, sometimes one by the minister and another by the meeting, as custom directs. Where there is no custom the election must be according to Canon 89 and s. 13 above, under which they must be chosen by the joint consent of the minister and the meeting, and if they cannot agree, then the meeting is to elect one and the minister nominate the other. By Canon 90 they are to be chosen early in Easter week, and are generally two in number; are obliged when chosen to serve, and are sworn to execute the office faithfully. Several persons are, however, exempted from the office, viz., peers of the realm, members of parliament, sheriffs, acting justices of the peace, clergymen, Roman Catholic clergymen, Dissenting ministers, solicitors, practising physicians and surgeons in London, practising apothecaries, officers in the army, navy, or marines, though on half-pay, registrars of births, etc., officers of the excise or customs or post-office, and persons living out of the parish unless they occupy a house of trade there (*Steer's Par. Law;* and see *R.* v. *Townson*, (1908) 99 L. T. 472). The former duties of the churchwardens relating to the repair of the church and churchyard and the care of the church goods have been transferred by the Parochial Church Councils (Powers) Measure, 1921 (11 & 12 Geo. 5, No. 1) to the Parochial Church Council, but the church goods (such as the organ, bells, Bible, and parish books) are still vested in them. It is their duty to make such order relative to seats in the church and chancel, not appropriated to particular purposes, as the ordinary (who has in general the sole power in this matter) shall direct, and in practice the arrangements are usually made by the churchwardens, even without any special direction from the ordinary. It is incident also to their office to enforce proper and orderly behaviour during divine service; and Canon 19 directs that they 'shall not suffer any idle persons to abide either in the churchyard or church porch during the time of divine service or preaching; but shall cause them either to come in or depart.' If churchwardens waste the goods of the

church, or be guilty of other misbehaviour, they are liable to removal; at the end of the year they are bound to render an account of all their receipts and disbursements. Churchwardens officiate in the collection and application of offerings at the Communion Service—*Book of Common Prayer* (*Rubric*)—but other church collections are managed by the incumbent and the Parochial Church Council jointly, see Parochial Church Councils (Powers) Measure, 1921, s. 4. It is also part of their office, unless other persons are appointed by the ordinary for that purpose, to have the care of the benefice during its vacancy, or while it is under sequestration for the debts of the incumbent. —*Prideaux's Churchwardens' Guide; Steer's Parish Law.* Churchwardens were *ex officio* overseers of the poor under the Poor Relief Act, 1601 (43 Eliz. c. 2), but overseers were abolished by the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 62.

Churchyard is the freehold of the rector or vicar, subject to the right of parishioners to be buried in it.

The Statute of Winchester, 13 Edw. 1, 1285, prohibits fairs or markets in churchyards; a statute of uncertain date (perhaps 35 Edw. 1), the felling of trees indiscreetly by parsons; and the Ecclesiastical Courts Jurisdiction Act, 1860 (23 & 24 Vict. c. 32), punishes riotous, violent or indecent behaviour by fine up to 5*l.*, or imprisonment up to two months without option of fine. See preceding title; BURIAL; and *Whitehead's Church Law.*

As to consecration, see Consecration of Churchyards Acts, 1867 and 1868.

A gift for the maintenance of a churchyard is a valid charitable gift (*Re Douglas*, 1905, 1 Ch. 279).

Churle [fr. *ceorl*, Sax.], a tenant at will, of free condition, who held lands of the thanes, on condition of rents and services: of two sorts; one who hired the lord's tenementary estate, like our farmers; the other that tilled and manured the demesnes (yielding work and not rent), and were called his *sockmen* or *ploughmen.—Spelm.*

Ciltre, corruptly *Siltre*, Chiltern.

Cinematograph, more properly Kinematograph. A contrivance for projecting in rapid succession on a screen a series of instantaneous photographs so as to give the effect of motion (*The Concise Oxford Dict.*). The Cinematograph Act, 1909, provides that an exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus for the purpose of which inflammable films are used shall not be given unless the regulations made by the Home Secretary are complied with, or elsewhere than in premises licensed under the Act (s. 1). The Act does not apply, however, to exhibitions in private houses to which the public are not admitted (s. 7 (4)). The exhibition of films by dealers or their agents to intending purchasers or hirers does not amount to an exhibition within the meaning of the Act (*Attorney-General* v. *Vitagraph Co.*, 1915, 1 Ch. 206). Sunday exhibitions, see Sunday Entertainments Act, 1932 (22 & 23 Geo. 5, c. 51), s. 1. The Celluloid and Cinematograph Film Act, 1922, makes provisions against fire in premises where celluloid or cinematograph films are stored or manufactured. Reference should be made to the above-mentioned Acts and to the orders and regulations made thereunder, especially Cinematograph Regulations, 1923, No. 983, and 1924, No. 403. The Cinematograph Films Act, 1927 (17 & 18 Geo. 5, c. 29), restricts blind booking of films and secures the renting of a quota of British films. See also *Williams & Harris* on the Act of 1909, and see PATENT; COPYRIGHT; QUOTA.

Cinque Ports [*quinque portus*, Lat.], certain anciently enfranchised havens, lying on the coast towards France. In the time of Edward the Confessor there were only three ports, viz., Dover, Sandwich, and Romney; but in the time of William the Conqueror Hastings and Hythe were added, making five, whence the name *Cinque Ports.* Winchelsea and Rye were afterwards added by or before the accession of King John, but the old name, though now become inappropriate, was still retained. The Cinque Ports Act, 1855 (18 & 19 Vict. c. 48), abolishes all jurisdiction and authority of the Lord Warden of the Cinque Ports and Constable of Dover Castle, in or in relation to the administration of justice in actions, suits, or other civil proceedings at law or in equity, but with a saving (s. 10) of his Admiralty jurisdiction and certain other rights. The office of Lord Warden is still one of great dignity, and is always held by some person of eminence.

Circada, a tribute anciently paid to the bishop or archdeacon for visiting the churches.—*Du Cange.*

Circar, head of affairs; the state or government; a grand division of a province; a headman. A name used by Europeans in Bengal to denote the Hindu writer and accountant employed by themselves, or in the public offices. See SIRCAR.

Circuits (seven, eight formerly), certain divisions of England and Wales, appointed for the judges to go formerly twice a year, in the respective vacations after Hilary and Trinity terms, but more recently oftener, and at no precisely fixed periods, to administer justice in the several counties. Two judges, until 1884, attended at each circuit town, when by a new scheme set on foot by the ' Circuits Order ' of that year it was arranged that at the majority of the circuit towns one judge only should attend, with the power, however, under Rule 9 of the Order, of requesting one of the judges in London to proceed to any place on circuit in his aid ' in order to enable the judges, as far as possible, to leave no cause untried at any place on any circuit.' The following were the circuits as altered by Order in Council made pursuant to 26 & 27 Vict. c. 122, viz. : (1) *Northern ;* (2) *Home ;* (3) *Western ;* (4) *Oxford ;* (5) *Midland ;* (6) *Norfolk ;* (7) *North Wales ;* and *South Wales.*

By the Judicature Act, 1875, s. 22, replaced by Judicature Act, 1925, s. 72, it is provided that by Order in Council regulations may be made for the circuits, altering their arrangement and discontinuing any assizes, etc. The circuits and assize towns throughout England are regulated periodically by Orders in Council.

(1) *Northern Circuit :* Counties of Westmoreland, Cumberland, and Lancaster.

(2) *North-Eastern Circuit :* Counties of Northumberland, Durham, and York, and counties of the town of Newcastle-upon-Tyne, and city of York.

(3) *Midland Circuit :* Counties of Lincoln, Nottingham, Derby, Warwick, Leicester, Northampton, Rutland, Buckingham, and Bedford ; the counties of the city of Lincoln and town of Nottingham ; the borough of Leicester ; and the city of Birmingham.

(4) *South-Eastern Circuit :* Counties of Norfolk, Suffolk, Huntingdon, Cambridge, Hertford, Essex, Kent, Surrey, and Sussex ; and county of the city of Norfolk.

(5) *Oxford Circuit :* Counties of Berks, Oxford, Worcester, Stafford, Salop, Hereford, Monmouth, Gloucester ; and counties of the cities of Worcester and Gloucester and the city of Birmingham.

(6) *Western Circuit :* Counties of Southampton, Wilts, Dorset, Devon, Cornwall, Somerset ; and counties of the cities of Exeter and Bristol.

(7) *North and South Wales Circuit :* (*a*) North Wales Division—Counties of Montgomery, Merioneth, Carnarvon, Anglesea, Denbigh, Flint, and Chester. (*b*) South Wales Division—Counties of Glamorgan, Carmarthen, Pembroke, Cardigan, Brecknock, and Radnor ; and counties of the borough of Carmarthen and town of Haverfordwest.

The places, and also, as far as it may be, the days for holding assizes, and various other regulations as to circuits, are from time to time altered by Orders in Council. By Order in Council of 2nd August, 1910 (amending an Order of June 28, 1909), continuous sittings are established for civil business at Manchester and Liverpool, a judge of the K. B. D. being assigned for the purpose. Consequently one circuit judge instead of two now attends at these places and takes the criminal business. But it is provided that the assigned judge is as far as possible to sit at those cities during the whole time that the judge taking criminal business is sitting there. The Circuit Order in Council, 1930, substituted Kingston-on-Thames for Guildford as the Surrey Assize town, and also made provisions for civil business to be taken on the Autumn Circuit at Carlisle, Gloucester, Leicester, Maidstone, Nottingham, Shrewsbury and Winchester. See ASSIZES, and *Ency. of the Laws of England.* The County Court Circuits, at present 59 in number, are divisions of the country for the purposes of the County Court (*q.v.*).

Circuity of Action, a longer course of proceeding to recover a thing sued for than is needful—*Termes de la Ley ;* also a general term denoting *inter alia* a multiplicity of law suits. Wherever the rights of the litigant parties were such that the defendant would be entitled to recover back from the plaintiff the same sum which the plaintiff sought to recover, the defendant might plead the facts which constitute such right as a defence, in order to avoid circuity of action.—*Bullen & Leake, Prec. of Plead.*, 3rd ed., p. 558. Now all the counterclaims may be raised in the defence to an action. See Jud. Act, 1873, s. 24 (3), and Judicature Act, 1925, s. 39 ; see also ss. 59 (2) and 61 of the Bills of Exchange Act, 1882. See COUNTERCLAIM.

One of the most beneficial functions of the Chancery Courts was exercised in its concurrent jurisdiction under which all parties concerned were brought before the Court before deciding an action, and see also the third party procedure under R. S. C. Ord. XVI., r. 48, where the defendant claims contribution or indemnity against any person not a party to the action.

Circular Note, a written request by a bank to one of its correspondents abroad to pay a specified sum to a specified person; as to its nature, see *Conflans Stone Quarry Co.* v. *Parker,* (1867) L. R. 3 C. P. 1.

Circulating Medium, more comprehensive than the term money, as it is the medium of exchanges, or purchases and sales, whether it be gold or silver coin or any other article.

Circumduction, a judicial declaration that the time allowed to either party for leading proof has elapsed.—*Scots Law.*

Circumspecte agatis (that you act cautiously), the title of a statute, 13 Edw. 1, st. 4, relating to prohibitions, prescribing certain cases to the judges wherein the king's prohibition lies not; 2 *Inst.* 187; *Jac. Law Dict.*

Circumstantial Evidence, presumptive proof when the fact itself is not proved by direct testimony, but is to be inferred from circumstances, which either necessarily or usually attend such facts. It is obvious that a presumption is more or less likely to be true according as it is more or less probable that the circumstances would not have existed unless the fact which is inferred from them had also existed; and that a presumption can only be relied on until the contrary is actually proved. Circumstantial evidence has, in some instances, undoubtedly been found to produce a much stronger assurance of a prisoner's guilt than could have been produced by more direct and positive testimony. As a general principle, however, it is true that positive evidence of a fact from credible eye-witnesses is the most satisfactory that can be produced; and the universal feeling of mankind leans to this species of evidence in preference to that which is merely circumstantial. If positive evidence of a fact can be produced, circumstantial evidence ought not to be trusted. Chief Baron Gilbert, therefore, considered it a higher species of proof. He says, 'When the fact itself cannot be proved, that which comes nearest to the proof of the fact is the proof of the circumstances which necessarily or usually attend such facts, and which are called presumptions and not proofs, for they stand instead of the proofs of the fact till the contrary be proved.'—1 *Phil. Evid.* c. 7, s. 2. See *Wills on Circumstantial Evidence; Powell on Evidence.*

Circumstantibus, Tales de (so many of the bystanders). In civil and criminal trials, where by reason of the default of the jury, or of challenge, there is not a sufficient number of the jurors impanelled, the judge may direct the sheriff to add to the panel the names of a sufficient number of persons qualified to act as jurymen who may be present or can be found, who are called *tales de circumstantibus.*—County Juries Act, 1825 (6 Geo. 4, c. 50), s. 37. There is now no statutory limit to the number of jurors who can be impanelled.—County Common Juries Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 17).

Cirle-Bryce, any violation of the privileges of a church.—*Anc. Inst. Eng.*

Cirle-Sceat [*punicitiæ seminum*], church-scot, or shot, an ecclesiastical due, payable on the day of St. Martin, consisting chiefly of corn.—*Anc. Inst. Eng.*

Citatio ad reassumendam causam, a citation which issued when a party died pending a suit, against his heir, to revive the cause.

Citation, a summons to appear, applied particularly to process in the spiritual, probate, and matrimonial courts (see *Tristram* v. *Coote,* Probate Pr. and Probate Rules, 1862 and (non-contentious) 1925); a reference to authorities in support of an argument.

Citations, Statute of (23 Hen. 8, c. 9), by which no man can be cited to appear before any spiritual judge out of the diocese in which he dwells, except for a spiritual offence or cause of heresy; and see Canon 94.

City [fr. *cité,* Fr.], a town corporate, which has usually a bishop and cathedral church. It is called *civitas,* because it is governed by justice and order of magistracy; *oppidum,* for that it contains a great number of inhabitants; and *urbs,* because it is in due form begirt about with walls.—*Jac. Law Dict.*

City of London Court. The City of London Court was, prior to the County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 55, known as the 'Sheriffs Court of the City of London.' Its procedure was, theretofore, regulated by Acts and Rules peculiar to itself; but by the County Courts Act, 1934, s. 186, replacing s. 185 of the County Courts Act, 1888, it becomes to all intents and purposes a county court. By amalgamation with the Mayor's Court of London, it becomes the Mayor's and City of London Court, and the latter possesses the powers and jurisdiction of both the former Courts. See Mayor's and City of London Court Act, 1920 (c. cxxxiv.). As to sittings of the High Court of Justice in the City of London, see ROYAL COURTS OF JUSTICE.

Civil, may stand, according to the context, for the opposite of criminal, of ecclesiastical, of military, or of political.

Civil Bill Court, a tribunal in Northern Ireland with a jurisdiction analogous to that of county courts in England. The judge of it is also chairman of quarter sessions (where the jurisdiction is more extensive than in England), and performs the duty of revising barrister. The procedure of the Civil Bill Courts is regulated by 27 & 28 Vict. c. 99 ; 28 & 29 Vict. c. 1 ; and 37 & 38 Vict. c. 66. This is still true of Northern Ireland : in the Irish Free State the legal organization is regulated by the local law.

Civil Death. A man is said to be civilly dead (*civiliter mortuus*) when he has been attainted of treason or felony, and, in former times, when he abjured the realm or went into a monastery. The Forfeiture Act, 1870 (33 & 34 Vict. c. 23), provides that after the passing of that Act no confession, verdict, inquest, conviction, or judgment of or for any treason or felony, or *felo de se*, shall cause any attainder or corruption of blood, or any forfeiture or escheat.

Civil Engineer. In 1923 the Institution of Civil Engineers was granted a supplemental Royal Charter which gives members and associate members an exclusive right to describe themselves as 'Chartered Civil Engineers.' The term 'engineer' was originally understood to mean military engineer ; the word 'civil' was therefore applied to distinguish the institution.

Civil Law, that rule of action which every particular nation, commonwealth, or city has established peculiarly for itself, more properly distinguished by the name of municipal law.

The term 'civil law' is now chiefly applied to that which the Romans compiled from the laws of nature and nations.

The 'Roman Law' and the 'Civil Law' are convertible phrases, meaning the same system of jurisprudence ; it is now frequently denominated 'the Roman Civil Law.'

The collections of Roman Civil Law, before its reformation in the sixth century of the Christian era by the eastern Emperor Justinian, were the following :—

(1) *Leges Regiæ.* These laws were for the most part promulgated by Romulus, Numa Pompilius and Servius Tullius. To Romulus are ascribed the formation of a constitutional government, and the imposition of a fine, instead of death, for crimes ; Numa Pompilius composed the laws relating to religion and divine worship, and abated the rigour of subsisting laws ; and Servius Tullius, the sixth king, enacted many wise and good laws to maintain the cause of the poor, and to stop the oppressions of the rich. He also revived many of the obsolete laws of Romulus and Numa Pompilius.

Sextus Publius Papirius, Pontifex Maximus in the reign of Tarquinius Superbus, collected the royal laws, which collection is known by the name of *Jus Civile Papirianum.* Legislation under the kings must have been extremely simple ; very few relics of it, however, have been preserved, and among them it is almost impossible to distinguish the genuine from the spurious. The *Leges Regiæ* have been edited by Lipsius and other men of learning ; and of the supposed laws of Romulus, a separate collection was published by Balduinus.

(2) *Leges Decemvirales*, or the Laws of the Twelve Tables. The uncertain state of the law, in the Republican era, and the uneasiness occasioned by the continued quarrels of the patricians and plebeians, rendered systematic legislation indispensable, so after great opposition on the part of the patricians, a law was proposed by Caius Terentelius Horsa (B.C. 460, A.U.C. 293) to appoint a commission to draw up a body of laws ; and (in B.C. 452, A.U.C. 301) three commissioners are said to have been chosen by the patricians to visit Greece in order to collect materials for a code ; upon their return, after an absence of three years, ten commissioners, including the three, were appointed with the title *De Legibus Scribendis*, whose duty it was to revise, digest, and enforce the new laws. All other magisterial offices were then suspended, and these ten commissioners, or *Decemviri*, became invested with the sole management of State affairs. The Ten Tables they drew up, having been approved by the senate and comitia, were engraved on metal, and suspended in the Comitium, and all parties were so well satisfied with the result of the first year's administration of the *Decemviri*, that it was resolved to continue the same sort of government for another year—new members were elected to sit upon this commission, the only one re-elected being Appius Claudius. In the former year the whole ten had been taken from the patrician class, but this year three of them were plebeians. The new laws drawn up by this new commission having been duly approved, and reduced to writing on two supplementary tables, made up the total number of Twelve Tables, by which name they were subsequently known, and under which they became famous. To judge

from the fragments of these laws which have survived, they were very epigrammatic and positive in their nature; they formed the catechism of education for the Roman youth; indeed all well-educated persons were expected to know them by heart. Cicero, in his book *De Oratore*, describes the law of the Twelve Tables as a summary of all that is excellent in the libraries of the philosophers.

The Laws of the Twelve Tables were illustrated by the commentaries of several ancient lawyers, especially Antistius, Labeo, and Caius: the fragments of these laws have been collected and explained by many of the moderns, by Balduinus, Rœvardus, Marcilius Augustinus, Gravina, Funccius, Bouchard, Gothofredus, and others.

(3) *Jus Civile Flavianum*, and its subsequent edition, *Jus Civile Ælianum*. This collection consists of the forms of pleadings, called *Actiones Juris*, adopted in all proceedings and acts of Court. It was compiled about 440 A.U.C. or B.C. 312 by Appius Claudius Cæcus, who, being blind, was obliged to employ an amanuensis, Gaius Flavius, hence the title of the collection.

The Flavian collection, being the first, was naturally imperfect; in consequence of which Sextus Ælius Pætus, surnamed Catus, published about 553 A.U.C. or 200 B.C. a supplement to it, again promulgating the new formulæ subsequently introduced, together with an interpretation of the laws of the Twelve Tables, whence it is called Tripartita, because the first part contained the laws of the Twelve Tables; the second, their interpretation; and the third, the forms of pleadings.

(4) *Edictum Perpetuum Juliani*. Offilius, in Julius Cæsar's time, made a compilation of the Prætor's Edicts, which was made perpetual by Salvius Julianus, at the command of the Emperor Hadrian, many years later.

(5) The Codes of Gregorius, Hermogenianus, and Theodosius the Younger.

Gregorius, or Gregorianus, appears to have collected the imperial constitutions belonging to the intermediate reigns from Hadrian to Constantine the Great.

Hermogenianus, or Hermogenes, is supposed to have formed a supplementary collection, and the remaining fragments consist entirely of the constitutions of Diocletian and Maximin.

These compilations are to be esteemed as the work of two private lawyers; the fragments which Cujacius (the most celebrated of all the interpreters of the Roman law) has placed at the end of the Theodosian Code are all that remains of these two productions.

The Theodosian Code collects the constitutions enacted from the time of Constantine the Great (A.D. 312) down to A.D. 438, the year of its publication. It is of considerable magnitude, and is still extant, though unfortunately in an imperfect state. It is probable that this book, having been compiled by imperial command, had the stamp of authority.

This Code was followed until suppressed by Justinian's order, and is not unworthy of the attention of the learned. The editor and expounder of the Theodosian Code is Jacobus Gothofredus, or Godfroy, who is the first and most illustrious of modern civilians. He bestowed his assiduous labour upon this code for thirty years, and left his great commentary to be completed by Antoine Marville, who published it at Lyons in 1665. It is an immense storehouse of judicial and historical knowledge. Ritter published another edition of it some seventy years afterwards. The best modern edition is that of Prof. Mommsen, published at Berlin in 1905.

Such were the several collections of laws before Justinian's reign. Those made by that emperor's order, which compose the body of the Civil Law in its present state, will now be referred to.

The Imperial, or Civil Law, as consolidated by Justinian, consists of four parts:—

(1) The Institutes, in which the elements of jurisprudence are disposed in a didactic form; its chief and leading objects are explained in a regular series, and the whole arranged in such a way as neither to oppress the student with a multitude and a variety of matter, nor yet to leave him destitute of any necessary helps to facilitate his progress in legal knowledge.

These Institutes were composed chiefly from Gaius, and especially from his *Aureorum* (of important matters), in order to teach the rudiments of the law and the great principles of equity, and were divided so as to form an elementary introduction to legal study. The division is into four Books, each book being divided into several Titles, and every title into several Parts; the first (not numbered) is called *Principium*, which is the beginning of the title, and those which follow, Paragraphs. The Institutes are quoted with the letter I. or *Inst.*; thus § *si adversus*, 12 *I. De Nuptiis*, is nothing more than 12 paragraphs of the title *De Nuptiis*, which on reference to the

index will be found to be the tenth of the first book; this is usually now cited *I.* i. 10, 12.

(2) The Digest or Pandects, which are rules founded on the pure spirit of jurisprudence. The words 'Digest' and 'Pandects' are not synonymous; the former means an abstract of the opinions of lawyers upon certain points of law; the latter, from πᾶν, all, and δέχομαι, to receive, signifies a compendium of the law.

Tribonian received the imperial command De Conceptione Digestorum, A.D. 530, with directions to choose his colleagues; and seventeen were ultimately appointed with absolute power to make such use of preceding works as should appear most conducive to the object in view. Tribonian's library afforded forty of the works of the most renowned civilians, which, with above two thousand other treatises, containing three millions of lines, were abridged into a hundred and fifty thousand; the work was completed in the incredibly short space of three years, and published on the 16th December, A.D. 533, a month after the appearance of the Institutes; its publication having been delayed a month, in order that the elementary work might precede it.—1 *Colq. R. C. L.* 66.

The Digest is compiled from the decisions, conjectures, questions, and disputes of the most famous lawyers who had existed up to that time; and thus the substance of many thousand treatises is compressed into one work which superseded all the then existing Digests, and rendered unnecessary references, which had become not only laborious but almost impossible. The Pandects were divided into fifty Books, each book containing several Titles, divided into Laws, and the Laws generally into several Parts or Paragraphs.

Besides this distribution of the Digest into fifty Books, it was divided into seven Parts, but the reason that induced the emperor to make this division is not known. Some supposed it was done in order to separate the different matters, and include all that related to one subject in one Part, consisting of several Books. Others attribute it to the superstitious respect of the ancients for the number seven, as the most perfect. This book is variously quoted by the letter D. P. or π, and ff, which latter is supposed to be a corruption of the D with a stroke through the middle, or perhaps a corruption of the Greek π. The most ancient method of quotation is by mentioning the initial words of the Law and Paragraph with those of the Book or Title, which necessitates a reference to the general index, with which all modern editions are not furnished; thus, § *sin. ver. l. quæsitum est D., De Peculio.* The second, by citing the initial words and numbers of the Law or Paragraph, with the initial words of the Book or Title; thus, § *sin. ver.* 3 *l. quæsitum est* 30 *D., De Peculio.* The third, by mentioning the number of the Law or §, with the initial words of the Book or Title; thus, § 3 *l.* 30 *D., De Peculio;* which is the method adopted by Heineccius. The modern mode, which avoids all reference to the index, is thus, D. 15, 1, 30, 3. The first paragraph is not numbered, and is usually quoted by the abbreviation *in pr.* (*in principio*); in like manner the last paragraph is sometimes quoted by the words *in fin.* (*fine*), or § *ult.* (*paragraphus ultimus*).—1 *Colq. R. C. L.* 64 *et seq.*

(3) The Code, *Codex Justinianius.* This was commenced, under the imperial Orders, by Tribonian and a body of nine associates in A.D. 528, compiled with great rapidity, and published in the following year, thus preceding in date the Institutes and the Digest. It was compiled from the Gregorian, Hermogenian and Theodosian Codes and from other sources. Within six years of its publication, however, it was suppressed as imperfect and replaced by a new edition entitled the *Codex Repetitæ Prælectionis*, containing 200 of Justinian's own laws, and the 50 decisions on the most obscure and debatable points of jurisprudence. The Code was divided into twelve books, each book into titles, and each title into laws, each law containing several parts. The first is called Principium, being the beginning of the law, and those which follow, paragraphs. The letter C is the invariable mark of the Codex, which may be variously quoted by the initial words of the paragraph, law, book, or title. The nine first books were emphatically called the Codex; the latter three (*tres libri*) contained the Jus Publicum, which had been separated from the whole at an early period, as of less practical utility, and often bound up with other works.

(4) The Novels, or New Constitutions (*Novellæ Constitutiones*), which are explanatory of the Code. After Justinian's decease, some parts of his Novels to the number of 168 were collected and reduced into one volume, together with thirteen of the Greek edicts; which, toge her, make up the fourth and last divi ion of the *Corpus Juris Civilis.* The greatest part of these Novels was com-

posed in Greek, owing to the seat of the empire being then at Constantinople, where few or none spoke Latin in perfection; notwithstanding which some of them were published in Latin, and have been noticed by Antonius Augustinus. There are four Latin translations of the Novels. The Novels are quoted by their respective numbers. They are directed either to magistrates, bishops, or citizens of Constantinople, and were of equal force and authority for those private persons to whom they were addressed, and who were enjoined to have them proclaimed and to see them executed according to their form and tenor.

By the Civil Law was governed the greater part of Britain, for the space of about 360 years (from Claudius to Honorius), during which period some of the greatest masters of that law, whose opinions appeared collected in the body of it—as Papinian, Paulus, and Ulpian—sat in the seat of judgment in this island. After the declension of the Roman empire, the Saxon, Danish, and Norman laws superseded a great portion of the Roman Law; but not very long afterwards it began again to manifest its influence, and entered largely into the composition of the Common Law. Under the influence of the foreign ecclesiastics, who, pouring into this country after the Conquest, long monopolized the administration of the law, great encouragement was given to the adoption of the Civil Law, till the nobility and laity became so jealous of its prosperity, and alarmed at its progress, that a long and fierce feud ensued between the laity, stoutly struggling for the Common Law, and the clergy for the Civil and Canon Law, to which, in the end, they entirely betook themselves; and, withdrawing from the temporal courts, left them to the superintendence of the common lawyers; still, however, keeping an ecclesiastic at the head of affairs, in the high station of chancellor, who, as his office gradually increased in influence and power, was enabled, in time, to introduce much of the spirit of the Civil Law into the administration of Municipal Law, especially in the Courts of Equity.

'The whole body of the Civil Law' (remarks Chancellor Kent, 1 *Comm.* 548) 'will excite never-failing curiosity, and receive the homage of scholars, as a singular monument of wisdom. It fills such a large space in the eye of human reason; it regulates so many interests of man as a social and civilized being; it embodies so much thought, reflection, experience, and labour; it leads us so far into the recesses of antiquity, and it has stood so long against the waves and weathers of time, that it is impossible, while engaged in the contemplation of the system, not to be struck with some portion of the awe and veneration which are felt in the midst of the solitudes of a majestic ruin.' And see *Gib. Dec. and Fall*, c. xliv., for an outline of the Roman jurisprudence.

Civil List, an annual sum granted by Parliament at the commencement of each reign, for the expenses of the royal household and establishment, as distinguished from the general exigencies of the state; it is the provision made for the Crown out of the taxes, in lieu of its proper patrimony, and in consideration of the assignment of that patrimony to the public use. This arrangement has prevailed from the time of the Revolution downwards, though the amount fixed for the civil list has been subject in different reigns to considerable variation. At the commencement of her reign a civil list was settled by the Civil List Act, 1837 (1 Vict. c. 2), upon her late Majesty Queen Victoria for life, to the amount of 385,000*l.* per annum, payable quarterly, out of the consolidated fund, of which the sum of 60,000*l.* was assigned for her Majesty's privy purse; in return for which grant it was provided that the hereditary revenues of the Crown (with the exception of the hereditary duties of excise on beer, ale, and cider, which were to be discontinued during the reign, and as to which see the title HEREDITARY DUTIES) should, during the late Queen's life, be carried to and form part of the consolidated fund.

The Civil List Acts, 1901 (1 Edw. 7, c. 4), provided for similar grants (with modifications) to King Edward VII.; 1910 (10 Edw. 7 & 1 Geo. 5, c. 15), to King George V.; and 1936 (26 Geo. 5 & 1 Edw. 8, c. 15), to King Edward VIII.; and 1937 (1 Edw. 8 & 1 Geo. 6, c. 32), to King George VI.

Civil List pensions to the amount of 2,500*l.* a year are also and additionally grantable by the Crown, but only to such persons as 'have just claims on the royal beneficence, or who by their personal services to the Crown, by the performance of duties to the public or by their useful discoveries in science and attainments in literature and the arts, have merited the gracious consideration of their sovereign and the gratitude of their country.'—Civil List Act, 1837, ss. 5, 6 as amended by Civil List Act, 1937, s. 9 (1).

Civil Procedure Acts Repeal Acts, 1879,

1881, and 1883 (42 & 43 Vict. c. 59, 44 & 45 Vict. c. 59, and 46 & 47 Vict. c. 49), repealed by Judicature Act, 1925, repealing amongst other enactments those which had been superseded by the Rules of the Supreme Court under the Judicature Acts; the Act of 1883 in particular repealing all but very small portions of the Common Law and Chancery Procedure Acts in view of the issue of the Consolidated 'Rules of the Supreme Court, 1883.'

Civil Remedy, one open to a private person as opposed to a criminal prosecution.

Civil Service. This term properly includes all service under the Crown except the naval, military and air services. As to pensions, see SUPERANNUATION ACTS. As to a civil servant's right to be a member of a trade union, see TRADE UNION.

Civilian, one that professes the knowledge of the Civil Law.

Civiliter mortuus (civilly defunct, i.e., dead in law). See CIVIL DEATH.

Civilization, a law, act of justice, or judgment, which renders a criminal process civil; which is performed by turning an information into an inquest, or the contrary. Also the assimilation of Common Law to the Civil Law (*Oxf. Dict.*).

Clades [fr. *clida, cleta, cleia,* fr. the Brit., *clie* and *clia,* Irish], a wattle or hurdle.—*Paroch. Antiq.* 575.

Claim [fr. *clamer,* Fr.; *clamo,* Lat., to call], a challenge of interest of anything which is in another's possession, or at least out of a man's own possession, as claim by charter, descent, etc.—*Plow.* 359 *a.* Any assertion of a right to a remedy, relief or property, either general, or before a tribunal, a pleading in an action, see County Courts Act, 1934, and STATEMENT OF CLAIM.

Claim in Equity. In simple cases, where there was not any great conflict as to facts, and a discovery from a defendant was not sought, but a reference to chambers was nevertheless necessary before final decree, which would be as of course, all parties being before the Court, the summary proceeding by claim was sometimes adopted, thus obviating the recourse to plenary and protracted pleadings. This summary practice was created by Orders 22nd April, 1850, which came into operation on the 22nd May following. By Order VIII., Rule 4 of Consolid. Ord. 1860, claims were abolished.

Claim of Liberty, a suit or petition to the king in the Court of Exchequer, to have liberties and franchises confirmed there by the attorney-general.

Claims, Court of. A court appointed by the sovereign before a coronation to consider and determine the rights of claimants to perform divers services to the sovereign thereat (as to carry the spurs) in regard of their tenure of divers lands. See the Report of the Court before the Coronation of his late Majesty King Edward the Seventh, by G. Woods Wollaston, Principal Garter King of Arms of the Inner Temple, published by Harrison & Sons in 1903 (p. 330), and note in regard to the Coronation of King George the Fifth in 1911 in *Halsb. Laws of Eng. Hailsham Ed.,* Vol. 6, p. 403. The first Court of Claims was appointed in 1377.

Claim, Statement of. See STATEMENT OF CLAIM.

Clam vi aut precario, by stealth, force or request.

Clamea admittenda in itinere per attornatum, an ancient writ by which the king commanded the justices in eyre to admit the claim by attorney of a person who was in the royal service and could not appear in person.—*Reg. Brev.* 19.

Clandestine Mortgages. By 4 & 5 Wm. & Mary, c. 16, it was enacted that if any person, having once mortaged his lands for a valuable consideration, shall again mortgage the same lands, or any part thereof, to any person, the former mortgage being in force, and shall not discover in writing to the second mortgagee the first mortgage, such mortgagor so again mortgaging his lands shall have no relief or equity of redemption against the second mortgagee. This Act was repealed by the Law of Property Act, 1925. By s. 183 of the Act of 1925, any person disposing of property or any interest therein for money or money's worth as a purchaser, or his agent, who conceals any instrument or incumbrance material to the title with intent to defraud, is made guilty of misdemeanour punishable by fine and imprisonment and also to an action for damages if sustained. See DECEIT; FRAUD.

Clarendon, Constitutions of, Assize of. At a great council held at Clarendon, in Wiltshire, A.D. 1164, in the tenth year of the reign of Henry II., a code of laws was brought forward by the king, under the title of the ancient customs of the realm, and known as the 'Constitutions of Clarendon'; and as Becket had solemnly promised he would observe what were really such, the king procured the principal propositions in dispute to be enacted, and declared by the council under that denomination. The main provisions of them were that clergy charged

with crimes were to be tried in the civil courts, and that a justice of the king should be present in the king's courts; that no prelate was to quit the realm without the king's permission; that prelates were to be subject to feudal burdens; that the king was to hold all vacant benefices and receive their revenues till the vacancies were filled; and that goods forfeited to the Crown were not to be protected by sanctuary.

As in the Constitutions of Clarendon the king had laid down the principles which were to regulate the relations of Church and State, so two years later, in the 'Assize of Clarendon,' he laid down the principles on which the administration of justice was to be carried out. This 'Assize' was in fact a short code of twenty-two articles drawn up for the use of the judges, who were about to proceed on circuit, and containing directions for dealing with criminals and the repression of crime, and was issued by the sole authority of the king, and without any appeal to the sanction of 'custom'; see *Mrs. J. R. Green's Henry the Second.*

Class. A term for a number of persons who are intended to be indicated as a group—such as the children or issue of a named person. The share of any donee under a gift by will to a class if he predeceases the testator does not lapse but survives to the other members. See *Theobalds on Wills* and *Norton on Deeds.*

Classiarius [fr. *classis*, Lat.], a seaman or soldier at sea.

Claud [Brit.], a ditch: *claudere*, to enclose, or turn open fields into inclosures.—*Paroch. Antiq.* 236.

Clause Rolls [*rotuli clausi*, Lat.] contain all such matters of record as were committed to close writs; these rolls are preserved in the Tower. See CLOSE ROLLS.

Clauses Irritant and Resolutive, clauses devised for limiting the right of an absolute proprietor, and making effectual the conditions imposed on him, which otherwise would infer no more than a personal obligation, ineffectual against creditors or singular successors.—*Bell's Dict.*

Clausulæ inconsuetæ semper inducunt suspicionem, 3 *Rep.* 81.—(Unusual clauses always excite suspicion.)

Clausum fregit. See CLOSE.

Clausum paschæ, the morrow of the *utas* (or eight days) of Easter; the end of Easter; the Sunday after Easter-day.—2 *Inst.* 157.

Clausura heyæ, the enclosure of a hedge.

Claves insulæ, the keys of the Isle of Man, or twelve persons to whom all ambiguous and weighty cases are referred.—*Cun. Law Dict.*

Clavia, a club or mace.—*Cun. Law Dict.*

Clavigeratus, a treasurer of a church.—*Dugd. Mon.* tom. 1, p. 184.

Clawa, a close or small measure of land.—*Dugd. Mon.* tom. 2, p. 250.

Clayton's Case. 1 *Mer.* 572. The rule in this case is that payments are presumed, *primâ facie*, to be appropriated to debts in the order in which they are incurred, but see *Hallett's Estate*, 13 C. D. 696, as to payments by a trustee, and s. 38, Bankruptcy Act, 1914, also APPROPRIATION OF PAYMENTS.

Clearance, a certificate that a ship has been examined and cleared at the Custom House. See s. 101 and other sections of the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36); *Chitty's Statutes*, tit. '*Customs.*'

Clear Days. If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively as well of the first day as the last. (*Chit. Arch. Pr.*) As to the meaning of 'clear,' generally, in deeds, wills, and other documents, see *Stroud's Jud. Dict.*

Clearance Area. Under the Housing Acts, 1930–35, substantially reproducd by the Housing Act, 1936, the local authority may (see ss. 25 *et seq.*, 1936 Act) declare any area in their district to be a clearance area where they are satisfied that the houses there are by reason of disrepair or sanitary defects or bad arrangement either of the houses or streets dangerous to the health of the inhabitants in the area, and after marking off on a map of the area and excluding from the area any building which is not unfit for human habitation or dangerous and injurious to health, they may, by a clearance order obtained from the Minister of Health (see *Errington* v. *Minister of Health*, 1935, 1 K. B. 249) and subject to formalities under ss. 51–53 of the H. Act, 1936, and if the owner has not obtained a certificate of re-conditioning fitness, order the demolition of the buildings in the area or purchase the land compulsorily or by agreement, or themselves secure the demolition of the buildings. A limited compensation is provided for under the Acts.

Clearing, among London bankers a method adopted by them for exchanging the drafts of each other's houses, and settling the difference. At fixed hours, each day, a clerk from each banker attends at the clearing-house, bringing all the drafts on the other bankers which have been paid into his house during the day, and delivers to each of the

other clerks the obligations he has against his house, receiving from each the obligations due from his own. Balances are struck at the end of the day, the clerk to the Clearing House making up the accounts between each bank. The balances are not paid to or received from the other bankers as formerly, but are settled with the Clearing House, which keeps an account itself at the Bank of England. There is also a Country Clearing House. Consult *McLeod on Banking*; *Grant's Law of Banking*, 6th ed. p. 66.

Clearing-house, the place where the operation termed 'clearing' is carried on, situated in a corner of Post Office Court, in Lombard Street.

Clementines, the collection of decretals or constitutions of Pope Clement V., made by order of John XXII., his successor, who published it in 1317.

Clement's Inn, an Inn of Chancery before the reign of Edward IV., taking its name from the parish church of St. Clement Danes, to which the Inn formerly belonged. Now only the name remains to denote the locality. See INNS OF CHANCERY.

Cler. fil. (*clerici filius*), the son of a clergyman.

Clergy [fr. *clerge*, Fr.; *clerus*, Lat.], the assembly or body of clerks or ecclesiastics set apart from the rest of the people or laity to superintend the public worship of God and the other ceremonies of religion, and to administer spiritual counsel and instruction.

The clergy were before the Reformation divided into (1) *regular*, who lived under certain rules, being of some religious order, and were called men of religion, or the religious, such as abbots, priors, monks, etc.; and (2) *secular*, who did not live under any certain rules of the religious orders, as bishops, deans, parsons, etc. Now the term comprehends all persons in holy orders and in ecclesiastical offices, viz., archbishops, bishops, deans and chapters, archdeacons, rural deans, parsons (either rectors or vicars) and curates, to which may be added parish clerks. The clergy are exempt from serving on juries; restrained from farming more than 80 acres, except with the sanction of the bishop, and cannot carry on any trade. It is a misdemeanour to obstruct or assault them while in the exercise of their duties (24 & 25 Vict. c. 100, s. 36).

The clergy, by 41 Geo. 3, c. 63, are disqualified from sitting in the House of Commons. By the Ministers of Religion (Removal of Disqualifications) Act, 1925 (15 & 16 Geo. 5, c. 54), they are no longer disqualified for the office of borough councillor; and they may be county councillors, by s. 2 of the Local Government Acts, 1888 and 1933, and may also be parish councillors; but the Clerical Disabilities Act, 1870 (33 & 34 Vict. c. 91) (amended in 1934 by 24 & 25 Geo. 5, No. 1) enables them, by executing and enrolling a deed of relinquishment, to obtain freedom from their disabilities, and generally to assume the status of laymen.

The Church Discipline Act, 1840 (3 & 4 Vict. c. 86), provides for the prosecution of clergymen for offences in matters of doctrine; the Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85), for offences in matters of ritual; and the Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), for convictions for crimes or for immoralities therein described: see, e.g., *Bishop of Lincoln* v. *Wakeford*, 1921, 1 A. C. 813. And the Benefices (Ecclesiastical Duties) Measure, 1926 (16 & 17 Geo. 5, No. 8), contains provisions for dealing with cases where ecclesiastical duties are inadequately performed. See CLERICAL SUBSCRIPTION, *infra*; also *Chitty's Statutes*, tit. '*Church and Clergy*'; *Phillimore's Ecclesiastical Law*; *Dale's Clergyman's Legal Handbook*; and *Whitehead's Church Law*.

Clergy, Benefit of. See BENEFIT OF CLERGY.

Clerical Error, an error in a document which can only be explained by considering it to be a slip or mistake of the party preparing or copying it. Clerical errors in judgments or orders may be corrected by the court or a judge under R. S. C. Ord. XXVIII., r. 11, and in awards, by the arbitrator, under the Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 7; and for the inherent right of a court to correct an error or supply an accidental omission, see *Milson* v. *Carter*, 1893, A. C. at p. 640.

As to contracts, clerical errors have frequently been corrected by application of the maxims, *Qui hæret in literâ, hæret in cortice*, or, *Mala grammatica non vitiat chartam*. A clerical error in a lease for ninety-four years at a yearly rent 'during the said term of ninety-one years and a quarter' was corrected by the counterpart into ninety-one years and a quarter, in *Burchell* v. *Clark*, (1876) 2 C. P. D. 88, by a majority of the Court of Appeal; and see *Spyve* v. *Topham*, (1802) 3 East, 115; and other cases showing that courts both of law and equity, where there is a manifest

error in a document, will put a sensible meaning on it by reading the error as corrected.

As to Acts of Parliament, clerical errors in them have usually to be corrected by subsequent Acts. See the filling up of a blank in the Parsonages Act, 1838 (1 Vict. c. 23, by 1 & 2 Vict. c. 29), and the substitution of a 'this' by the Burial and Registration Acts (Doubts Removal) Act, 1881 (44 & 45 Vict. c. 2), for a 'that' misprinted for 'this' in s. 11 of the Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41); but in a very clear case an error will be read by a court as corrected. See, e.g., *Reg.* v. *Wilcock*, (1845) 7 Q. B. 321.

Clerical Subscription. The Clerical Subscription Act, 1865 (28 & 29 Vict. c. 122), s. 4, as amended by the Statute Law Revision Act, 1893, enacts that every person about to be ordained priest or deacon shall, before ordination, in the presence of the archbishop or bishop by whom he is about to be ordained, make the following 'Declaration of Assent':

I assent to the Thirty-nine Articles of Religion, and to the Book of Common Prayer and of the ordering of Bishops, Priests, and Deacons. I believe the doctrine of the Church of England, as therein set forth, to be agreeable to the word of God; and in public prayer and administration of the Sacraments I will use the form in the said book prescribed, and none other, except so far as shall be ordered by lawful authority.

See ARTICLES OF RELIGION; and for an attempt to define 'lawful authority,' see *Lely on the Church of England Position*, at p. 138.

Oaths of allegiance and of canonical obedience to the bishop have also to be taken.

Clerico capto per statutum mercatorum, etc., a writ for the delivery of a clerk out of prison, who is imprisoned upon the breach of a statute-merchant.—*Reg. Brev.* 147.

Clerico convicto commisso gaolæ in defectu ordinarii deliberando, an ancient writ, that lay for the delivery to his ordinary, of a clerk convicted of felony where the ordinary did not challenge him, according to the privilege of clerks.—*Ibid.* 69.

Clerico infra sacros ordines constituto, non eligendo in officium, a writ directed to those who have thrust a bailiwick or other office upon one in holy orders, charging them to release him.—*Ibid.* 143.

Clericum admittendum, a writ of execution directed not to the sheriff, but to the bishop or archbishop, and requiring him to admit and institute the clerk of the plaintiff.—3 *Bl. Com.* 413.

Clericus non connumeretur in duabus ecclesiis, 1 *Rol. R.*—(A clergyman should not be appointed to two churches.) See PLURALITY.

Clerk [fr. *cleric*, Sax.; *clericus*, Lat.], originally a learned man or man of letters, whence the term is appropriated to churchmen who were called clerks and now clergymen, the nobility and gentry being bred to the exercise of arms, and none left to cultivate the sciences but ecclesiastics. Where the canon law has full power, the word 'clerk' comprehends *sacerdotes*, *diaconi*, *subdiaconi*, *lectores*, *acolyti*, *exorcistæ*, and *ostiarii*. The word has been anciently used for a secular priest, in opposition to a religious or a regular.—*Jac. Law Dict.*

Clerk of Affidavits in Chancery, an office abolished by 15 & 16 Vict. c. 87, s. 27.

Clerk of Arraigns, an assistant to the Clerk of Assize. His duties are in the Crown Court on circuit.

Clerk of Assize. An officer attached to the assizes who attends to various duties on the civil side, acting as associate (*q.v.*). As to necessary qualifications, etc., see Clerks of Assize Act, 1869, and s. 21 of the Judicature Act, 1884, and Judicature Act, 1925, s. 79.

Clerk of the Crown in Chancery. See Great Seal (Offices) Act, 1881 (37 & 38 Vict. c. 81), s. 8, by which this officer performs the duties of clerk of the hanaper (see HANAPER) and receives ballot papers, etc., after a parliamentary election from the returning officers under Rule 38 of Schedule I. of the Ballot Act, 1872 (35 & 36 Vict. c. 33).

Clerk of the Custodies of lunatics and idiots; abolished, see 2 & 3 Wm. 4, c. 111; 3 & 4 Wm. 4, c. 84; and 5 & 6 Vict. c. 84, s. 10.

Clerk of Justices of the Peace, Clerk of Petty Sessions, Clerk of Special Sessions. The duties of these officers are, by the Justices Clerks Act, 1877 (40 & 41 Vict. c. 43), s. 5, performed by one salaried clerk called in the Act 'clerk of a petty sessional division.' Such clerk must, by s. 7, be either a barrister of not less than 14 years' standing, or a solicitor, or have served for not less than seven years as a clerk to a magistrate or to a metropolitan police court.

Clerk of the Peace. His duties are to officiate at sessions of the peace, to prepare indictments, and to record the proceedings of the justices, and to perform a number of special duties in connection with the affairs of the county. He is also clerk of the

county council, by virtue of s. 83 of the Local Government Act, 1888 (applying to London). The offices are separated by Local Government (Clerks) Act, 1931 (21 & 22 Geo. 5, c. 45), s. 1, but by s. 2 usually the same person will be appointed to both. See also Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 101 ; London County Council General Powers Act, 1930 (c. clix.), ss. 26–28.

Removal is regulated by 1 Wm. & M. c. 21, and Local Government Clerks Act, 1931 (21 & 22 Geo. 5, c. 45), ss. 2, 3, 4.

As to appointment, etc., in a quarter sessions borough, see Municipal Corporations Act, 1882, s. 164.

Clerk of Reports in Chancery, abolished by 15 & 16 Vict. c. 87, s. 27.

Clerks of the Enrolments in Chancery. Their offices and those of their deputies are abolished by 5 & 6 Vict. c. 103.

Clerks of Records and Writs. Three officers in Chancery first appointed under 5 & 6 Vict. c. 103. See their duties, *Dan. Ch. Prac.*, 7th ed. They were officers of the Supreme Court (Jud. Act, 1873, s. 77). The office is merged in that of the Masters, and see R. S. C. Ord. LXI.

Client [fr. *cliens*, Lat., said to contain the same element as the verb *clueo*, to hear or obey, and accordingly compared by Niebuhr with the German word *hoeriger*, a dependent], a person who seeks advice of a lawyer or commits his cause to the management of one, either in prosecuting a claim or defending a suit in a court of justice ; and for meaning, the word (except in relation to non-contentious business) includes any person who as principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, and any person who is or may be liable to pay a solicitor's costs (Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37), s. 81). The relation between solicitor and client is a highly confidential one, and the power which his situation gives the former over the latter makes it impossible to be perfectly assured, in certain cases, whether in their transactions the client is a free agent, or under influence and imposition. A Court of Equity, therefore, will not permit a solicitor to take a present from his client, over and above his fees, however reasonable it might appear to be ; the solicitor is entitled to his legal remuneration and nothing more. Nor will the Court allow a solicitor to make a purchase from his client, whilst the relation subsists. In short, all dealings, of whatever kind, between solicitor and client, so long as the relation continues, are viewed by the Court with the utmost jealousy, and if impeached the onus of upholding them is thrown on the solicitor ; see, as to the general law on this subject, *Re Haslam*, 1902, 1 Ch. 769 ; *Holman* v. *Loynes*, (1854) 4 De G. M. & G. 270 ; *Wright* v. *Carter*, 1903, 1 Ch. 27.

Among the Romans, nearly all citizens were comprehended into two classes—patron and client. Their relative rights and duties were as follows :—The patron was the legal adviser of the client ; he was the client's guardian and protector, as he was the guardian and protector of his own children ; be maintained the client's suit when he was wronged, and defended him when another complained of being wronged by him ; in a word, the patron was the guardian of the client's interests, both public and private. The client contributed to the marriage portion of the patron's daughter, if the patron were poor ; and to his ransom or that of his children, if taken prisoners ; he paid the costs and damages of a suit which the patron lost, and of any penalty in which he was condemned ; he bore a part of the patron's expenses incurred by his discharging public duties, or filling the honourable places in the State. Neither party could accuse the other or bear testimony against the other, or give his vote against the other. The relationship between patron and client subsisted for many generations, and resembled in all respects a relationship by blood. It was the glory of illustrious families to have many clients, and to add to the number transmitted to them by their ancestors.

Clifford's Inn, an Inn of Chancery. Anciently the town residence of the Barons Clifford, and demised in 1345 to a body of students of law. It was the most important of the Inns of Chancery and numbered among its students Coke and Selden. It was governed by a principal and twelve rulers until late in the last century. In 1902 the Society was dissolved and the property sold. See INNS OF CHANCERY.

Cloere, a prison or dungeon.—*Cowel.*

Clog on Equity of Redemption. Any provision inserted in a mortgage to prevent redemption on payment or performance of the debt or obligation for which the security was given is called a ' clog ' or fetter on the equity of redemption, and is void ; see *Santley* v. *Wilde*, 1899, 2 Ch. 474. The question as to the exact nature and limits of this old rule of equity has been raised in a

number of recent cases, see *G. & C. Kreglinger* v. *New Patagonia Meat Co.*, 1914, A. C. 25, where will be found a discussion of the whole subject. And see EQUITY OF REDEMPTION; MORTGAGE.

Cloish, an unlawful game, supposed to be the same as skittles, forbidden by the (repealed) 17 Edw. 4, c. 3; and (under the name of clash) by 33 Hen. 8, c. 9, except at Christmas.

Close, a field or piece of land parted off from other fields or common land by banks, hedges, etc. Every entry upon another's land (unless by the owner's leave, or in some very particular cases) is an injury or wrong, for which an action of trespass will lie to recover such damages as a jury may think proper to assess, and this injury is called trespass *quare clausum fregit*, or trespass for breaking a man's close.

Close Rolls and **Writs,** royal letters, under the Great Seal, addressed to particular persons for particular purposes, which, because they are not intended for public inspection, are closed and sealed, and recorded in the close rolls; hence their name.—2 *Bl. Com.* 346.

Close of Pleadings. In a civil action 'as soon as either party has joined issue upon any pleading of the opposite party simply without adding any further or other pleading thereto, the pleadings as between such parties shall be deemed to be closed.' (R. S. C. 1883, Ord. XXVII., r. 13.)

Close Season. See GAME.

Closure. See CLOTURE.

Cloth. By 12 Edw. 3, c. 3, no cloth made beyond sea might be brought into the kingdom on pain of forfeiture of the goods and punishment of the importer.

Cloture. The procedure in deliberative assemblies whereby debate is closed. Introduced in the English parliament in the session of 1882, and now anglicized into 'Closure.'

Clough, a valley.—*Domesday.* Also an allowance of two pounds in every hundredweight for the turn of the scale, on buying goods wholesale by weight.—*Lex Mercat.* See ALLOWANCE.

Club-law, regulation by force; the law of arms.

Clubs, associations to which individuals subscribe for purposes of mutual entertainment and convenience; the affairs of which are generally conducted by a steward or secretary, who acts under the immediate superintendence of a committee. The members of an ordinary club, merely as such, are not liable for anything beyond their subscriptions (*Wise* v. *Perpetual Trustee Co.*, 1903, A. C. 139). As to altering the rules of a club, see *Thellusson* v. *Valentia*, 1907, 2 Ch. 1; and as to the expulsion of a member, see *Baird* v. *Wells*, (1890) 44 Ch. D. 661. Consult *Wertheimer on Clubs; Leake on Contracts.*

As to working men's clubs, sick clubs, etc., see FRIENDLY SOCIETIES, and especially s. 8 of the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), and Industrial Assurance and Friendly Societies Act, 1929 (19 & 20 Geo. 5, c. 28). Shop clubs are dealt with by the Shop Clubs Act, 1902 (2 Edw. 7, c. 21), which prohibits compulsory membership of unregistered Shop Clubs or Thrift Funds, and regulates such as are duly registered. The expression 'shop club' or 'thrift fund' in that Act means, by s. 7, 'every club and society for providing benefits to workmen in connection with a workshop, factory, dock, shop, or warehouse.'

The sale of intoxicating liquor in clubs is regulated by a system of registration of the clubs under ss. 91 to 98 of the Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), by s. 91 of which the secretary of every club occupying premises habitually used for the purposes of a club, and in which any intoxicating liquor is supplied, must have the club registered with the clerk to the justices of the petty sessional division. The register must contain (*inter alia*) the rules of the club as to the election of members and the admission of temporary and honorary members and friends, the terms of subscription, the opening and closing hours, and the mode of altering the rules. No intoxicating liquor is to be supplied in an unregistered club, and a registered club may under certain circumstances be struck off the register by a Court of Summary Jurisdiction. See also the Licensing Act, 1921 (11 & 12 Geo. 5, c. 42). A club within s. 4 of that Act means the premises of a registered club and not the association of persons who are members of the club (*Upton and Another* v. *Cully*, 1926, 2 K. B. 270).

Clypeus, or **Clipeus,** a shield; metaphorically one of a noble family. *Clypei prostrati*, noble families extinct.—*Mat. Paris*, 463.

Coadjutor, an assistant, helper, or ally: particularly a person appointed to assist a bishop, who from age or infirmity is unable to perform his duty: and see SUFFRAGAN.

Coal may be sold by weight only by the Weights and Measures Act, 1889 (52 & 53 Vict. c. 21), s. 20. The seller delivers a

weight ticket for the whole quantity sold (*Kyle* v. *Dunsdon*, 1908, 2 K. B. 293). The weighing is to take place at the premises of the seller, not on delivery at the premises of the purchaser (*Knowles* v. *Sinclair*, 1898, 1 Q. B. 170). See WEIGHTS AND MEASURES. As to the validity of bye-laws requiring coal carts to carry weighing machines, see *Kent County Council* v. *Humphrey*, 1895, 1 Q. B. 903; *Alty* v. *Farrell*, 1896, 1 Q. B. 636.

Coal Mines. The Coal Mines Act 1911, (1 & 2 Geo. 5, c. 50), repealing and re-enacting, with alterations, a great part of the existing law, and itself amended by the Coal Mines Act, 1914 (4 & 5 Geo. 5, c. 22), contains a set of elaborate enactments for the management, safety, and inspection of coal mines. The employment of boys, girls, and women below ground is prohibited, and their employment above ground carefully regulated. The Act applies to mines of coal, stratified ironstone, shale, and fire-clay. See also the Coal Mines (Weighing of Minerals) Act, 1905 (5 Edw. 7, c. 9), amending certain provisions of the Coal Mines Regulation Act, 1887, and see the Check-weighing in Various Industries Act, 1919 (9 & 10 Geo. 5, c. 51).

By s. 1 (1) of the Coal Mines Regulation Act, 1908 (8 Edw. 7, c. 57), as amended by the Coal Mines Act, 1919, s. 1, 'a workman shall not be below ground in a mine for the purpose of his work and of going to and from his work, for more than seven hours during any consecutive twenty-four hours.' The Coal Mines Act, 1930 (20 & 21 Geo. 5, c. 34), provides for the regulation, supply and sale of coal by owners of coal mines, and constitutes a Coal Mines National Industrial Board. The Act contains elaborate provisions for the re-organisation of the coal-mining industry and restricts the supply and sale of coal. And by the Coal Mines (Minimum Wage) Act, 1912 (2 Geo. 5, c. 2), provision is made for establishing a minimum wage in the case of workmen employed under ground in coal mines; see *Lofthouse Colliery* v. *Ogden*, 1913, 3 K. B. 120; *Davies* v. *Glamorgan Coal Co.*, 1914, 1 K. B. 674; *Richards* v. *Wrexham and Acton Collieries*, 1914, 2 K. B. 497. See MINES.

Coal-note, a particular description of promissory note formerly in use in the port of London. See the (repealed) 3 Geo. 2, c. 26, ss. 7, 8.

Coal-whippers, labourers discharging the cargoes of vessels laden with coals in the port of London. See 6 & 7 Vict. c. ci., which established a coal-whipper's register.

Coast-guard. See the Coast Guard Service Act, 1856 (19 & 20 Vict. c. 83), 'to provide for the better defence of the Coasts of the Realm, and the ready manning of the Navy; and to transfer' to the Admiralty 'from the Board of Customs the Government of the Coast Guard,' whereby the Admiralty may raise such number of officers or men from time to time up to 10,000 as it may think fit for the constitution of a Coast-guard. The force was originally formed merely for the prevention of smuggling, in connection with which it has many duties to discharge under the Customs Acts. The Coast-guard Act, 1925 (15 & 16 Geo. 5, c. 88), transfers the control of the Coast-guard service to the Board of Trade, but in case of emergency it can be transferred to the Admiralty.

Coasting Trade. See 12 & 13 Vict. c. 29; 17 & 18 Vict. c. 5; and 18 & 19 Vict. c. 96 (repealed by Customs and Consolidation Act, 1876 (39 & 40 Vict. c. 36), see ss. 140–148).

Coat Armour. Coats of arms were introduced by Richard I., from the Holy Lond, where they were first invented. Originally they were painted on the shields of the Christian knights, who went to the Holy Land during the crusades, for the purpose of identifying them, some such contrivance being necessary in order to distinguish knights when clad in armour from one another.—2 *Bl. Com.* 306'

Cocaine. See DRUGS, DANGEROUS.

Cocherings, or **Cosherings,** Irish exactions or tributes, now reduced to chief rents. See BONAUGHT.

Cocket, a sealed scroll of parchment given to the master of an outward-going ship certifying that the vessel has been duly cleared by the customs officers.—*Jac. Law Dict.*

Cock-fighting, a criminal offence by s. 1 (c) of the Protection of Animals Act, 1911 (1 & 2 Geo. 5, c. 27).

Cock-pit, a set of apartments built on the site of the old cock-pit of Whitehall Palace. This was converted into the Privy Council offices in the reign of William III.; but the old name remained till modern times.

Cocksetus, a boatman, a cockswain.—*Cowel.*

Cocula, a cogue or drinking-cup.

Code, a collection or system of laws. The collection of laws and constitutions made by order of the Emperor Justinian is distinguished by the appellation of 'The Code' by way of eminence. See CIVIL LAW.

The Code Napoleon, or Civil Code of

France, proceeding from the French Revolution, and the administration of Napoleon while First Consul, effected great changes in the laws of that country. Framed in the first instance by a commission of jurists appointed in 1800, this code, after having passed both the tribunate and the legislative body, was promulgated in 1804 as the 'Code Civil des Français.' When Napoleon became emperor, the name was changed to that of Code Napoleon, by which it is still often designated, though it is now styled by its original name of Code Civil. A Code de Procédure Civile, a Code de Commerce, Code d'Instruction Criminelle, and Code Pénal were afterwards compiled and promulgated under Bonaparte's administration. To these was subsequently added a Code Forestier, or regulations concerning the forests, which was promulgated under Charles X. in 1827. All these codes are sometimes called 'Les six Codes.' A Code de la Conscription and a Code Militaire were also promulgated under Napoleon. All these codes under his administration are sometimes confusedly designated by the name of the Code Napoleon.—*Life of Napoleon, by Vieusseux; Myer's Esprit des Institutions Judiciaires.* There are English translations of the Code Civil by H. Cachard (1895), and E. Blackwood Wright (1908).

In British India the law has been partly codified; in Great Britain the chief 'codifications' are those effected by the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61)—'an Act to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes'; the Partnership Act, 1890 (53 & 54 Vict. c. 39)—'an Act to declare and amend the law of Partnership'; the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71)—'for codifying the law relating to the sale of goods'; and the Marine Insurance Act, 1906 (6 Edw. 7, c. 41)—'an Act to codify the law relating to Marine Insurance.' There have no doubt been a great many consolidation Acts (see that title) passed in recent years. But *consolidation* merely reduces into shape the law as already written in many existing statutes; whereas *codification* not only does that, but fuses into the new whole the Common Law (as laid down by judicial decisions) besides.

A Criminal Code (Indictable Offences) Bill was submitted to parliament in 1878. This Bill, which was drawn by Mr. Justice Stephen when at the Bar, was referred to a Royal Commission. After the Report of the Commissioners the Bill was reintroduced and referred to a select Committee of the House of Commons, whose sittings, however, were cut short by a dissolution of parliament, and the Bill has not since been proceeded with. See *Sir Leslie Stephen's Life of Sir J. F. Stephen*, p. 379. For a historical sketch of the subject of codification, see *Holland's Essays on the Form of the Law*, 29.

In New Zealand, a Criminal Code Act, 1893 (No. 56 of 1893), contains 424 sections and repeals 33 Imperial Acts from 5 & 6 Edw. 6, c. 11 (against Treason), down to 14 & 15 Vict. c. 100 inclusive.

Codex, a roll or volume.

Codex Justinianus. See CIVIL LAW.

Codex Theodosianus. See CIVIL LAW.

Codicil [fr. *codicillus*, Lat., a little book, tablet, or writing], a supplement to a will, containing anything which the testator wishes to add, or any explanation or revocation of what the will contains. It must be executed with the same formalities as a will under the Wills Act, 1837 (1 Vict. c. 26), by s. 1 of which the term 'will' extends to a codicil, and must be proved with the will.

Codification. The collection of all the principles of any system of law into one body after the manner of the Codex Justinianus and other codes. See CODE.

Co-emptio, the sale of a wife to a husband. —*Civil Law.* Consult *Colquhoun's Roman Civil Law*, vol. i. s. 558.

Co-emption, the act of purchasing the whole quantity of any commodity.

Cofferer of the King's Household, a principal officer of the royal establishment, next under the controller, who, in the counting-house and elsewhere, had a special charge and oversight of the other officers, whose wages he paid. He passed his accounts in the Exchequer. Mentioned in 39 Eliz. c. 7.—*Cun. Law Dict.*

Cognati, relations by the mother's side. In Roman Law, opposed to *Agnati* (*q.v.*).

Cognatione. See COSENAGE.

Cognisor, and **Cognisee.** The former is he who passed or acknowledged a fine of lands or tenements to another; the latter is the person to whom the fine of the lands, etc., was acknowledged.—32 Hen. 8, c. 5.

Cognitionibus mittendis, an abolished writ to a Justice of the Common Pleas, or other who has power to take a fine, who having taken the fine defers to certify it, commanding him to certify it.—*Reg. Brev.* 68.

Cognitor, a person appointed by a party to a suit to conduct it for him.—*Civil Law.*

Cognizance, or **Conusance,** the hearing of

a thing judicially; also an acknowledgment of a fine; and in replevin it was, before the Judicature Acts, the name for the pleading of a defendant who acted as bailiff, etc., to another in making a distress, by which he alleged the right or title to be in that person by whose command he acted. If the person who ordered the distress was sued, his pleading was called an Avowry.—*Steph. Plead.* 225.

Conusance of Pleas, is a privilege granted by the Crown to a town or place, to hold pleas of all contracts, etc., within the precinct of the franchise; and when a person is impleaded for such matters in the King's Court at Westminster, the mayor, etc., may ask cognizance of the plea, and demand that it shall be determined before him.—*Termes de la Ley.*

Conusance was successfully claimed by the Chancellor of the University of Oxford over an action to which an undergraduate was defendant in *Ginnett* v. *Whittingham*, (1886) 16 Q. B. D. 761, though the plaintiff resided in London, and had no connection with the University.

Cognizance (Judicial), knowledge upon which a judge is bound to act without having it proved in evidence: as the public statutes of the realm, the ancient history of the realm, the order and course of proceedings in parliament, the privileges of the House of Commons, the existence of war with a foreign state, the several seals of the King, the Supreme Court and its jurisdiction, and many other things. A judge is not bound to take cognizance of current events, however notorious, nor of the law of other countries. See *Roscoe's Evidence at Nisi Prius.*

Cognovit actionem (he has confessed the action), a defendant's written confession of an action brought against him, to which he has no available defence. It is usually upon condition that he shall be allowed a certain time for the payment of the debt or damages, and costs. It is supposed to be given in court, and it impliedly authorizes the plaintiff's solicitor to do everything necessary in order to obtain judgment.

By the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 24, a warrant of attorney to confess judgment in any personal action, or *cognovit actionem* given by any person, is not of any force unless there is present some solicitor of the Supreme Court on behalf of such person, expressly named by him, and attending at his request to inform him of the nature and effect of such warrant or cognovit before the same is executed, which solicitor must subscribe his name as a witness; and the same Act also contains various provisions in regard to the filing of warrants of attorney, cognovits, and judge's orders.—2 *Chit. Arch. Prac.*

Co-heir, one of several to whom an inheritance descended.

Co-heiress, a woman who had an equal share of an inheritance with another woman.

Cohuagium, a tribute paid by those who meet promiscuously in a market or fair.—*Du Cange.*

Coif [fr. *coiffe*, Fr.], the badge of serjeants-at-law, who were called serjeants of the coif, from the lawn coif they wore on their heads under their caps when created serjeants.—*Cowel.* See SERJEANT, and consult *Pulling's State and Degree of the Coif.*

Coigne, horse-meat, man's meat, and money at pleasure.—*Irish Term.*

Coin [fr. *coign*, Fr.; *cuneus*, Lat., a wedge], a piece of metal stamped with certain marks and made current at a certain value. The coining of money is in all states the prerogative of the sovereign power; and, as money is the medium of commerce, it is the Crown's prerogative and monopoly, as arbiter of domestic commerce, to give it authority or make it current.

By the Coinage Offences Act, 1861 (24 & 25 Vict. c. 99), it was made a felony to counterfeit coin; to colour or gild, so as to make a resemblance to gold or silver coin; to impair or lighten coin; to have in unlawful possession filings or clippings produced by impairing or lightening coin; to buy or sell or import or utter counterfeit coin. There were numerous other provisions tending to the suppression of the manufacturing, importing and uttering of counterfeit coin. See the Counterfeit Currency (Convention) Act, 1935 (25 & 26 Geo. 5, c. 25), an Act to enable effect to be given to an International Convention for the suppression of counterfeiting Currency, to apply to foreign coin certain enactments relating to British coin, and to assimilate the penalties for importing and exporting counterfeit coin, and see now the Coinage Offences Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 16), a consolidating Act.

The Coinage Act, 1870 (33 & 34 Vict. c. 10), consolidated and amended the laws relating to coinage and his Majesty's Mint. This Act was amended by the Coinage Acts of 1891 and 1920. The Gold Standard Act, 1925 (15 & 16 Geo. 5, c. 29), made a return to the Gold Standard, but the Gold Standard is now suspended until by Proclamation

directed otherwise, see Gold Standard (Amendment) Act, 1931 (21 & 22 Geo. 5, c. 46). See TENDER and CURRENCY AND BANK NOTES ACT.

Coke, Sir Edward, often, but incorrectly, styled Lord Coke, born in 1551, called to the Bar by the Inner Temple in 1578, counsel in Shelley's case (see that title), Speaker of the House of Commons, Solicitor-General and Attorney-General under Queen Elizabeth, knighted by James I. shortly after his accession in 1603, made Chief Justice of the Common Pleas in 1606 and of the King's Bench in 1613, 'taking particular delight,' writes Lord Campbell in his *Lives of the Chief Justices*, ' in styling himself " Chief Justice of England," ' was deprived of office and committed to the Tower by Charles I., for his support of the Petition of Right. Coke was bitterly hostile to the injunction of equity. The controversy between Coke and Lord Ellesmere, the Chancellor, was acute. James I. referred the whole matter to Bacon, the Attorney-General, and others learned in the law. Acting upon the recommendations of this committee of counsel, James I. decided the matter in favour of Chancery. It should be mentioned to Coke's credit that he stood up manfully against King James upon the question of the Law Officers interfering with the judges, and also that he strongly protested against ' the cursed gallows tree ' so frequently in use in his day. He died in 1634. Author of the *Institutes* and *The Reports* (see those titles), and of an edition of Littleton's *Treatise on Tenures*. A famous text-writer and reporter among English lawyers, one of whose great characteristics, however, has been not unjustly said by Sir James Stephen in his *Digest of the Criminal Law*, 3rd ed. 1883, at p. 364, to be an ' utter incapacity for anything like correct language or consecutive thought.' Lord Campbell, however, writes that his First Institute (being the Commentary on Littleton) ' may be studied with advantage, not only by lawyers, but by all who wish to be well acquainted with the formation of our polity and with the manners and customs prevailing in England in times gone by.'

Coliberts, tenants in socage, particularly such villeins as were manumitted or made freemen; but they had not an absolute freedom, for though their condition was better than that of servants, yet they had superior lords, to whom they paid certain duties, and in that respect they might be called servants, though they were of middle condition, between freemen and servants.—*Du Cange.*

Collate. See COLLATION.

Collateral, indirect, sideways, that which hangs by the side; applied in several ways, thus:—collateral assurance, that which is made over and above the deed itself; collateral consanguinity or kindred, which descend from the same stock or ancestor as the lineal relation, but do not descend one from the other, as the issue of two sons; collateral issue, where a criminal convict pleads any matter allowed by law, in bar of execution, as pregnancy, pardon, an act of grace, or diversity of person, viz., that he or she is not the same that was attainted, etc., the issue upon which when taken is tried by a jury *instanter*; collateral security, where a deed is made of other property, besides that already mortgaged, for the better safety of the mortgagee (see *Re Athill*, (1880) 16 Ch. D. 211) or a bill of exchange given, or pledge deposited to secure a pre-existing debt; and collateral contract, where a contract by word of mouth co-exists (see e.g., *Morgan* v. *Griffiths*, (1871) L. R. 6 Ex. 70; *De Lassalle* v. *Guildford*, 1901, 2 K. B. 215) with a contract in writing made at the same time, notwithstanding the general rule that an oral merges in a written contract. See WARRANTY.

Collateral Warrants, abolished by the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), s. 14, was where the heir's title to the land neither was, nor could have been, derived from the warranting ancestor, as where a younger brother released to his father's disseisor with warranty, this was collateral to the elder brother. The whole doctrine of collateral warranty is repugnant to justice; and even its technical grounds are so obscure that the ablest legal writers are not agreed upon the subject.—*Wright's Tenures*, 168; *Gilbert's Tenures*, 143.

Collatio bonorum (a contribution of goods). Where a portion or money, advanced by the father to a son or daughter, is brought into hotchpot (*q.v.*), in order to have an equal distributory share of his personal estate at his death, according to the intent of the Statute 22 & 23 Car. 2, c. 10 (the Statute of Distribution). Repealed and replaced by the Administration of Estates Act, 1925, ss. 46, 47, and 49.

Collation, the comparison of a copy with its original to ascertain its correctness; or the report of the officer who made the comparison.

Collation of Seals, when upon the same label one seal was set on the back or reverse of the other.

Collation to a Benefice, where the bishop and patron are one and the same person, in which case the bishop cannot present the clergyman to himself, but does, by the one act of collation or conferring the benefice, the whole that is done in common cases both by presentation and institution.

Collatione facta uni post mortem alterius, a writ directed to justices of the Common Pleas, commanding them to direct their writ to a bishop, for the admitting a clerk in the place of another presented by the King, who during the suit between the King and the bishop's clerk is departed this life; for judgment once passed for the King's clerk, and he dying before admittance, the King may bestow his presentation to another.—*Cun. Law. Dict.; Reg. Brev.* 31 *b.*

Collatione Heremitagii, a writ whereby the King conferred the keeping of a hermitage upon a clerk.—*Cun. Law Dict.*; *Reg. Brev.* 303, 308.

Collative Advowson. See ADVOWSON.

Collecting Society, a friendly society or branch, whether registered or unregistered, which receives contributions by means of collectors at a greater distance than ten miles from the registered office or principal place of business of the Society; see Collecting Societies and Industrial Assurance Act, 1923 (13 & 14 Geo. 5, c. 8), and Industrial Assurance and Friendly Societies Act, 1929 (19 & 20 Geo. 5, c. 28).

Collections, Street, in the Metropolitan Police District, are regulated by the Street Collections Regulations, 1923 (No. 1133), made under the Police, Factories, etc. (Miscellaneous Provisions), Act, 1916. No collection of money (other than at an open-air meeting) or sale of any article in any street or public place is permitted unless the persons responsible have obtained a permit from the Commissioner of Police. The regulations contain provisions regulating the conduct of collectors and vendors, who must be unpaid and 18 years of age or over. An audited return of the amount received and expenses has to be rendered in a prescribed form.

Collective Work. As to the meaning of the term for the purposes of the Copyright Act, 1911, see s. 35 of this Act.

Collegatary, a person who has a legacy left to him in common with other persons.

College [fr. *colligo*, Lat., to bring to], a corporation, company, or society of men, having certain privileges and endowed with certain revenues, founded by royal license. An assemblage of several colleges is called a University.

College of Justice. Those persons who take part in the administration of justice in the Court of Session in Scotland are known collectively as the College of Justice, the Canon Law status of a *Collegium* having been conferred upon them by Pope Paul III.

Collegia, the guild of a trade.—*Civil Law.*

Collegiate Church, a church built and endowed for a society, or body corporate, consisting of a dean or other president and secular priests, as canons or prebendaries in such church. There were many of these societies distinguished from the religious or regulars before the Reformation, and some are still subsisting, as Westminster, Windsor, Southwell and others.—*Jac. Law Dict.*

Colliery. See COAL MINES.

Colligenda bona, Letters ad. In default of relatives or creditors to administer, the Probate Court may grant letters to collect the goods of the deceased, and may give the grantee the full powers of an administrator during the time he is to act; see *Whitehead* v. *Palmer*, 1908, 1 K. B. 151; *Re Roberts*, 1898, P. 149.

Collision of Ships, the striking or running foul of one ship against another. The remedy is either an action at law or a suit in the Admiralty Division. The possibilities under which a collision may occur, and the rules acted on by the Court of Admiralty, have been thus stated by Lord Stowell in *The Woodrop-Sims*, (1815) 2 Dodson, 85:—'In the first place, it may happen without blame being imputable to either party: as where the loss is occasioned by a storm or any other *vis major*, in that case the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree. Secondly, a misfortune of this kind may arise where both parties are to blame, where there has been a want of due diligence or of skill on both sides: In such a case, the rule of law is, that the loss must be apportioned between them, as having been occasioned by the fault of both of them. Thirdly, it may happen by the misconduct of the suffering party only, and then the rule is that the sufferer must bear his own burthen. Lastly, it may have been the fault of the ship which ran the other down, and in that case the injured party would be entitled to an entire compensation from the other.'

In a Court of Common Law the same rule prevailed in the 1st, 3rd, and 4th cases; but in the 2nd, viz., where both parties are

to blame, the rule was that if the negligence of both substantially contributed to the accident, neither could maintain an action against the other; but that if one of them by the exercise of ordinary care might have avoided the consequences of the other's negligence, the former was liable for any injury that the latter might have sustained. See *Tuff* v. *Warman*, (1857) 2 C. B. N. S. 740. But by the Judicature Act, 1873, s. 25 (9), it was provided that in any cause or proceeding for damages arising out of a collision between two ships, if both ships were found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they had been at variance with the rules in force in the Courts of Common Law, should prevail. The Maritime Conventions Act, 1911 (1 & 2 Geo. 5, c. 57), repealed this, and enacts that where by the fault of two or more vessels, damage or loss is caused to one or more of those vessels to their cargoes or freight or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was at fault, see s. 1 of the Act. This rule is subject to the limitation of liability under the Merchant Shipping Act, 1894, according to the size of the vessel. See LIMITATION OF LIABILITY.

The 418th section of the Merchant Shipping Act, 1894, authorizes the King in Council, on the joint recommendation of the Admiralty and the Board of Trade, to make regulations for the prevention of collisions at sea, and thereby regulate the light to be carried and exhibited, the fog signals to be carried and used, and the steering and sailing rules to be observed by ships (see Regulations, 1910), and s. 471 of the Act provides for inquiries to be held by order of the Board of Trade.

Collistrigium, a pillory.

Collitigant, one who litigates with another.

Collocation, the order in which creditors are placed and paid.—*Fr. Law.*

Colloquium, 1. A talking together; a conversation. 2. An old term in pleading applied to the statement in declaration for libel or slander that the libellous or slanderous imputation had reference to the plaintiff.

Collusion [fr. *collusio*, Lat., fr. *colludo*, to unite in the same play or game, and thus to unite for the purposes of fraud or deception], an agreement or compact between two or more persons to do some act in order to prejudice a third person, or for some improper purpose. Collusion in judicial proceedings is a secret agreement between two persons that the one should institute a suit against the other, in order to obtain the decision of a judicial tribunal for some sinister purpose, and appears to be of two kinds: (1) When the facts put forward as the foundation of the sentence of the Court do not exist; (2) When they exist, but have been corruptly preconcerted for the express purpose of obtaining the sentence. In either case the judgment obtained by such collusion is a nullity. See *The Duchess of Kingston's case*, (1776) 2 *Sm. L. C.* Collusion between the petitioner and either of the respondents in presenting or prosecuting a suit for dissolution of marriage is a bar to such suit by the Judicature Act, 1925, s. 178, replacing the Matrimonial Causes Act, 1857 (c. 85), ss. 30 and 31; and a collusive penal action is no bar to a *bonâ fide* penal action by virtue of 4 Hen. 7, c. 20; *Chitty's Statutes*, tit. '*Penal Action*'; and see *Girdlestone* v. *Brighton Aquarium Co.*, (1878) 3 Ex. D. 137.

Colonial Attorneys Relief Acts, 1857, 1874, and 1884 (20 & 21 Vict. c. 39, 37 & 38 Vict. c. 41, and 47 & 48 Vict. c. 24). These Acts provided for the admission, to practise as solicitors in the Supreme Court in England, of all persons, being subjects of the British Crown, who have been duly admitted and enrolled as attorneys and solicitors in any colony. These Acts were repealed by the Colonial Solicitors Act, 1900 (63 & 64 Vict. c. 14), which was in turn repealed by the Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37), and s. 35 enacts:—

(1) A solicitor of a Superior Court in a British possession to which this section applies who has been in practice before such Court for not less than three years may—

(*a*) on giving due notice and the prescribed proof of his qualifications and good character; and

(*b*) on passing the prescribed examination or, in the prescribed cases, without examination; and

(*c*) after service under articles during the prescribed period or, in the prescribed cases, without such service;

be admitted as a solicitor upon payment of the prescribed amount in respect of stamp duties and fees.

(2) Where as respects a Superior Court in a British possession His Majesty in Council is satisfied on the report of a Secretary of State—

(*a*) that the regulations respecting the admission of solicitors of that Court are such as to secure that these

solicitors possess proper qualifications and competency ; and

(*b*) that by the law of that possession solicitors of the Supreme Court will be admitted as solicitors of the Superior Court in that possession on terms as favourable as those on which it is proposed to admit solicitors of that Superior Court in pursuance of this section as solicitors of the Supreme Court,

His Majesty may by Order in Council apply this section to the said Superior Court and British possessions subject to any exceptions, conditions and modifications specified in the Order, and by the same or any subsequent Order in Council may, as respects that Court and possession, provide for all matters authorized by this section to be prescribed and for all matters appearing to His Majesty to be necessary or proper for giving effect to the Order and to this Act. See *Chit. Stat.*, tit. '*Colonies*.'

Colonial Clergy. As to the position of clergy ordained in the colonies, when they come to England, see the 'Colonial Clergy Act, 1874,' 37 & 38 Vict. c. 77.

Colonial Coinage. By s. 11 (8) of the Coinage Act, 1870 (33 & 34 Vict. c. 10), replacing the Colonial Branch Mint Act, 1866 (29 & 30 Vict. c. 65) (which applied to gold coins only), the King in Council may make coins coined in the colonies legal tender in England, and may revoke such order, and see Coinage Act, 1920 (10 Geo. 5, c. 3), s. 1. See TENDER.

Colonial Laws. The validity of laws passed by colonial legislature is established by the Statute of Westminster, 1931, which enacts, subject to the provisions of the Act, that the Colonial Laws Validity Act, 1865, shall not apply to any law made after December 11th, 1931, by the Parliament of a Dominion. Also that no law made by the Parliament of a Dominion be void on the ground that it is repugnant to the law of England. The Colonial Laws Validity Act, 1865 (28 & 29 Vict. c. 63) enacts that no colonial law shall be void for repugnancy to the law of England, unless it be repugnant to the provisions of some Act of Parliament extending to the colony, or to any Order made under authority of such Act, or having in the colony the force and effect of such Act. In the case of such repugnancy the colonial law shall be void to the extent thereof and not otherwise. By the same Act all colonial legislatures are empowered to establish courts of judicature, and to abolish and reconstitute the same, and to make laws respecting the constitution, powers, and procedure of the legislature in each colony respectively, in accordance with the requirements of any Act of Parliament in force in every such colony.

Colonial Marriages Validity Act, 1865 (28 & 29 Vict. c. 64). All the laws made or to be made by the legislature of any of his Majesty's possessions for the purpose of establishing the validity of marriages previously contracted therein, are to have the same effect within all parts of his Majesty's dominions as within the place where they were made.

Colonial Office, the department of state through which the sovereign appoints colonial governors, etc., and communicates with them. Until the year 1854, the administration of Colonial and military affairs was combined, but after the Crimean War an additional Secretary of State was appointed for the administration of military affairs only. See WAR OFFICE.

Colonial Register (Companies). See DOMINION REGISTER.

Colonial Stock Acts. Colonial stocks were not authorized as trustee investments by the Trustee Act, 1893, but by the Colonial Stock Acts of 1877, 1892, 1900 and 1934. Colonial stocks registered in the United Kingdom, and with respect to which certain prescribed conditions have been observed, are (unless expressly forbidden by the instrument of trust : Trustee Act, 1925, s. 1 (o) available as investments for trustees ; see Colonial Stock Act, 1900 (63 & 64 Vict. c. 62), and subsequent Acts ; *Re Maryon-Wilson*, 1912, 1 Ch. 55.

Colonus, a husbandman or villager, who was bound to pay yearly a certain tribute ; or, at certain times in the year to plough some part of the lord's land ; hence 'clown.'

Colony [fr. *colo*, Lat., to cultivate], a settlement in a foreign country possessed and cultivated, either wholly or partially, by immigrants and their descendants, who have a political connection with and subordination to the mother-country whence they emigrated. In other words, it is a place peopled from some more ancient city or country.

England was not the first among European nations that planted settlements in parts beyond Europe. But by her own colonization, and by the conquests of the settlements of other nations, she has now acquired a more extensive dominion of colonies and dependencies than any other nation. The colonies of Great Britain exceed in number,

extent, and value those of every other country.

In an Act of Parliament passed after 1889 the expression 'colony' means by s. 18 (3), of the Interpretation Act, 1889, 'any part of her Majesty's dominions, exclusive of the British Islands and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony.' But, by the Statute of Westminster, 1931 (22 Geo. 5, c. 4), s. 11, notwithstanding anything in the Interpretation Act, 1889, the expression 'Colony' shall not, in any Act of Parliament of the United Kingdom passed after 11th December, 1931, include a Dominion or any Province or State forming part of the Dominion.

Colonies are acquired either (1) by conquest, (2) by cession under treaty, (3) by occupancy, as Newfoundland, New South Wales, and Van Diemen's Land, or (4) by hereditary descent. By far the greater part of the colonies was acquired by conquest or cession. In the first two cases the territory retains its former laws until they are altered by the home government, i.e., the King in Council, yet subordinate to the authority of Parliament. The alterations may be general or partial, leaving the old laws still in force touching matters unprovided for. In the third case (which is strictly a plantation), the English laws, so far as they are applicable to the condition of an infant colony, are *ipso facto* in force in such a colony, for there can be no existing laws to contest the superiority; and besides, the occupants could not have any power to establish laws independently of the mother-country, to whom their allegiance is still due; and they also carry with them the laws of their country, which are their inalienable birthright. Such a colony is, then, not subject to legislation by the Crown, nor is a country which comes to the Crown by title of descent. Such colonies retain their own laws till changed by the act of the Imperial Parliament, to whose legislative authority every kind of colony is subject, as portions of the British dominions, and whose protection they have a right to demand, for the resistance of hostile aggression, and the peaceful possession of their territory. As a general rule an Act of Parliament must name the colony in order to bind it, but see Statute of Westminster, 1931 (22 Geo. 5, c. 4). *Clark's Col. Law; Burge's Col. and For. Law.* See COLONIAL LAWS.

Colorado Beetle. An insect indigenous to Colorado, one of the United States of America, so destructive to vegetables that the Destructive Insects Act, 1877 (40 & 41 Vict. c. 68), was passed to prevent its introduction into Great Britain by means of orders (see *Chitty's Statutes*, tit. '*Agriculture*') prohibiting or regulating the landing of potatoes, etc., likely to introduce it, and giving powers to destroy crops on which it may be found, and compensation to persons whose crops may be destroyed accordingly.

Colour, a term of the ancient rhetoricians, and early adopted into the language of pleading. It was an apparent or *primâ facie* right; and the meaning of the rule, that pleadings in confession and avoidance should give colour, was that they should confess the matter adversely alleged, to such an extent, at least, as to admit some apparent right in the opposite party, which required to be encountered and avoided by the allegation of new matter. Colour was either express, i.e., inserted in the pleading, or implied, which was naturally inherent in the structure of the pleading.—*Steph. Plead.* 233. Express colour was abolished by C. L. P. Act, 1852, s. 64.

Colour of Office, when an act is unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and colour.—*Plowd.* 64.

Colourable Alteration. An alteration or imitation calculated to deceive or otherwise conceived for the purpose of passing off goods as goods of a different make or to evade copyright or trade marks or other rights or property.

Colpices, young poles, which being cut down are made into levers or lifters.—*Blount.*

Colpo, a small wax candle.

Combarones, the fellow-barons or commonalty of the Cinque Ports.—*Jac. Law Dict.*

Combat, Trial by Single. See BATTEL.

Comba terræ [fr. *cumbe*, Sax.; *kum*, Br.; *comb*, Eng.], a valley or piece of low ground between two hills.—*Ken. Glos.*

Combe [*cwm*, W.], a narrow valley.

Combination, a banding together of persons for any particular purpose, as of workmen for the purposes of a strike. See Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), by which (s. 3) 'an agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a crime if such act

committed by one person would not be punishable as a crime.' See TRADE DISPUTE.

Combustio Pecuniæ. The ancient way of trying mixed and corrupt money by melting it down.—*Jacob.*

Come ceo ; as well for this.

Comes, a count or superior officer of a county.

Cominus, or more correctly **Comminus** [Lat.], hand-to-hand ; in personal contact.

Comitatu commisso, a writ or commission whereby a sheriff is authorized to enter upon the charge of a county.—*Reg. Brev.* 295.

Comitatu et castro commisso, a writ by which the charge of a county, together with the keeping of a castle, is committed to the sheriff.—*Ibid.*

Comitatus, a county. See POSSE COMITATUS.

Comites, earls, courtiers, or companions.

Comitissa [Lat.], a countess.

Comitiva, a companion or fellow-traveller ; also a troop or company of robbers.

Comity of Nations, the most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another. It is derived altogether from the voluntary consent of the latter, and is inadmissible when it is contrary to its known policy or prejudicial to its interests. In the silence of any positive rule affirming or denying or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless repugnant to its policy or prejudicial to its interests. It is not the comity of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other principles of the municipal law are ascertained and guided.—*Story's Conflict of Laws,* s. 38, and see *Westlake's Pr. Intern. Law.*

Commandeer, a thing is said to be commandeered when the government of the owner's country seize or require it to be placed at their disposal for military purposes, not for general political purposes. See *Capel* v. *Soulidi,* 1916, 1 K. B. 439.

Commander-in-Chief. The army was originally under the personal command of the sovereign, but in 1793 this command was delegated to a Commander-in-Chief appointed by patent. The command was divided in the middle of the nineteenth century between the Commander-in-Chief and a Secretary of State for War. The latter gradually became predominant, which led to the abolition of the former office in 1904, the Commander-in-Chief's duties being divided between the Army Council and the Inspector-General, the Secretary of State for War being responsible for the Army as a whole.

Commandery, a manor or chief messuage with lands and tenements thereto appertaining, which belonged to the priory of St. John of Jerusalem, in England ; he who had the government of such a manor or house was styled the commander, who could not dispose of it but to the use of the priory, only taking thence his own sustenance, according to his degree. The manors and lands belonging to the priory of St. John of Jerusalem were given to Henry the Eighth by 32 Hen. 8, c. 20, about the time of the dissolution of abbeys and monasteries ; so that the name only of commanderies remains, the power being long since extinct.

Commandite, Partnerships en, partnerships in France which are limited, where the contract is between one or more persons, who are general partners, and jointly and severally responsible, and one or more other persons, who merely furnish a particular fund or capital stock, and thence are called *commanditaires* or *commenditaires,* or partners *en commandite.*—' The salient features of that system in its simplest form are these : There is a managing partner, who manages the affairs of the partnership and is under unlimited liability to creditors, and there is a sleeping partner, who contributes, or agrees to contribute, capital of specified amount for the purposes of the partnership. His liability is limited to the amount of his capital, and he is not allowed to take part in the management of the business. Particulars are registered. Sometimes there are several managing partners and several sleeping partners.' See *Pollock on Partnership,* 9th ed. p. 207 ; *Code of Commerce of France,* arts. 23, 24 ; *Pothier tr. de la Société,* n. 60, 102. These partnerships are allowed in several of the states of America.—3 *Kent's Com.* 35. See LIMITED PARTNERSHIP.

Commandments, Table of Ten. By Canon Law (Canon 82) churchwardens are under an obligation to provide fittings and space for a table of the Ten Commandments in every church or chapel.

Commencement of Business. See COMPANY.

Commarchio, the confines of the land.

Commendam is a benefice or ecclesiastical living which, being void, is commended by the Crown to the care of a clerk until

it may be conveniently supplied with a pastor. Not only dignitaries and benefices, but deaneries, prebends, headships of colleges and hospitals, have been granted *in commendam*. The acceptance by a beneficed clerk of a second living vacated the one he already held, and to avoid this a dispensation, called a *commendam retinere*, had to be obtained either from the Pope, or in later times from the King. See *Mirehouse on Adv.* c. vii. s. 6.

By the Ecclesiastical Commissioners Act, 1836 (6 & 7 Wm. 4, c. 77), s. 18, which abolished *commendams* by bishops (with a saving for those at the passing of the Act), every *commendam*, whether to retain or to receive, and whether temporary or perpetual, became absolutely void.

Commenda est facultas recipiendi et retinendi beneficium contra jus positivum a suprema potestate. *Moore*, 905. — (A commendam is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.)

Commendators. During Popery the commendator was the person by whom the fruits of a benefice were levied during a vacancy. He was properly a steward or trustee; but the Pope, who was entitled to grant the higher benefices *in commendam*, abused the power, and gave them to commendators for their lives.—*Bell's Dict.*

Commendatory, he who holds a church living or preferment *in commendam*.

Commendatory Letters, those written by one bishop to another on behalf of any of the clergy, or others of his diocese travelling thither; or that the clerk may be promoted; or necessaries administered to others, etc.

Commendatum. See DEPOSIT.

Commendatus, one who lives under the protection of a great man.—*Spelm.*

Commerce [fr. *commutatio mercium*, Lat.], the intercourse of nations in each other's produce and manufactures, in which the superfluities of one are given for those of another, and then re-exchanged with other nations for mutual wants. Commerce relates to our dealings with foreign nations, colonies, etc.; trade, to mutual dealings at home.—See *McCull. Com. Dict.*

Commercial Court, the name given to a court presided over by a single judge for the trial, as expeditiously as may be, of cases set down in a commercial list at the Royal Courts of Justice. The list was established in 1896 (not by any Rule of the Supreme Court, but by inherent power of the High Court or any Division of it to arrange its business—see *Barry* v. *Peruvian Corporation*, 1896, 1 Q. B. at p. 109)—and Mr. Justice Mathew was the first judge. The particular circumstances and the question in issue must be considered in order to decide whether a case should be made a commercial cause (*Sea Insurance Co.* v. *Carr*, 1901, 1 K. B. 7). See *Annual Practice*, part vi., 'Commercial Causes,' and *Encyclopædia of the Laws of England*.

Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum. 3 *Inst.* 181.—(Commerce by the law of nations ought to be common, and not converted to monopoly and the private gain of a few.)

Commissariat, the whole body of officers in the commissaries' department.

Commissary, one who is sent or delegated to execute some office or duty as the representative of his superior. In ecclesiastical law, an officer of the bishop, who exercises spiritual jurisdiction in distant parts of the diocese. In military affairs, an officer who has the charge of furnishing provisions, clothing, etc., for an army.

Commissary Court. The name of the Court in Canterbury which exercises the functions of a Consistory Court (*q.v.*).

Commission, the warrant or letters-patent which all persons exercising jurisdiction, either ordinary or extraordinary, have, to authorize them to hear or determine any cause or action, or do other lawful things, as the commission of the judges, etc. There was formerly a High Commission Court founded on 1 Eliz. c. 1, but it was abolished by the Act of 16 Car. 1, c. 11, though an impotent attempt was made to re-establish it during the succeeding reign.

In commerce, the order by which any one traffics or negotiates for another; also, and much more frequently, the percentage given to factors or agents for transacting the business of others.

Earning Commission.—Commission may be earned by bringing contracting parties together, although an actual contract may not be made (*Green* v. *Bartlett*, (1863) 32 L. J. C. P. 261). From a contract to employ for a time certain on commission may be implied a contract to give opportunity to earn the commission throughout the time (*Turner* v. *Goldsmith*, 1891, 1 Q. B. 544; *Warren* v. *Agdeshman*, 38 T. L. R. 588).

Commission from the other Party.—That an agent employed by his principal to sell or otherwise to negotiate with another take a pecuniary or other benefit from that other for

himself as part of the negotiation, expressly or impliedly, the benefit belongs to the principal and he can recover it from the agent (*De Bussche* v. *Alt*, (1878) 8 Ch. D. 286), and the secret taking of such a benefit works a forfeiture of the agent's legal commission (*Andrews* v. *Ramsay*, 1903, 2 K. B. 635), and justifies dismissal (*Boston Deep Sea Fishing Co.* v. *Ansell*, (1888) 39 Ch. D. 339). See also the Prevention of Corruption Acts, 1906 and 1916, and the Prevention of Corruption Order, 1918, No. 321. And see CORRUPTION and BRIBE.

Commission of Anticipation, an authority under the Great Seal to collect a tax or subsidy before the day.—15 Hen. 8. See now Provisional Collection of Taxes Act, 1913.

Commission of Array, issued to send into every county officers to muster or set in military order the inhabitants. The introduction of commissions of lieutenancy, which contained in substance the same powers as these commissions, superseded them.—2 *Steph. Com.*

Commission of Assize. See ASSIZE.

Commission of Bankruptcy, the authority formerly given by the Lord Chancellor to certain commissioners, empowering them to proceed in the bankruptcy of a trader. Abolished by 1 & 2 Wm. 4, c. 56, s. 12; as to construction of unrepealed Acts mentioning it, see Bankruptcy Act, 1914, s. 131.

Commission of Charitable Uses, issued out of Chancery to the bishop and others to inquire into misapplication of lands given to charitable uses.—43 Eliz. c. 4. See CHARITABLE USES.

Commission Day, the opening day of the assize; so called because on that day the Royal Commission to the judges was formerly read in court—a ceremony dispensed with by Rule 14 of the Circuits Order, 1884, Rule 13 of which Order provides for the postponement of Commission Day. Till that Order, court business was never transacted on Commission Day, whereas now it very frequently is.

Commission del Credere, where an agent of a seller undertakes to guarantee to his principal the payment of the debt due by the buyer. The phrase *del credere* is borrowed from the Italian language, in which its signification is equivalent to our word guarantee or warranty.—*Story's Agency*, 28.

Commission of Delegates, issued under the Great Seal to certain persons, usually lords, bishops and judges, to sit upon an appeal to the King in the Court of Chancery, where a sentence was given in any ecclesiastical cause by the archbishop.—25 Hen. 8, c. 19, repealed by 2 & 3 Wm. 4, c. 92.

Commission of Oyer and Terminer. See ASSIZE.

Commission of Rebellion, an attaching process, formerly issuable out of Chancery, to enforce obedience to a process or decree; abolished by Order of 26th August, 1841.

Commission of the Peace, issues under the Great Seal for the appointment of justices of the peace in a form settled in 1590, which continues with little alteration at the present day.

Commission to examine Witnesses, was, under 15 & 16 Vict. c. 86, s. 36, issued in Chancery suits, where the witnesses resided abroad; and at Common Law under the 1 Wm. 4, c. 22, s. 4. See now R. S. C. 1883, Ord. XXXVII., r. 5. See DE BENE ESSE and LETTERS OF REQUEST.

Commission to inquire of Faults against the Law, anciently set forth on extraordinary occasions and corruptions.

Commission Merchant. A factor is commonly said to be an agent employed to sell goods or merchandise, consigned or delivered to him by or for his principal for a compensation commonly called factorage or commission. Hence he is often called a commission merchant or consignee; and the goods received by him for sale are called a consignment.—*Story's Agency*, 28.

Commissioner, a person authorized by letters-patent, Act of Parliament, or other lawful warrant, to examine any matters, or execute any public office, etc. The Commissioners Clauses Act, 1847 (10 & 11 Vict. c. 16), regulates the qualification, etc., of commissioners, who under an Act of Parliament execute undertakings of a public nature; and in particular enacts by s. 60 that they are not to be personally liable.

Commissioners Clauses Act, 1847 (10 & 11 Vict. c. 16), consolidates the usual statutory clauses constituting and regulating commissioners for regulating public undertakings.

Commissioners in Lunacy. Now Board of Control. See UNSOUND MIND.

Commissioners for Oaths. Masters extraordinary in Chancery acted in very early times as commissioners to administer oaths to persons making affidavits (see that title) before them concerning Chancery suits, and the judges of the Common Law courts were authorized, under 29 Car. 2, c. 5, by commission to empower 'what and as many persons as they should think fit and neces-

sary ' to take affidavits for one shilling fee concerning Common Law actions. The Masters in Chancery were succeeded by solicitors under 16 & 17 Vict. c. 78, appointed by the Lord Chancellor, the fee being one shilling and sixpence.

The Commissioners for Oaths Act, 1889 (52 & 53 Vict. c. 10), which amends and consolidates twenty-four enactments on the subject, enacts by s. 1 that the Lord Chancellor may, from time to time, by commission signed by him, appoint practising solicitors or other fit and proper persons to be commissioners for oaths; with power, in England or elsewhere, to administer any oath or take any affidavit for the purpose of any court or matter in England, etc. But it is provided that a commissioner may not act in any proceedings in which he is solicitor to any of the parties to the proceeding, or in which he is interested, and to the same effect is R. S. C. Ord. XXXVIII., r. 16.

The ordinary minimum qualification is in London, and other large towns, six years' continuous practice as a solicitor from the date of the first certificate (but this rule is under special circumstances sometimes relaxed), or if he has been a barrister, from the date of his call to the Bar (Solicitors Act, 1932, s. 73), and each application must be supported by two barristers, two solicitors, and at least six neighbours of the applicant. See Memorandum of Lord Chancellor issued in January, 1894. The appointment must be registered with the Law Society or their Appointee, Solicitors Act, 1932, s. 72.

The fees for Court business, two shillings for each oath, and one shilling and fourpence for each exhibit, are given by Supreme Court Fees Order, 1930, and it has been usual to take similar fees for business not in court. See also R. S. C. Ord. LXV., r. 8, Appendix N.

The Commissioners for Oaths Act, 1891, allows persons to take oaths before commissioners for oaths instead of justices of the peace, in matters arising under the Pawnbrokers Act, 1872, and other Acts therein mentioned.

Commissioners of Crown Lands, the name of the Commissioners of Woods and Forests, see the Forestry (Transfer of Woods) Act, 1923, and Order in Council, 1924, S. R. O., 1924 (No. 1370). The Commissioners were incorporated by the Crown Lands Act, 1927 (17 & 18 Geo. 5, c. 231); their powers and duties are provided for by this Act. The Minister of Agriculture and Fisheries is an *ex-officio* commissioner (6 Edw. 7, c. 28).

Commissioners of Customs and Excise. The constitution and powers of these Commissioners are provided for by the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), and amending Acts. See the Excise Transfer Order (S. R. O. 1909, No. 197), by which excise duties were transferred to these Commissioners from the Inland Revenue.

Commissioners of Inland Revenue. The appointment and powers of these Commissioners are regulated by the Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21), and see preceding title.

Commissioners of Sewers, directed to see drains and ditches well kept and maintained in the marshy parts of England for the better conveyance of the water into the sea, and the preservation of the grass upon the land, by 13 Eliz. c. 9 and subsequent Acts. The office of Commissioners of Sewers was abolished by 20 & 21 Geo. 5, c. 44. The powers and duties of the Commissioners are to be transferred to Catchment Boards. See LAND DRAINAGE.

Commissioners of Woods. See COMMISSIONERS OF CROWN LANDS.

Commissioners of Works. The Works and Public Buildings Act, 1874 (37 & 38 Vict. c. 84), as amended, regulates the incorporation, powers and duties of these Commissioners, and see the Ancient Monuments Acts, 1913 and 1931.

Commissioners, Perpetual, for taking acknowledgments of married women under the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), and the Married Women's Reversionary Interests Act, 1857 (20 & 21 Vict. c. 5), *Chitty's Statutes*, tit. '*Fines and Recoveries*.' See s. 81 of the Act, by which as amended by s. 25 of the Judicature Act, 1881, proper persons were appointed such Commissioners by the Lord Chief Justice of England from time to time. The Law of Property Act, 1925, s. 167, has abolished the statutory requirements for acknowledgments by married women as respects settlements executed after 1925.

Commissoria lex, the term applied to a clause often inserted in conditions of sale, by which a vendor reserved to himself the privilege of rescinding the sale, if the purchaser did not pay his purchase-money at the time agreed on.—*Dig.* 18, tit. 3.

Commitment, (1) the sending a person to prison by warrant or order, either for a crime, contempt, or contumacy (see the Debtors Act, 1869, for the abolition of imprisonment for debt, 32 & 33 Vict. c. 62, s. 5). In the county court, judgment debts which the debtor has the means (*Re A*

Debtor, 1905, 1 K. B. 374) to, but will not pay, can be enforced by commitment for a term not exceeding six weeks. This procedure can be applied to an award under the Workmen's Compensation Act, 1906 (*Bailey* v. *Plant*, 1901, 1 K. B. 31); see ATTACHMENT, and R. S. C. Ord. XLIV.; and (2) the sending to prison, pending his trial at Assizes or Quarter Sessions, by justices of the peace, under the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), of a person charged with an indictable offence, in a case where the evidence is sufficient.

Committal. See COMMITMENT.

Committee, certain persons elected or appointed to whom any matter or business is referred, either by a legislative body or by any corporation or society; e.g., a Committee of a Town Council under the Municipal Corporations Act, 1882, ss. 22 and 190, and Local Government Act, 1933 (c. 51), s. 75, or of directors under the Companies Clauses Act, 1845, s. 95. See also PARLIAMENTARY COMMITTEE.

Committee of a Person of Unsound Mind or Idiot, the person to whom the care and custody of the person and estate, or either, of a person of unsound mind is committed by the Court. Separate committees may be appointed (*a*) of the person, (*b*) of the estate, and joint committees may be appointed for either or both of these purposes. See Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 120. A committee can only be appointed after a formal inquisition. In practice, receivers are generally appointed under the Lunacy Acts, 1890 (53 Vict. c. 5), s. 116; 1908 (8 Edw. 7, c. 47), s. 1, and 1922 (12 & 13 Geo. 5, c. 60).

Committee of Inspection. In bankruptcy (after the making of a receiving order) the creditors may appoint a committee to supervise the administration of the bankrupt's property by the trustee (Bankruptcy Act, 1914, s. 20). As to the necessity for the trustee to obtain the committee's consent and to follow its directions, see Bankruptcy Act, 1914, ss. 56 and 79. In companies winding up, a similar committee may be appointed by the creditors and contributories: see Companies Act, 1929, ss. 187, 188, 196–199, 212 and 230.

Committitur Piece, an instrument in writing on parchment, which charges a person, already in prison, in execution at the suit of the person who arrested him.—2 *Ch. Arch.*

Commodatum. He who lends to another a thing for a definite time, to be enjoyed and used under certain conditions, without any pay or reward, is called *commodans*; the person who receives the thing is called *commodatarius*, and the contract is called *commodatum*. It differs from *locatio* and *conductio* in this, that the use of the thing is gratuitous.—*Dig.* 13, tit. 6; *Instit.* iii. 2, 14.

Commodum ex injuriâ suâ nemo habere debet. *Jenk. Cent.* 161.—(No person ought to have advantage from his own wrong.)

Common, a profit which a man has in the land of another; it derives its name from the community of interest which thence arises between the claimant and the owner of the soil, or between the claimant and other commoners entitled to the same right; all which parties are entitled to bring actions for injuries done to their respective interests, and that both as against strangers and against each other. It is called an incorporeal right, which lies in grant, as if originally commencing in some agreement between lords and tenants, for some valuable consideration which, by lapse of time, being formed into a prescription, continues, although there be no deed or instrument in writing which proves the original contract or agreement. It differs from a rent, principally in freedom of enjoyment on the one hand, and in freedom from obligation on the other; which the law expresses by the quaint antithesis that it lies not in *render* but in *prender*. It is also incidentally distinguished by its fruits being always taken in kind, and being in general not otherwise measured than by limiting the instruments of enjoyment. The Prescription Act (2 & 3 Wm. 4, c. 71), s. 1, enacts that after thirty years' enjoyment a right of common cannot be defeated by merely showing it commenced within time of memory, and after sixty years' enjoyment the right shall be absolute and indefeasible, unless it appear that the same was taken and enjoyed under some deed or writing.

There are four sorts of common, viz.:—

(1) Common of pasture, limited or unlimited, which is the right of feeding one's beasts in another's land, and this is subdivided into:

(*a*) Appendant, which is a privilege belonging to the owners or occupiers of arable land holden of a manor, to put upon its wastes their commonable beasts, viz., horses, kine, or sheep, such as either plough or manure the arable land granted.

(*b*) Appurtenant, which arises from no connection of tenure, nor from any absolute necessity, but may be extended to other beasts besides such as are generally commonable, as swine, goats, or geese. This can

only be claimed by grant, or by title of prescription, which supposes a now forgotten grant.

(*c*) Because of vicinage or neighbourhood (*pur cause de vicinage*), which takes place where the tenants of two adjoining townships have suffered their cattle to range indiscriminately over both wastes, and it seems that either lord may put an end to it by erecting a fence. In close connection with this, and substantially of the same kind, is *common of shack*, or the right of persons occupying lands lying together in the same common field, to turn out their cattle after harvest, to feed promiscuously in that field.

(*d*) In gross or at large, which is neither appendant nor appurtenant to land, but is annexed to a man's person by granting it to him and his heirs by deed, or it may be claimed by prescriptive right, as by a parson of a church or a corporation sole. The right cannot be granted for an unlimited number of cattle.

(2) Common of piscary, a liberty of fishing in another's water. It is either appendant, appurtenant, or in gross.

(3) Common of turbary, a license to dig turf upon the land of another, or in the lord's waste; it may be either appendant or appurtenant, i.e., appendant or appurtenant to a house, and not to lands, for turfs are to be burnt in the house, or it may be in gross.

(4) Common of estovers or estouviers, or necessaries, a liberty of taking necessary wood, for the use or furniture of a house or farm from off another's estate. The Saxon word *bote* is used by us as synonymous with the French *estovers*. House-bote is a sufficient allowance of wood to repair, or to burn in the house; which latter is sometimes called fire-bote; plough-bote and cart-bote are wood to be employed in making and repairing all instruments of husbandry; and hay-bote or hedge-bote is wood for repairing of hays, hedges, or fences.—See 2 *Bl. Com.* 32; *Williams on Rights of Common*.

The inclosure of commons is regulated by the Inclosure Acts, but these Acts contain (see especially the Inclosure Act, 1845 (8 & 9 Vict. c. 118), s. 30) many provisions for the protection of commoners and the formation of 'recreation grounds' and 'field gardens.'

The regulation of commons, for many years mainly provided for by the Commons Act, 1876 (39 & 40 Vict. c. 56), is now mainly provided for by the Commons Act, 1899 (62 & 63 Vict. c. 30), which, though it does not repeal the Act of 1876, will probably supersede it as being too cumbrous and expensive in its procedure. The Act of 1899 enables urban and rural district councils to make regulations under the supervision of the Board of Agriculture. A district council may delegate its powers of management to a parish council, and a parish council may contribute to the expenses of management. Compensation, to be ascertained under the Lands Clauses Acts, is given for interests taken away or injuriously affected by any scheme under the Act.

The Commons Act, 1908 (8 Edw. 7, c. 44), enables the persons entitled to turn out animals on a common to make regulations as to the turning out of entire animals, but the regulations must be confirmed by the Board of Agriculture and Fisheries, and see the Horse Breeding Act, 1918, s. 10.

The Law of Property Act, 1925, ss. 193 and 194, contains provisions for lands which are Metropolitan Commons within the meaning of the Metropolitan Commons Acts, 1866 to 1898, or manorial waste, or commons which are wholly or partly situated within a borough or urban district and any lands which on the 1st January, 1926, were subject to rights of common and become assimilated to the above-mentioned commons by the lord of the manor or person entitled for the purposes of s. 193. That section sets out and regulates the right of public access for the purposes of air and exercise under statutory conditions. Section 194 restricts building and fencing on commons. Under par. 4 of the 12th Sched. of the L. P. Act, 1922, an enfranchisement of copyhold lands under that Act shall not deprive a tenant of a commonable right in respect of the enfranchised land and such right is to continue notwithstanding that the land has become freehold.

As to damage, see title MALICIOUS DAMAGE ACT.

Common Assurances, the legal evidences of the translation of property, whereby every person's estate is assured to him. These common assurances are of four kinds:—(1) By matter *in pais*, or deed, which is an assurance transacted between two or more private persons, *in pais*, in the country; that is (according to the old Common Law) upon the very spot to be transferred. (2) By matter of *record*, or an assurance transacted only in the sovereign's public courts of record, or under the authority of a public board or commission empowered by Act of Parliament to record its proceedings. (3) By special *custom* obtaining in some particular places and relating only to some

particular species of property: which three are such as take effect during the life of the party conveying or assuring. (4) The fourth takes no effect till after his death, and that is by *devise*, contained in his last will and testament.—2 *Bl. Com.* 294.

Common Bench [fr. *banc.*, Sax., bench], a name of the Court of Common Pleas. Thus the 'Common Bench Reports' are the reports of the cases decided in the Court of Common Pleas. See COMMON PLEAS.

Common Council, the councillors of the City of London. See COUNCIL.

Common Counts. The indebitatus (see that title) counts in a declaration for goods sold and delivered, or bargained and sold, for work done, for money lent, for money paid, for money received to the use of the plaintiff, for interest or for money due on an account stated, were so called.—Superseded by the Judicature Acts. See STATEMENT OF CLAIM.

Common Employment. The general rule that a master is liable for damage caused by the negligence of his servant has the exception that where the person injured is the fellow-servant of and engaged in common employment with the person whose negligence causes the injury, the master is not liable in an action at *common law*. The principle upon which the exception rests is that 'a servant who engages for the performance of services for compensation does as an implied part of the contract take upon himself, as between himself and his master, the natural risks and perils incident to the performance of such services; the presumption of law being that the compensation was adjusted accordingly, or, in other words, that these risks are considered in the wages' (per Blackburn, J., *Morgan* v. *Vale of Neath R. Co.*, (1864) 5 B. & S. at p. 578). For review of cases, see Bray, J., in *Cribb* v. *Kynoch, Ltd.*, 1907, 2 K. B. 548. The doctrine applies in spite of difference in rank or grade between the two servants, e.g., a miner injured by the negligence of the general manager (*Wilson* v. *Merry*, (1868) L. R. 1 H. L. (Sc.) 326); or difference in the occupations of the servants, e.g., collier injured by negligence of mason and engineer (*Coldrick* v. *Partridge*, 1910, A. C. 77). 'One who volunteers to associate himself with the defendant's servant in the performance of his work, and that without the consent or even knowledge of his master, cannot stand in a better position than those with whom he associates himself in respect of their master's liability' (per Erle, C.J., *Potter* v. *Faulkner*, (1861) 1 B. & S. at p. 806). It seems that if the injured person be an infant of such tender years as to make it unreasonable to assume that he wittingly undertook the risk of negligence of his fellow-servant, the doctrine does not apply: a boy of 14 is not of such tender years (*Bass* v. *Hendon U. D. C.*, (1912) 28 T. L. R. 317 (C. A.)). The master is of course liable to his servant for his own acts of negligence, and, further, the defence of common employment will not be available to him if the negligence alleged consists in a breach of a statutory duty (*Groves* v. *Wimborne* (*Lord*), 1898, 2 Q. B. 402; *David* v. *Britannic Co.*, 1909, 2 K. B. 146); nor in respect of claims under the Workmen's Compensation Acts (*q.v.*).

The doctrine of Common Employment has been modified by the Employers Liability Act, 1880, which entitles a workman to compensation for injuries caused as follows as if 'the workman had not been a workman of, nor in the service of the employer, nor engaged in his work':—

(i.) By reason of a defect in the condition of the works or plant connected with or used in the business of the employer (*Fanton* v. *Denville*, 1932, 2 K. B. 309) (defect in machinery—negligence of fellow-servant—duty of employer); or (ii.) by reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence; or (iii.) by reason of the negligence of any person in the service of the employer to whose orders or directions the workman was bound to conform where the injury resulted from the workman conforming to such orders or directions; (iv.) by reason of the act or omission of any person in the service of the employer done or made in obedience to rules of the employer or to rules made with authority on his behalf; or (v.) by reason of the negligence of any person in the service of the employer who has charge or control of any signal, points, or train on a railway.

The Act, however, limits (i.) and (iv.) above by providing that in the case of (i.) the employer shall not be liable unless the defect arose or was not discovered or remedied by the negligence of the employer or of his servant entrusted with the supervision of the works, plant, etc., and in the case of (iv.) that the injury must result from a defect or impropriety in the rules, and that rules made or accepted by a Government department are not to be deemed defective,

and, further, that the workmen must have drawn the employer's attention to the defect or negligence, if he knew of its existence, unless he was aware that the employer already knew. The amount recoverable is limited to three years' earnings, and the time within which actions may be brought is limited to six months from the date of the accident, or in the case of death 12 months from the date of death. Notice of injury must be given within six weeks. The action can only be brought in a County Court. Consult the Act itself and *Clerk and Lindsell on Torts*; and see MASTER AND SERVANT and WORKMEN'S COMPENSATION ACTS.

As to *scienter* and common employment, see *Knott* v. *L.C.C.* (1933), 175 L. T. 282.

Common Fine, a small sum of money paid to the lords by the residents in certain leets.—*Fleta*, l. 7, c. xlviii.

Common Hall, a court in the city of London, at which all the citizens, or such as are free of the City, have a right to attend.

Common Informer, a person who prosecutes others for breaches of penal laws, or furnishes evidence on criminal trials for no other reason than to get the penalty or a share of it; for a recent instance of an action to recover penalties, see *Forbes* v. *Samuel*, 1913, 3 K. B. 706. Statutes occasionally provide that no proceedings shall be taken without the leave of the Attorney-General, see, e.g., the Larceny (Advertisements) Act, 1870 (33 & 34 Vict. c. 65), and the Public Health (Officers) Acts, 1884 and 1885. Sometimes, too, as by the Larceny (Advertisements) Act, 1870, the informers have lost the benefit of their penal action by a retrospective enactment that proceedings therein be stayed in payment of their costs out of pocket. See PENAL STATUTE.

Common Law (*lex communis*, Lat.]. 'The phrase 'common law' is used in two very different senses. It is cometimes contrasted with equity; it then denotes the law which, prior to the Judicature Act, was administered in the three "superior" Courts of law at Westminster, as distinct from that administered by the Court of Chancery at Lincoln's Inn. At other times it is used in contradistinction to the statute law, and then denotes the unwritten law, whether legal or equitable in its origin, which does not derive its authority from any express declaration of the will of the Legislature. This unwritten law has the same force and effect as the statute law. It depends for its authority upon the recognition given by our Law Courts to principles, customs, and rules of conduct previously existing among the people. This recognition was formerly enshrined in the memory of legal practitioners and suitors in the Courts; it is now recorded in the voluminous series of our law reports which embody the decisions of our judges together with the reasons which they assigned for their decisions.'—*Odgers on the Common Law*, p. 59.

The distinction between written and unwritten law is adopted from the Romans, who borrowed it from the Greeks (*Inst.* l. 1, t. 2, ss. 3, 9, 10). In this distinguishing our own laws into the *scriptæ* or statute, and *non scriptæ* or common, we use the latter in a peculiar and restrained sense; signifying by it nothing more than the original institution and authority of the law are not set down in writing, as is the case with Acts of Parliament; but that it receives its binding powers, as a law, from long and immemorial usage, and universal reception throughout the realm. The authenticity of these customs, rules, and maxims rests entirely upon reception and usage, as declared by our judges, who are the sworn depositaries and interpreters of our law. This Common Law is properly distinguished into three kinds: (1) General customs, or those applicable to and governing the whole kingdom, comprehending the law of nations and the law merchant. (2) Particular customs, i.e., affecting the inhabitants of particular districts. (3) The Civil and Canon Laws, properly denominated the ecclesiastical, military, maritime, and academical laws.—See *Hale's Hist. of the Com. Law*, c. iii.; *Mackintosh's England*, 274; 1 *Kent's Com.* 447, 468.

By the Judicature Act, 1873, s. 24, replaced by the Judicature Act, 1925, s. 36, all branches of the Supreme Court of Judicature are to administer law and equity concurrently; and by s. 25, and Jud. Act, 1875, s. 10, see now Judicature Act, 1925, s. 36, the rules of law on certain points are altered.

Common Lodging-House. See LODGING HOUSES, COMMON.

Common Pleas, the Court of, so called because its original jurisdiction was to determine controversies between subject and subject, one of the three Superior Courts of Common Law at Westminster, presided over by a lord chief justice and five (formerly four) *puisne* judges. It was detached from the King's Court (*Aula Regis*) as early as the reign of Richard I., and the 14th clause of Magna Charta enacted that it should not

follow the King's Court, but be held in some certain place. Its jurisdiction was altogether confined to civil matters, having no cognizance in criminal cases, and was concurrent with that of the King's Bench and Exchequer in personal actions and ejectment. It had a peculiar or exclusive jurisdiction in the following cases :—

(I.) Formal or plenary.

(1) Real actions, under the C. L. P. Act, 1860, s. 26.

(2) Under the Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), over petitions complaining of an undue return or undue election of a member of parliament.

(II.) Summary.

Under the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31).

(III.) Auxiliary.

(1) Registration of judgments, annuities, etc. (1 & 2 Vict. c. 110 ; 2 & 3 Vict. c. 11 ; 3 & 4 Vict. c. 82 ; 18 Vict. c. 15).

(2) Under the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), respecting the fees connected with conveyances executed by virtue of the Act, and also with the examination of married women concerning their assurances.

(IV.) Appellate.

Appeals from the Revising Barristers' Courts, under the Parliamentary Registration Act, 1843 (6 & 7 Vict. c. 18).

By Jud. Act, 1873, s. 34, replaced by Judicature Act, 1925, s. 18, the exclusive jurisdiction of this court was retained for the ' Common Pleas Division ' which represented it ; but by Order in Council of December 16, 1880, under s. 31 of that Act, that division was merged in the Queen's (now King's) Bench Division.

Common Seal, a seal used by a corporation as the symbol of their incorporation, and see CORPORATION.

Common Serjeant, a judicial officer of the Corporation of the City of London, appointed by the Crown (Loc. Gov. Act, 1888 (51 & 52 Vict. c. 41), s. 42 (14))., and one of the judges of the Central Criminal Court (*q.v.*) ; an assistant to the Recorder. See *Pulling on the Laws and Customs of London.*

Common Vouchee. Obsolete. See RECOVERY.

Commonable Beasts, such as are necessary for the ploughing or manuring of land, as horses, oxen, cows, and sheep.

Commonalty [*populus, plebs, communitas,* Lat.], the people of England.—2 *Inst.* 539.

Commonance. the commoners, or tenants and inhabitants, who have the right of common or commoning in open field.

Commons, House of. See HOUSE OF COMMONS ; PARLIAMENT.

Commonwealth, 1. The social state of a country, without regarding its form of government ; also a republic, or that form of government in which the administration of public affairs is open to all, with few, if any, exceptions. 2. The period of the administration of the Parliamentary Army, and the Protector Cromwell. The journals of this parliament are found along with the rest. See DE JURE and UPPER BENCH.

Commorancy, or **Commorant,** an abiding, dwelling, continuing, or lying in a certain place.

Commorientes, persons who die by the same accident or upon the same occasion. By English law, there was no presumption of survivorship in such a case, whereas by the Code Napoleon, and the Civil Law generally, there is a presumption that the physically stronger survive the physically weaker. See *Wing* v. *Angrave,* (1860) 8 H. L. C. 183, in which a husband, a strong man who could swim well, was swept off the deck of a ship by the same wave which swept off his delicate wife who could not swim.—*Best on Evidence,* s. 410 : but now by s. 184 of the Law of Property Act, 1925, in all cases where after 1925 two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the Court) for all purposes affecting the title to property be presumed to have occurred in the order of seniority and accordingly the younger shall be deemed to have survived the elder.

Commorth, or **Comorth** [fr. *cymmorth,* Brit. ; *subsidium,* Lat.], a contribution which was gathered at marriages, and when young priests said or sung the first masses, by 4 Hen. 4, c. 27, and prohibited in Wales and the Marches, 26 Hen. 8, c. 6.—*Jacob.*

Commote, half a cantred or hundred in Wales, containing fifty villages.—*Stat. Wallial,* 12 Edw. 1. Also a great seigniory or lordship, and may include one or divers manors.—*Co. Litt.* 5.

Commune Concilium Regni Angliæ, the common council of the king and people assembled in parliament.

Communi custodia, an obsolete writ which anciently lay for the lord, whose tenant, holding by knight's service, died, and left his eldest son under age, against a stranger

that entered the land, and obtained the ward of the body.—*Reg. Brev.* 161.

Communia placita non tenenda in Scaccario, an ancient writ directed to the Treasurer and barons of the Exchequer, forbidding them to hold pleas between common persons (i.e., not debtors to the king, who alone originally sued and were sued there) in that court, where neither of the parties belongs to the same.—*Reg. Brev.* 187.

Communion, Holy. As to the doctrine and practice of the Church of England in reference to the celebration of the Holy Communion, see *Sheppard* v. *Bennett,* (1870) L. R. 3 Ad. & Ec. 167 ; L. R. 4 P. C. 350, 371 ; *Read* v. *Bishop of Lincoln,* 1891, P. 9 ; 1892, A. C. 644, and the authorities there referred to. As to the right of the clergyman to repel from Holy Communion, see *Rex* v. *Dibdin,* 1910, P. 57 ; 1912, A. C. 533.

Communis error facit jus.—4 *Inst.* 240. (Common error makes law.) 'A maxim to be applied with very great caution.' See *Broom's Legal Max.*, where common recoveries (see RECOVERY) are given as an example of its application, as also is the practice of the courts of adhering to erroneous, because long-established, views of the law. See PRECEDENTS.

Commutation, conversion ; the change of a penalty or punishment from a greater to a less ; or giving one thing in satisfaction of another—as commuting tithes into a rent-charge, copyhold services into money payments, etc., annual payments into one lump payment, as under the Pensions Commutation Act, 1871 (34 & 35 Vict. c. 36).

Commutative Contract, one in which each of the contracting parties gives and receives an equivalent.

Companage, all kinds of food, except bread and drink.—*Spelm.*

Company [fr. *compagnia,* Ital., which word is still printed on Bank of England notes as 'compᵃ'], a body of persons associated for purposes of business, sometimes, but not now so frequently as some years ago, styled a Joint Stock Company.

A company has its origin either (1) in a charter, as the Bank of England and many insurance companies ; or (2) in a special Act of Parliament, with which, as authorizing an undertaking of a public nature such as a railway, the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), is necessarily incorporated ; or (3) in registration under the Companies Acts, 1862 and subsequent Acts, now consolidated into the Companies Act, 1925 (19 & 20 Geo. 5, c. 23).

By s. 13 of the Act of 1925 (1) on the registration of the memorandum of a company the registrar shall certify under his hand that the company is incorporated and, in the case of a limited company, that the company is limited. (2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in the Act.

Companies having a share capital are not entitled to commence business before the registrar has delivered a certificate that the company is so entitled. This does not apply to private companies or to any company registered before 1901 or any company registered before 1st July, 1908, which has not issued a prospectus for public subscription of shares, see s. 94.

The main distinction between ordinary partnerships for business purposes and company partnerships is that a duly constituted company is a 'person' in law (see CORPORATION), while a mere partnership is not a legal entity, although the partners may sue and be sued in the firm's name, and the consequence is that in ordinary partnerships the whole property of each partner is liable for the debts of the partnership, whereas in limited company partnerships the liability of the partners—or shareholders, as they are called—is limited either by the charter, Act of Parliament, or memorandum of association. For though companies may be and have been registered with unlimited liability since that principle was first, in 1855, applied to ordinary companies, so few unlimited companies now remain, since the conversion of unlimited into limited companies was allowed in 1879, and see now s. 16 of the Companies Act, 1929, that unlimited companies may be practically disregarded. But if a limited company carries on business for more than six months after with less than seven members, each member having knowledge of the reduction below the minimum becomes severally liable for the whole of the debts contracted during the

period of reduction. In the case of private companies the minimum number is two (Companies Act, 1929, s. 28).

Before the 1929 Act, the Act of 1862 had been frequently amended, chiefly as the result of close and careful expert examination as to the best means of remedying certain defects in the working of the Acts which enabled persons to make use of them for dishonest purposes. The Act of 1929, by ss. 357 and 358, requires registration of every company, association or partnership of more than ten persons for banking and of more than twenty persons for carrying on any other business having for its object the acquisition of gain, unless it be formed under special Act of Parliament, or letters-patent, or be a mining company subject to the jurisdiction of the Stannaries (see STANNARY).

The first section provides for incorporation and is as follows :—

2. (1) Any seven or more persons or where the company to be formed will be a private company, any two or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without liability.

(2) Such a company may be either—

(i) A company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a ' company limited by shares '); or

(ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a ' company limited by guarantee'); or

(iii) A company not having any limit on the liability of its members (in this Act termed an ' unlimited company ').

Companies incorporated outside Great Britain which carry on business within Great Britain are subject to Part XI. (ss. 343–353) of the Companies Act, 1929. This part of the Act applies to all such companies which have established or establish a place of business in Great Britain in extension of s. 74 of the Companies (Consolidation) Act, 1908, which only applied to companies establishing a place of business here after 1st April, 1909. The meaning of establishing a place of business was discussed in *Lord Advocate* v. *Huron & Erie Loan Co.*, 1911, S.C. 612, see also s. 90 as to charges by such companies or acquired by them.

Companies limited by shares or by guarantee must add the word ' limited ' after their name whenever used, but in some cases the licence of the Board of Trade to dispense with limited may be obtained, see Companies Act, 1929, s. 18. All companies subject to the Act must have a registered office (s. 92, *ibid.*). As to name, see ss. 17 to 19.

As to registration under the Companies Act, 1929, of companies not formed under that Act, see ss. 321–336 *ibid.*

Consult *Palmer ;* See ASSOCIATION ; DIRECTORS ; FOREIGN COMPANY ; PRIVATE COMPANY ; SUBSIDIARY COMPANY ; STANNARY.

Comparative Legislation, Society of. A body formed for the purpose of studying and circulating information respecting the laws and legislation of various countries. The Society issues journals to its subscribers two or three times a year, one of them each year containing an account of the legislation of the whole British Empire for a previous year.

Comparison of Handwriting. See Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18) (applicable to civil as well as to criminal cases), and HANDWRITING.

Comparuit ad diem (he appeared at the day).

Compassing [fr. *compasser*, Fr., to encircle, *con*, with, and *passus*, a step, Lat.], imagining or contriving. To compass or imagine the death of the king, of his queen, or of their eldest son and heir is treason by 25 Edw. 3, c. 2. ' Compassing ' or ' imagining ' are here synonymous terms, the word ' compass ' signifying the purpose or design of the mind or will, and not, as in common speech, the carrying such design to effect ; but this compassing or imagining, being an act of the mind, cannot fall under any judicial cognizance unless it be demonstrated by some open, or *overt*, act.—See 4 *Bl. Com.* 78.

Compaternity, spiritual affinity.

Compellativus, an adversary or accuser.—*Leg. Athel.*

Compendia sunt dispendia. (Abbreviations are detriments.) ' It is ever good to rely upon the book at large, for many times *compendia sunt dispendia*, and *melius est petere fontes quam sectari rivulos.*'—*Co. Litt.* 305 *b.* This passage from Coke is taken as the motto to *Smith's Leading Cases.*

Compensatio Criminum (compensation of offences), a term used by the canonists. Where husband and wife had both been guilty of adultery, there was, according to the doctrine of the Canon Law, a *compensatio criminum*, i.e., the guilt of the one was neutralized by that of the other, and both were restored to the position of innocent persons. See DIVORCE.

Compensation, making things equivalent, satisfying or making amends, a reward for the apprehension of criminals; also that equivalent in money which is paid to the owners and occupiers of lands taken or injuriously affected for public purposes and under Act of Parliament, e.g., the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), but where the land is acquired compulsorily by a Government Department or any local or Public Authority the compensation is regulated by the Acquisition of Land (Assessment of Compensation) Act, 1919 (9 & 10 Geo. 5, c. 57) and Rules of 1919, and see Housing Act, 1936, ss. 40 and 42 and Schedules, and *Lloyd* or *Cripps on Compensation*, 7th ed. Also (in Scots Law) a sort of right by set-off or stoppage, whereby a person who has been sued for a debt demands that the debt may be compensated with what is owing to him by the creditor.

See INTOXICATING LIQUORS; WORKMEN'S COMPENSATION; VALUATION; AGRICULTURAL HOLDING; and LANDLORD AND TENANT.

Compertorium, a judicial inquest in the Civil Law, made by delegates or commissioners to find out and relate the truth of a cause.—*Paroch. Antiq.* 575.

Complainant, one who urges a suit or commences a prosecution against another.

Complaint. This term is most generally used with reference to Courts of Summary Jurisdiction where proceedings are commenced 'on information,' but is also sometimes used to describe a claim in an action of a civil or *quasi*-civil character. See STATEMENT OF CLAIM. As to when a 'complaint' made to a third person and *not* in the presence of the accused is admissible as evidence, see *R.* v. *Osborne*, 1905, 1 K. B. 551, and as to statements made *in* the presence of the accused, see *R.* v. *Norton*, 1910, 2 K. B. 496.

Complice, one who is united with others in an ill-design; an associate; a confederate; an accomplice.

Compos mentis (of sound mind).

Composition. 1. An amicable arrangement of a law-suit. See COMPROMISE.

2. An agreement between a parson, patron, or ordinary, and the owner of lands, for commutation of tithes, e.g., that such lands shall for the future be discharged from payment of tithes, by reason of some land or other real recompense given to the parson in lieu and satisfaction thereof. Tithe Act, 1832, s. 2, and see TITHES.

3. Also an agreement made between an insolvent debtor and his creditors, by which the latter accept a part of their debts in satisfaction of the whole. See ARRANGEMENTS.

Compositio mensurarum, the title of an ancient ordinance for measures, not printed. —*Jac. Law Dict.*

Compost, several sorts of soil or earth and other matters mixed, in order to make a fine kind of mould for fertilizing lands.

Compound Householder. The payment of rates was formerly one of the ingredients in the qualification for the parliamentary franchise; but modern statutes have enabled the owners of small houses to pay the rates for the occupiers and receive a composition for so doing. To prevent the occupiers being disfranchised by this process, it was enacted that they might claim to be rated themselves, and such householders so claiming became commonly known as 'compound householders,' as appears from the title to the Act, 14 & 15 Vict. c. 14, now repealed, see Representation of People Act, 1918, Schedule 8.

Compound Interest, interest upon interest, i.e., when the interest of a sum of money is added to the principal, and then bears interest, which thus becomes a sort of secondary principal. It is ordinarily not recoverable at law; see *Fergusson* v. *Fyffe*, (1840) 8 Cl. & F. 121, and *Wrigley* v. *Gill*, 1906, 1 Ch. 165. See INTEREST.

Compound Settlement. Two or more dispositions including Acts of Parliament affecting the same piece of land by way of settlement either comprehensively or derivatively, that is, in particular without affecting the comprehensive settlement. By the proviso to s. 1 of the Settled Land Act, 1925, land which is the subject of a compound settlement is governed for the purposes of the Act by its provisions relating to a settlement unless the context otherwise requires.

Compounding, arranging, coming to terms; compounding a felony is where the party robbed not only knows the felon, but also takes his goods again, or other amends, upon an agreement not to prosecute; this offence was denominated *theftbote*. It is a misdemeanour and is punishable by fine and imprisonment. See *Reg.* v. *Burgess*, (1885) 16 Q. B. D. 141.

It is no offence to compound a misdemeanour unless the offence is virtually an offence against the public, for the party injured may maintain an action to recover compensation in damages. See *Keir* v. *Leeman*, (1844) 6 Q. B. 308; (1846) 9 Q. B.

371 ; *Odgers on the Common Law.* And compounding offences only cognizable before magistrates on summary jurisdiction is not within 18 Eliz. c. 5.

Corruptly to take reward for helping a person to recover stolen goods is felony (Larceny Act, 1916, s. 34) ; and to advertise a reward for the return of things stolen by an advertisement representing that no questions will be asked, etc., incurs a penalty of 50*l.* (Larceny Act, 1861, s. 102).

Where it is an implied term of an agreement that there shall be no prosecution of an offender, the agreement is void as being founded on an illegal consideration ; see *Jones* v. *Merionethshire Building Society*, 1892, 1 Ch. 173.

Penal actions by common informers may be compounded by leave of the court ; this leave of the Court, however, is not necessary in actions by the party grieved.

Comprint, a surreptitious printing of another bookseller's copy of a work, to make gain thereby, which was contrary to common law, and is illegal. See COPYRIGHT.

Compromise, an adjustment of claims in dispute by mutual concession ; also a mutual promise of two or more parties at difference to refer the ending of their controversy to arbitrators. As to the authority of counsel to compromise an action, see *Neale* v. *Gordon-Lennox*, 1902, A. C. 465 ; and of solicitor, see *Fray* v. *Voules*, (1859) 1 E. & E. 839 ; and *Macaulay* v. *Polley*, 1897, 2 Q. B. 122.

Compromissum, a submission to arbitration.—*Civ. Law.*

Comptroller, one who observes and examines the accounts of collectors of public money ; an officer of the royal household ; also the Comptroller-general of patents, designs, and trade-marks, who has the immediate control of the Patent Office under the superintendence and direction of the Board of Trade. See the Patents and Designs Acts, 1907 to 1932. The 1907 Act sets out (ss. 73–76) the powers and duties of the Comptroller.

Comptroller in Bankruptcy, an officer appointed under the repealed Bankruptcy Act, 1869, ss. 55–58, for the purpose of receiving and examining the accounts of trustees.

Comptrollers of the Hanaper, officers of the Court of Chancery ; their offices were abolished by 5 & 6 Vict. c. 103.

Compulsory Pilot. See PILOT.

Compurgator, one who by oath justifies another's innocence. The *compurgatores* mentioned in Anglo-Saxon records have been supposed to be the origin of trial by jury.—*Comyns's Dig.* ; *Du Cange.*

Computo, a writ to compel a bailiff, receiver, or accountant, to yield up his accounts, founded on the Statute of Westminster II., c. 12.—*Reg. Brev.* 135.

Conacre (Corn-acre), a sub-letting by an Irish tenant, for a season, of a part of his holding ready ploughed and prepared for a crop.—*Oxf. Dict.*

Concealers, such as were used to find out concealed lands, i.e., such lands as are privily kept from the king by common persons, having nothing to show for their title or estate therein.—39 Eliz. c. 23.

Concealment, to the injury or prejudice of another. This must amount, in order to be deemed a fraud or to be a ground for rescission of the contract, to the suppression or non-disclosure of facts, which one, under the circumstances, is bound, both legally and equitably, to disclose to another, the latter having an undoubted right to be put in possession of such facts, as in the case of contracts of insurance. See *Ionides* v. *Pender*, (1874) L. R. 9 Q. B. 531, as to marine insurance ; and *London Assurance Co.* v. *Mansel*, (1879) 11 Ch. D. 363, as to life insurance, and as to contracts for the sale of land, see *Flight* v. *Booth*, 1 Bing. N. C. at p. 377 ; *Terry* v. *White*, 32 C. D. at p. 29 ; and PROSPECTUS.

Concealment (Criminal). (1) Of birth, see BIRTH. (2) Of documents of title to land, or of testamentary instruments, felony by Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 28, 29, and see L. P. Act, 1925, s. 183, as to fraudulent concealment of documents, and DIRECTORS and PROSPECTUS.

Concessi (I have granted), a word of frequent use in conveyances. By s. 59 (2) of the Law of Property Act, 1925, replacing the Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 4, the word 'grant' in a deed executed after 1st October, 1845, shall not imply any covenant in law, save as otherwise provided by statute.

Concessimus (we have granted).

Concessit solvere (he agreed to pay), an action of debt upon a simple contract. It lies by custom in the Mayor's Court, London, and Bristol Tolzey Court. The defence to a count *sur concessit solvere* was 'never indebted.' See *Glyn and Jackson, Mayor's Court Practice.*

Concessor, a grantor.

Conciliation, the settling of disputes without litigation, as (1) disputes between railway

companies and freighters of goods, by the Minister of Labour under s. 31, commonly called the 'conciliation clause,' of the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25); or (2) disputes between employers and workmen by a conciliator appointed by the Minister of Labour under the Conciliation Act, 1896 (59 & 60 Vict. c. 30), as amended by the New Ministers and Secretaries Act, 1916 (6 & 7 Geo. 5, c. 68), s. 2, and S. R. & O. 1917, No. (46), p. 419. The Minister is empowered to register 'conciliation boards' for a similar purpose. The Conciliation Act repealed the Masters and Workmen (Arbitration) Act, 1824, the Councils of Conciliation Act, 1867, and the Arbitration (Masters and Workmen) Act, 1872, the Act of 1824 not having been enforced for half a century and the Acts of 1867 and 1872 not having been enforced at all. Consult *Howell's Handy Book of the Labour Laws; Cohen and Howell's Trade Union Law.*

Concilium, a court; a time and place of meeting. Prior to the *Reg. Gen. of T. T.* 1853 (r. 15), a motion of rule for a *concilium* was required before the argument of a demurrer.

Concionatores, common council men, freemen.

Concluded, prevented from.

Conclusion, a binding act; also the end of a pleading or conveyance. In Scottish practice, that part of a summons which defines what the Court is asked to order or declare.

Concord, an agreement between parties, who intend to levy a fine of lands one to the other, how and in what manner the lands shall pass; it was the foundation and sustenance of the fine taken and acknowledged by the party before one of the judges of the Court of Common Pleas, or before commissioners in the country; also an agreement made between two persons, one of whom has a right of action against the other. It is of two kinds, concord executory and concord executed.—*Plowd.* 5, 6, 8.

Concordat, a treaty or public act of agreement between the Pope and any prince relative to some collation of benefices.

Concubaria, a fold, pen, or place where cattle lie.

Concubeant, lying together.

Concubinage, an exception against a woman suing for dower, on the ground that she was a concubine and not the wife.—*Britt.* c. 107.

Concurrent, acting in conjunction; agreeing in the same act; contributing to the same event; contemporaneous. As to concurrent writs of summons, which are used for service abroad, etc., and of which a plaintiff can have on payment as many as he pleases, see R. S. C., 1883, Ord. VI. Concurrent sentences, if newly passed, can always be given, but a sentence cannot be given to a prisoner convicted whilst out on ticket of leave to run concurrently with his unexpired sentence: per Hawkins, J., in *R.* v. *King*, 1897, 1 Q. B. at p. 218.

Concurrent jurisdictions, the jurisdiction of several different tribunals, both authorized to deal with the same subject-matter at the choice of the suitor. In equity, the jurisdiction was concurrent where no complete relief was obtainable at law. It was exercised in order to avoid circuity of action or multiplicity of suits. See UNSOUND MIND.

Condescendence, a part of the proceedings in a cause setting forth the case of the pursuer or plaintiff.—*Scots Law.*

Condictio is an *actio stricti juris* attributed to a party of a *negotium stricti juris*, and derived from the Civil Law. *Appellantur in personam actiones quibus dare fierive opertere intendimus, condictiones.* The *condictio* was *certa* or *incerta* according as a definite or an indefinite thing was demanded. The judge had merely to decide the question submitted to him, without taking into account consideration of equity.—*Sand. Just.* See ACTIO BONÆ FIDEI.

Condictio indebiti, an action for the recovery of a sum of money or other thing paid by mistake.—*Civil Law.*

Condiction, a repetition.

Condition. An event upon which a right under contract or to property may arise, become altered, or cease. Condition has been used in connection with personal obligations to distinguish one kind of obligation from another in the same transaction and to limit property. In their primary meaning, *conditions precedent* are events, but for the happening of which, rights will not arise.

A *condition subsequent* puts an end to a state of things which, but for its happening, would have continued. *Dependent or collateral conditions* depend upon their mutual fulfilment as in a contract for sale of land where, unless otherwise agreed, the payment of the purchase money is conditional upon the conveyance and *vice versâ*.

Conditions may be imposed by the parties, either expressly or by necessary implication arising out of the construction

of the document or agreement, or they may be implied by law according to the nature of the transaction.

A peculiarity of *conditions precedent* is that an illegal or impossible condition will, as a rule and excepting bequests of personalty (*Williams on Executors*), avoid the obligation which has been entered into, or the estate which has been granted subject to the conditions, but if the *condition precedent* has been made impossible by the person who imposed it, the condition will generally be disregarded. While a *condition subsequent*, if illegal or impossible, has, in general, no effect on the existing obligation or estate, see *Co. Litt.* 206 a, i, or 218 a., also *Re Richardson*, 1904, 2 Ch. 77. *Conditions subsequent* are almost universally found in connection with leasehold estates or the grant of a rentcharge, such as a condition for non-payment of rent or breach of covenants. A lease determinable upon a condition of this kind will, however, never be determined by the mere happening of the condition if the Court can gather from the document that the parties intended the lease to be voidable only upon entry by the lessor, see LEASES and RENTCHARGES.

Condition inherent, such as descends to the heir with the land granted, etc.

Conditions are, likewise, *affirmative*, which consist of doing an act; *negative*, which consist of not doing an act; *restrictive*, for not doing a thing; *compulsory*, as that the lessee shall pay rent, etc.; *single*, to do one thing only; *copulative*, to do divers things; and *disjunctive*, where one thing of several is required to be done. See *Jac. Law Dict.*; *Shep. Touch.* 117; 2 *Com. Dig.* And see CONDITIONS OF SALE.

Conditio beneficialis, quæ statum construit, benigne secundum verborum intentionem est interpretanda; odiosa autem quæ statum destruit, stricte secundum verborum proprietatem accipienda. 8 *Rep.* 90. (A beneficial condition, which creates an estate, ought to be construed favourably according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed strictly according to the letter of the words.)

Conditio dicitur cum quid in casum incertum qui potest tendere ad esse aut non esse confertur. *Co. Litt.* 201.—(It is called a condition when something is given on an uncertain event which may or may not come into existence.)

Conditions and Warranties. See CONTRACT.

Conditio si testator sine liberis decesserit. When a general settlement makes no provision for children born to the testator after its date, there is a presumption in the Law of Scotland that it is meant to be subject to the condition that no such children will be born. If that condition is not fulfilled, the settlement is presumed in the absence of rebutting evidence to be revoked.

Conditional Fee. This species of formerly inheritable freehold (now, equitable interest, except under Law of Property Act, 1925, s. 8) is marked, as to its duration or time of continuance, by an event beyond which it is not to endure. The event is the qualification which gives a name to this estate, and ascertains its determination. A fee qualified is frequently called a fee base, i.e., impure, defective, and circumscribed. There is hardly any event, provided it be lawful, and do not violate the rule against perpetuity, which may not be made the cause of the determination of this fee.

The following events are specimens of qualifications, which may be expressly annexed to this estate.

A limitation to A. and his heirs;

(1) Peers of the realm;

(2) Lords of the manor of Blackacre;

(3) Tenants of the manor of Dale;

(4) During the time whilst a particular tree shall stand;

(5) Till the marriage of a certain person takes place;

(6) Till certain debts be paid;

(7) Till default be made in payment of a given debt, at a certain time;

(8) Until a minor shall attain his majority.

When these events terminate, or the acts are done or omitted to be done, according to the meaning of the given restrictions, the fee qualified will cease; but it may possibly, as is obvious, continue for ever, in those instances especially where the qualification is not certain to take place. The estates will then continue precisely in the same manner, as if no collateral event, giving to the estate a determinate character, had been annexed to it. A base-fee may arise in the absence of any express qualification when it is made determinable by construction of law, on a certain event, such as an estate restrained to some particular heirs, exclusive of others, as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral; see BASE FEE. A qualified fee confers a limited power of alienation, entitling the owner to give an interest of the same extent and continuance only to another person which he has in

himself. So that the estate will, notwithstanding the transfer, be determinable, and, into whose hands soever it may come, will cease on the happening of the events upon which such qualified fee depends.

Conditional Legacy, a bequest whose existence depends upon the happening or not happening of some uncertain event, by which it is either to take effect or to be defeated.

Conditional Limitation partakes of the nature both of a condition and a remainder. At the Common Law whenever either the whole fee or a particular estate, as an estate for life or in tail, was first limited, no condition or other quality could be annexed to this prior estate, which would have the double effect of defeating the estate, and passing the lands to a stranger, for as a remainder it was void, being an abridgment or defeasance of the estate first granted, and as a condition it was void, as no one but the donor or his heirs could take advantage of a condition broken; and the entry of the donor or his heirs unavoidably defeated the livery upon which the remainder depended. On these principles it was impossible by the old law to limit by deed, if not by will, an estate to a stranger upon any event which might abridge or determine an estate previously limited. But the expediency of such limitations, assisted by the revolution effected by the Statute of Uses, at length established them, in spite of the maxim of law that a stranger cannot take advantage of a condition. These limitations are now become frequent, and their mixed nature has given them the name of conditional limitations; they so far partake of the nature of conditions, as they abridge or defeat the estates previously limited, and they are so far limitations, as upon the contingency taking effect the estate passes to a stranger.—*Harg.* note 1 to *Co. Litt.* 203 *b.* These limitations can, with some exceptions, only take effect now as equitable interests, see L. P. Act, 1925, s. 1.

Conditions of Sale. The terms set forth in writing upon which an estate or interest is to be sold by auction, tender, or private treaty. Together with the particulars (*q.v.*) the conditions constitute the offer for sale. Conditions of sale will be construed so as to collect the meaning of the parties without incumbering them with the technical meaning of words; for, as Lord Hardwicke declared, 'there is no magic in words.' But the conditions should be accurate, for they cannot be contradicted by parol at the sale; 'the babble of the auction room,' as Lord Eldon termed it, being inadmissible as evidence, and this although the purchaser by the written agreement bind himself to abide by the conditions and declarations made at the sale. If the conditions require alteration, they should be so altered in writing before the sale. See AUCTION; CONTRACT OF SALE. In sales of land, conditions of sale usually refer to the following matters:—Bidding at the auction, payment of deposit, date of completion, possession, and apportionment of outgoings, rights to interest or rents and profits, upon delay or completion after the fixed day, delivery of the abstract, commencement of title, time for making the purchaser's objections or requisitions to the title shown, and replies thereto. Rights of vendor to rescind, preparation of the conveyance, completion and powers of the vendor upon default by the purchaser, and any special conditions which may be necessary or advisable owing to the state of the property or the title and any defects or difficulties in proving it, incumbrances affecting the property, or otherwise. The following conditions are wholly void in a sale to a purchaser for money or money's worth, under s. 42 of the L. P. Act, 1925:—(*a*) that the purchaser of a legal estate shall accept a title with the concurrence of any person entitled to an equitable estate if a title can be made free from the equity without consent under a trust for sale, or the L. P. Act or the Settled L. Act, 1925, or any other statute; (*b*) that the purchaser shall pay or contribute towards the cost of certain formalities required to give effect to the vendor's title; and (*c*) in regard to contracts for sale or exchange made after 1925, that the purchaser shall bear the cost of tracing or getting in the legal estate or that he shall not object to its remaining outstanding. See generally, ss. 40–50 of the L. P. Act, 1925; *K. & E.* or *Prid. Conv. Pr.; Webster on Conditions of Sale.* Under s. 46 of the L. P. Act, 1925, by S. R. & O., 1925, No. 779/L14. Statutory conditions are made to apply to contracts of sale of land by correspondence. These may be varied by agreement or applied to any contract for sale of land; see also *Law Society's Conditions of Sale.*

Condonation, a pardoning or remission. In cases of adultery it is forgiveness, legally releasing the injury, by virtue of Judicature Act, 1925, s. 178, replacing the Matrimonial Causes Act, 1857, s. 30: *Keats* v. *Keats*, (1859) 28 L. J. P. & M. 57. When cruelty by a husband is condoned, it is revived by

subsequent adultery on his part (*Norman* v. *Norman*, 1908, P. 6).

Conduct-money, money paid to a witness for his travelling expenses. *Testes qui postulat debet dare eis sumptus competentes.* (He who requires witnesses must find their expenses to a sufficient extent).—*Reg. Jur. Civ.* A witness whose expenses are not paid may refuse to give evidence, it being provided by the still unrepealed 5 Eliz. c. 9, that a witness 'having tendered to him, according to his countenance or calling, such reasonable sums of money' for his expenses, 'as having regard to the distance of the places is necessary,' is to forfeit 10*l.*, and yield further recompense to the party grieved, etc.; and see *Hallett* v. *Mears*, (1810) 13 East, 15; 12 R. R. 296, and note to the effect that unless the whole necessary expenses of the journey to and from the place of trial, and of the witness's necessary stay there, be tendered with the subpœna, the Court will not grant a subpœna for the non-attendance of the witness at the place of trial.

Conductio, a hiring.

Coney [fr. *cuniculus*, Lat.], a rabbit. See s. 31 of the Game Act, 1831 (1 & 2 Wm. 4, c. 32), as to arrest of trespasser in pursuit of 'game or woodcocks, snipes, quails, landrails, or coneys,' if he refuse to quit or give his name and address; and see GAME; GROUND GAME ACT; and RABBIT.

Confederacy, a combination of two or more persons to do some damage or injury to another, or to commit some unlawful act. See TRADE DISPUTE.

Confederation, a league or compact for mutual support, particularly of princes, nations, or states.

Conference, a meeting between a counsel and solicitor to advise on the cause of their client.

Confessing Error, the affirmative plea to an assignment of error.

Confession and Avoidance, Plea of, a plea in bar, admitting the facts alleged in the declaration to be true, but showing some new facts, tending to obviate their legal effect. All matters in confession and avoidance had before the Judicature Acts to be specially pleaded (*Reg. Gen. H. T.* 1853, r. 8), and must be so still under the present system of pleading. See STATEMENT OF DEFENCE; CIRCUITY OF ACTION.

Confession by Culprit, the acknowledgment by a criminal of the offence charged against him when charged by any person or called upon to plead to the indictment. A confession before trial, if given without any inducement of favour or threat of punishment, is evidence against the person charged even though he may be in custody (*R.* v. *Best*, 1909, 1 K. B. 692), and by the Criminal Justice Act, 1925 (c. 86), s. 12, replacing Indictable Offences Act, 1848, s. 18, and the Summary Jurisdiction Act, 1879, s. 13 (2), justices of the peace are directed to give an accused person 'clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him' to make any confession of guilt. See ACCUSED.

Confession of Defence. Where defendant alleges a ground of defence arising since the commencement of the action, the plaintiff may deliver confession of such defence and sign judgment for his costs up to the time of such pleading, unless it be otherwise ordered. (R. S. C. 1883, Order XXIV., r. 3.)

Confession, Judgment by. See COGNOVIT.

Confession of Plea. A plea containing a defence arising after the commencement of an action, or after the last pleading, might be confessed by the plaintiff.—*Reg. Gen. H. T.* 1853, rr. 22, 23. See previous title.

Confession to a Priest. The English law does not recognize the duty of a priest (whether Roman Catholic or Anglican) to keep secrets revealed to him in his religious character (*Normanshaw* v. *Normanshaw*, (1893) 69 L. T. 468; *Wheeler* v. *Le Marchant*, (1881) 17 Ch. D. 681); but some judges have disapproved of extorting such secrets (see, e.g., per Best, C.J., in *Broad* v. *Pitt*, (1828) 3 C. & P. 518). The practice of the law on this subject is very uncertain, and in *Phillimore's Ecclesiastical Law* as edited by Phillimore, L.J., when at the bar, the view is taken that it is not improbable that an English Court would decide the question in favour of the inviolability of confession and expand the law into harmony with that of other Christian states. See *Best, Ev.*; *Taylor, Ev.* The 113th Canon provides that 'if any man confess his secret and hidden sins to the minister for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him,' he 'do not reveal to any person whomsoever any crime so committed to his trust and secrecy (except they be such as by the laws of this realm his own life may be called into question for concealing the same) under pain of irregularity.'

Confesso, Bill taken pro, an order which the Court of Chancery made, when the defendant did not file an answer, that the

plaintiff might take such a decree as the case made by his bill warranted. See now DEFAULT; PLEADING.

Confidence Trick. Where A. persuaded B. by a trick to deposit money or property with A. or a third party in order to show that B. trusts A. or the third party. Usually a preliminary to some joint but fictitious undertaking promising enormous benefits to B. Where the possession of money or goods is obtained under a contract induced by fraud, the person so fraudulently obtaining possession may be convicted of larceny. In order to reduce the taking under such circumstances from larceny to fraud the transaction must be incomplete. The term 'confidence trick' is also familiarly applied to other cases, of which there are many examples. See *R.* v. *Russett*, 1892, 2 Q. B. 312, in which the prisoner purported to sell a horse for 23*l.*, and required the buyer to pay 8*l.* forthwith and the balance on delivery of the horse, but never in fact delivered the horse or intended to do so; *R.* v. *Buckmaster*, (1887) 20 Q. B. D. 182, 'welching' on a racecourse.

Confidential Communication. See PRIVILEGED COMMUNICATION.

Confinement Solitary. See SOLITARY CONFINEMENT.

Confirmatio Chartarum, the 25 Edw. 1, A.D. 1297. This statute, being in the form of a charter, was sealed with the king's Great Seal, at Ghent, in Flanders, on November 5th, as appears by a memorandum upon the roll. It re-enacts Magna Charta, with the addition of giving that security to personal property which Magna Charta gave to personal liberty, and must be referred to for the terms of Magna Charta, in the 'Statutes of the Realm' and the 'Revised Statutes.'

Confirmation, a species of conveyance by which a voidable estate is made valid and unavoidable, or by which a particular estate is increased. Estates which are void cannot be confirmed, but only those which are voidable.—*Watkins's Conv.* 321. A confirmation may make a voidable or defeasible estate good, but it cannot work upon an estate that is void at law.—*Co. Litt.* 295 *b.*

Confirmation in Scotland is the ratification by a competent Court of an appointment of executors, and confers a title to uplift, administer, and dispose of the personal estate of the deceased. When the appointment of the executor has been made by the deceased, the appointee is called an executor-nominate and the confirmation a testament testamentor. When the appointment has been made by the Court, the appointee is called an executor-dative, and the confirmation a testament-dative.

Confirmation of Bishop, the ratification by the archbishop of the election of a bishop by dean and chapter under the king's letter missive prior to the consecration of the bishop by the archbishop, as directed (see CONGÉ D'ESLIRE) by 25 Hen. 8, c. 20. It was undecided, from 1848 to 1902, whether this ceremony be ministerial or judicial, i.e., whether the archbishop can refuse to confirm. See *The Queen* v. *The Archbishop of Canterbury*, (1848) 11 Q. B. 483, in which the Court of four judges was equally divided in discharging a rule for a mandamus to hear objections, on the ground of heterodoxy, to the confirmation of Dr. Hampden, as Bishop of Hereford. Since then objection has been many times taken to a confirmation:—to that of Dr. Prince Lee as Bishop of Manchester, in 1848; to that of Dr. Temple as Bishop of Exeter, in 1869; to that of Dr. Temple as Archbishop of Canterbury, in 1896; to that of Dr. Creighton as Bishop of London, in 1897; to that of Dr. Ingram as Bishop of London, in 1901; and to that of Canon Gore as Bishop of Worcester, in 1902, when for the first time opposers appeared by counsel, and it was held by three judges of the High Court, in *Reg.* v. *Archbishop of Canterbury*, 1902, 2 K. B. 503, that the confirmation could not be opposed on the ground of alleged heterodoxy, although objectors were called upon by proclamation in general terms to oppose.

Confiscation, the condemnation and adjudication of property to the public treasury, as of goods seized under the Customs Acts. See FORFEITURE.

Confitens reus, an accused person who admits his guilt.

Conflict of Laws. In the case where a suit is brought in one country, and the parties, or one of them (or the subject-matter of the suit), belongs more or less to another, and the laws of the two countries upon the subject are at variance, there is said to be a conflict of laws. See LEX LOCI CONTRACTUS; and also the case of *Simonin* v. *Mallac*, (1860) 29 L. J. Prob. & Mat. 97, where the marriage of two French persons who came to England for the express purpose of celebrating a marriage which would have been void if celebrated in their own country was declared valid. 'Either nation may refuse to surrender its laws to those of the other, and if either is guilty of any breach of the *comitas* or *jus gentium*, that reproach shall attach to

the nation whose laws are least calculated to ensure the common benefit and advantage of all.' See *Dicey's* or *Story's Conflict of Laws; Chitty on Contracts*, citing *Kaufman* v. *Gerson*, 1904, 1 K. B. 591. See RENVOI and *Halsbury, Laws of England*, Hailsham ed., title *Conflict of Laws*.

Conformity, Bill of. When an executor or administrator found the affairs of his testator or intestate so much involved that he could not safely administer the estate, except under the direction of the Court of Chancery, he filed this bill against the creditors to have their claims adjusted, and a decree settling order and payment of assets made. This bill was so called, probably because the executor or administrator undertook to conform to the decree, or the creditors were compelled by the decree to conform to it.—1 *Story's Eq. Jur.* 440.

Confrairie, a fraternity, brotherhood, or society.

Confrères, brethren in a religious house, fellows of one and the same society.

Confusion, a mode of extinguishing a debt, in the French law, by the concurrence in the same person of two qualities which mutually destroy one another. This may occur in several ways, as where the creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either accedes to the title of the other by any other mode of transfer.—*Pothier on Oblig.* by *Evans*, n. 505–609.

Confusion of Boundaries, was a jurisdiction of equity, concurrent with the Common Law. The Civil Law was far more provident than ours upon the subject of boundaries. It considered that there was a tacit agreement or duty between adjacent proprietors to keep up and preserve the boundaries between their respective estates, and it enabled all persons having an interest to bring a suit to have the boundaries between them settled; and this, whether they were tenants for years, usufructuaries, mortgagees, or proprietors. The action was called *actio finium regundorum;* and if the possession were also in dispute, that might be ascertained and fixed in the same suit, and indeed was incident to it. Equity adopts this general rule, not to entertain jurisdiction in cases of confusion of boundaries upon the ground that the boundaries are in controversy, but to require that there should be some equity superinduced by the act of the parties; such as some particular circumstances of fraud, or some confusion, where one person has ploughed too near another, or some gross negligence, omission, or misconduct on the part of persons whose special duty it is to preserve or perpetuate the boundaries. Where there is an ordinary legal remedy there is certainly no ground for the interference of equity, unless some peculiar equity supervenes which the law does not take notice of or protect.—*Story's Eq. Jur.*

Confusion, Property by. Where goods of two persons are so intermixed that the several portions can no longer be distinguished; if the intermixture be by consent, it is supposed that the proprietors have an interest in common, in proportion to their respective shares; but if one wilfully intermix his money, corn, or hay, with that of another man, without his approbation or knowledge, or cast gold in like manner into another's melting-pot or crucible, our law allows no remedy in such a case, but gives the entire property without any account to him whose original dominion or property is invaded, and endeavoured to be rendered uncertain without his consent.—2 *Bl. Com.* 405. See also *Vin. Abr. Justification* (*B*) and *Instit. of Justin.* l. ii. tit. 1, ss. 27–34.

As to the position where a person pays money held by him in a fiduciary character into his own banking account, see *Re Hallett's Estate*, (1879) 13 Ch. D. 696; *Sinclair* v. *Brougham*, 1914, A. C. 398.

By the Solicitors Act, 1933 (23 & 24 Geo. 5, c. 24), the Council of the Law Society has power to make rules as to the opening and keeping by solicitors of accounts at banks for clients' money. The intention is to keep such accounts separate.

The general rule, that, as against an agent who has mixed the property of his employer with his own, so as to render it undistinguishable, the whole may, both at Law and in Equity, be taken to be the property of the employer, is well settled; but the same rule does not, in all cases, hold against the creditors of such agent: for instance, if an agent pay money belonging to his employer into his own banking-house, and to his general account, this money may not be distinguishable; but should the agent become bankrupt, the whole sum which appears to be due to him from the bankers will go to his assignees, and his employer can only come in as a general creditor under the bankruptcy. So, if the bankers had an account with the agent by way of set-off, that set-off would equally affect the money of his employer paid into the agent's account as it would the agent's own money, supposing

the bankers to have no notice, displacing their equity.—*Ex parte Townshend*, (1809) 15 Ves. 470; *Massey* v. *Banner*, (1820) 1 J. & W. 241, 248.

Congeable [fr. *congé*, Fr., leave], lawful, done with permission.

Conge d'Accorder, leave to accord or agree. —8 Edw. 1.

Conge d'Eslire, or **d'Elire** (leave to elect). The king's licence or permission sent to a dean and chapter to proceed to the election of a bishop or archbishop, when the office becomes vacant. By 25 Hen. 8, c. 20, the sovereign may grant this licence 'with a letter missive containing the name of the person whom they shall elect and choose,' and it is enacted that the dean and chapter shall elect the said person and none other, and that if they defer their election above twelve days, the sovereign at his liberty and pleasure shall appoint such person to the office as he shall think able and convenient for the same. See *R.* v. *Archbishop of Canterbury*, 1902, 2 K. B. 503.

Congregationalist, a name for the sect formerly called Independents. See DISSENTERS.

Congress, an assembly of envoys, commissioners, deputies, etc., from different courts, who meet to concert measures for their common good, or to adjust their mutual concerns.

Conjoints, persons married to each other.

Conjugal rights, the right which husband and wife have to each other's society. The suit for restitution of conjugal rights is a matrimonial suit, cognizable in the Divorce Court, which is brought whenever either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason; in which case the Court will decree restitution of conjugal rights (Judicature Act, 1925, s. 186), but will not enforce it by attachment, substituting however for attachment, if the wife be the petitioner, an order for periodical payments by the husband to the wife, s. 187.

Conjugal rights cannot be enforced by the act of either party, as was held by the Court of Appeal in the case of a husband who had seized and detained his wife by force, in *Reg.* v. *Jackson*, 1891, 1 Q. B. 671.

Conjuratio [fr. *conjuro*, Lat.], an oath.

Connivance, consent, express or implied, by one spouse to the adultery of the other. If a petitioner be found guilty of connivance, the Court will not decree dissolution of the marriage.—Judicature Act, 1925, s. 172, replacing Matrimonial Causes Act, 1857 (c. 85), ss. 29, 30.

Conquest [fr. *conquerir*, Fr., to acquire; *conquiro*, Lat., to seek for], the feudal term for purchase. As to the use and meaning of the term in Scots Law, see *Diggens* v. *Gordon*, (1867) L. R. 1 H. L. Sc. 136; *Mackenzie* v. *Allardes*, 1905, A. C. 285.

Consanguineo. See COSENAGE.

Consanguineus frater, a brother by the father's side; in contradistinction to *frater uterinus*, the son of the same mother.

Consanguinity, or **Kindred,** the connection or relation of persons descended from the same stock or common ancestor. It is either lineal or collateral. Lineal is that which subsists between persons, of whom one is descended in a direct line from the other, as between son, father, grandfather, great-grandfather, and so upwards in the direct ascending line; or between son, grandson, great-grandson, and so downwards in the direct descending line. Collateral agree with the lineal in this, that they descend from the same stock or ancestor, but differ in this, that they do not descend one from the other. See MARRIAGE (*Prohibited Degrees*).

Conscience Clause. Section 7 of the Education Act, 1870, prohibits the imposing of an obligation to attend religious worship as a condition of attending a public elementary school, and allows a child to be withdrawn while any religious instruction is being given. See now the Education Act, 1921, s. 72. And see COWPER-TEMPLE CLAUSE; KENYON-SLANEY CLAUSE.

Conscience, Courts of, tribunals for the recovery of small debts, constituted by Acts of Parliament in the City of London and other towns. The ordinary constitution of these courts, which were generally for causes of debt to the amount of 40*s.* only, but often to the amount of 5*l.*, was to examine in a summary way, by the oath of the parties, or other witnesses, and make such order therein as was consonant to equity and good conscience. The county courts established in 1846 have superseded them.

Conscription. Compulsory enrolment of men (usually in fixed numbers and of fixed ages) for military service, practised by the Romans and from early times in France and other European countries. A species of conscription long existed under the Militia Acts, now suspended by the temporary Militia Ballot Suspension Act, 1865. See MILITIA. During the Great War compulsory military service was imposed: the first Act was the Military Service Act, 1916; for subsequent

war legislation extending compulsory military service, see *Chitty's Statutes*, tit. '*Army*.'

Consecrate, to dedicate to sacred purposes, as a bishop by imposition of hands, or a church or churchyard by prayers, etc. Consecration is performed by a bishop or archbishop. See BISHOP.

Consensus, non concubitus, facit matrimonium. *Co. Litt.* 323.—(Consent, not cohabitation, constitutes marriage.)

Consent is necessary to matrimony, and therefore persons *non compotes mentis*, or a boy under 14 or a girl under 12, or a person under coercion (see *Scott* v. *Sebright*, (1886) 12 P. D. 21), cannot enter into this, or indeed any other contract. But see now Age of Marriage Act, 1929 (19 & 20 Geo. 5, c. 36), which avoids any marriage of persons under 16, and see MARRIAGE.

Consensus tollit errorem. *Co. Litt.* 126.—(Consent [acquiescence] removes mistake.) See *Broom's Max.* and title WAIVER.

Consent, an act of reason accompanied with deliberations, the mind weighing, as in a balance, the good or evil on either side. Consent supposes three things—a physical power, a mental power, and a free and serious use of them. Hence it is that if consent be obtained by intimidation, force, meditated imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind. In relation to Criminal Law, see Criminal Law Amendment Acts, 1885–1922, and see AGE; ABDUCTION.

Consent-rule, a superseded instrument, in which a defendant in an action of ejectment specified for what purpose he intended to defend, and undertook to confess not only the fictitious lease, entry, and ouster, but that he was in possession.

Consequential Damages. See DAMAGES.

Conservancy of the Thames. See Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii., *Chitty's Statutes*, tit. '*Thames*,' and THAMES, *post*.

Conservator, a protector, preserver, or maintainer; or a standing arbitrator chosen and appointed as a guarantee, to compose and adjust differences that should arise between two parties, etc.—*Paroch. Antiq.* 513.

Conservators of the Peace, officers appointed by the Common Law for the maintenance of the public peace. Of these, some had and still have this power annexed to other offices which they hold; others had it merely by itself, and were thence called *custodes* or *conservatores pacis*. Those that were so, *virtute officii*, still continue; but the latter sort are superseded by the justices of the peace, first established in the reign of Edw. III. by 1 Edw. 3, st. 2, c. 16.

Conservators of the Truce and Safe Conducts, officers appointed to hear and determine questions relating to the breaking of the king's truce and safe conducts upon the main sea, out of the liberties of the Cinque Ports. It was enacted by 18 Hen. 6, c. 4, that if any of the king's subjects attempt or offend upon the sea, or in any port within the king's obeisance, against any stranger in amity, league, or truce, or under safe conduct, and especially by attacking his person, or spoiling him, or robbing him of his goods, the Lord Chancellor, with any of the justices of either the King's Bench or Common Pleas, should cause full restitution and amends to be made to the party injured.—*Jac. Law Dict.*

Consideratio curiæ, the judgment of the Court.

Consideration. Any act of the promisee (the person claiming the benefit of an obligation) from which the promisor (the person burdened with the obligation) or a stranger derives a benefit or advantage, or any labour, detriment or inconvenience sustained or suffered by the promisee at the request, express or implied, of the promisor. See *Laythoarp* v. *Bryant*, 3 Scott 250; 2 *Wms. Saund.* 137 h; *Currie* v. *Misa*, (1875) L. R. 10 Exch. 153.

Consideration is one of the facts which the Courts require as evidence of intention, (*a*) that a person intends his promise to be binding on him, or (*b*) that he intends to divest himself of a beneficial interest in property. In its widest sense consideration is the price, motive or inducement for a promise or for a transfer of property from one person to another. The nature or quality of the consideration which will be sufficient for these purposes varies with the nature of the transaction and in the absence of consideration the Courts will, except in the case of simple contract, accept other evidence from which intention will be inferred. A simple contract, that is to say, *a promise* by word of mouth or in writing which is not a deed, requires valuable consideration to support it, but if the promise is by deed, even the expressed absence of any consideration will not affect its validity either in law or equity (except for some kinds of equitable relief, see *infra*), because the execution of a deed is attended

by formalities from which a deliberate intention to make a binding promise is presumed. Valuable consideration may be described as the very life and soul of a simple contract or parol agreement.

Valuable consideration may be :—

(a) *Benefit* to the promisor or loss or injury sustained by the promisee. It is not necessary that the consideration and promise should be equivalent in actual value, for it would be impossible precisely to determine whether, in a given case, the consideration were adequate, without a psychological investigation into the motives of the parties. If the consideration, however, be so insufficient as to 'shock the conscience,' equity would quash the contract, upon the ground that such great inequality betokens mutual mistake, or fraud or undue advantage on the one side, or mental incompetency on the other, and, in equity, inadequacy may be a reason for refusing specific performance, *Pegler* v. *White*, 33 Beav. 403.

(b) *Forbearance* for a time to institute a suit upon a well-founded claim, or even upon one which is doubtful, but not upon one utterly unfounded, is sufficient, since it is a benefit to the one party and a prejudice to the other. If the time of forbearance be stated, it must be a reasonable time, and an agreement to forbear *per breve aut paululum tempus*, or *pro aliquo tempore*, will not be sufficient, inasmuch as the party promising may, in such case, sue immediately after the promise is made.

(c) *Mutual promises* are concurrent considerations, and will support each other if they be made simultaneously, unless one or the other be void.

Considerations which are insufficient for the purposes of a simple contract and may be insufficient for the validity of other transactions may be found :—

(a) In so-called *gratuitous* or voluntary promises which are void for want of a reciprocal return however obligatory they may be in morals or in honour. A moral consideration founded upon mere affection or gratitude will not support a simple contract, as was held in *Eastwood* v. *Kenyon*, (1840) 11 A. & E. 438, after many conflicting decisions on the subject. Other instances of insufficient consideration or absence of consideration may be found in :—

Cooke v. *Oxley*, (1790) 3 T. R. 653, and other authorities (see *Chitty on Contracts*, 15th ed. at pp. 9, 10), showing that if an offer be made with liberty to consider it for a limited time, it may nevertheless be revoked at any time before such limited time has expired.

Foakes v. *Beer*, (1884) 9 App. Cas. 605, showing, in accordance with the old law, that if A. owes B. 100*l.* and B. agrees to take and takes 90*l.* in full satisfaction for the debt, without any other or fresh consideration, B. can nevertheless sue A. for the remaining 10*l.* See also *Williams* v. *O'Keefe*, 1910, A. C. 186, and a promise to pay by instalments is not sufficient consideration for extending time for a payment which is due immediately. See *Foakes* v. *Beer*, L. R. 9 A. C. 605, and ACCORD AND SATISFACTION.

(b) *Illegal and impossible consideration.* A contract may be illegal because it contravenes the principles of the Common Law, or the special requirements of a statute. The former illegality exists whenever the consideration is founded upon a transaction which violates public policy or morality :— as a contract to commit, conceal, or compound a crime ; a contract for illicit cohabitation ; or a contract in fraud of the rights and interests of third parties. The illegality created by statute exists when the act is either expressly prohibited, or when the prohibition is implied from the nature and object of the statute. A contract founded upon an impossible consideration is void ; for the law will not compel a man to attempt to do that which is not within the limits of human capacity. *Lex neminem cogit ad vana aut impossibilia ;* see ILLEGALITY.

(c) *Executed consideration*, i.e., already performed before the making of the defendant's promise, but if the past or executed consideration was furnished upon an express or implied request by the promisor from which a promise to pay or perform the promise would be implied, see *Lampleigh* v. *Braithwaite, Sm. L. C.*, the contract will be upheld, otherwise an executed consideration will not support a promise.

Consideration has also been divided in regard to the time when it operates into 1st, *executed* (in another sense), i.e., if the consideration has been completed before the corresponding promise has been performed ; 2nd, *executory*, or something to be done after the promise ; 3rd, *concurrent*, as in the case of mutual promises ; and 4th, *continuing*, i.e., executed in part only. The three last classes are sufficient to support a contract not void for other reasons.—*Story on Contracts*, 71.

(d) *Considerations moving from third per-*

sons. It is a general rule that in cases of simple contract, if one party make a promise to another for the benefit of a third, as no consideration moves from such third person, it is only the party to whom it is made, and not the party for whose benefit it is made, who may maintain an action upon it. See *Tweddle* v. *Atkinson*, (1861) 1 B. & S. 393; *Re Empress Engineering Co.*, (1880) 16 Ch. D. 125; but if a trust be created for the third party, there is a departure from the rule and the third party can sue: see *Gregory* v. *Williams*, (1817) 3 Mer. 582; *Gandy* v. *Gandy*, (1884) 30 Ch. D. 57.

A promise under seal, such as a covenant or bond, does not require any consideration to be enforceable at law by an action upon the covenant or by damages for breach or any other remedy or defence in law, but the claim is always open to any defences arising out of want of any consideration in fact or otherwise available to the covenantor in equity, and equity will not enforce a covenant without consideration unless the covenant has been executed in law, or a trust had been declared in performance of the promise, *Jefferys* v. *Jefferys*, 1 Cr. & Ph. 138. If the promisor cannot show a reason in equity why he should not execute his promise according to his deed in law, equity will not intervene to help him, but if the promisee cannot show more than a promise in legal form, equity will not exert its auxiliary jurisdiction in his favour.

In regard to the transfer of property, as distinguished from contract to transfer property of any description, consideration plays an important part as evidence of the intention of the transfer. In the absence of consideration or an express or implied trust, the solemnity of the transfer, whether by feoffment in former days, or by deed or registration now, the legal completion of the transaction did and does not, as between the grantor and grantee, import either consideration or evidence that the grantor intended to divest himself of the beneficial ownership. Before 1926 in the absence of consideration implying or raising a use or of any declaration of a use or of a trust, a resulting use or trust would be presumed (*Fowkes* v. *Pascoe*, L. R. 10 Ch. 343; *Beckwith's Case*, (1589) 2 Co. Rep. 56b and 58b) in favour of the grantor, see also *Norton on Deeds*, ch. *Resulting Trusts*. This implication has been removed, in regard to deeds executed after 1925 by the Law of Property Act, 1925, s. 60, which provides that in a *voluntary* conveyance made after that year a resulting trust will not be implied merely because the property is not conveyed for the use or benefit of the grantee, see also Law of Property Act, 1925, 1st Schedule, Part II., paragraph 3, and the L. P. Amendment Act, 1926, but it is still open to the persons beneficially entitled to prove that the transfer was intended to be in trust for him. In the absence of an express declaration of trust or of circumstances in which the transferee is presumed to hold on trust, the consideration required to give a conveyance its expressed effect or to raise a use which was not expressed were money, money's worth, blood or marriage, see *Norton on Deeds*, and even where consideration is expressed, e.g., by the words in consideration of five shillings though the transfer might be complete in law, it is open to the grantor to prove that the consideration was merely nominal. The consideration of marriage covers all beneficiaries within the consideration, that is to say, the children of the marriage. It is not the same as 'consideration of blood' which as between grantor and grantee may support a simple or bare conveyance to the grantee. 'Blood' may mean a child or blood relation. Considerations such as 'love and affection' or gratitude for past services are also merely voluntary against creditors, see VOLUNTARY CONVEYANCES.

Consideratum est per curiam (it is considered by the Court), the formal and ordinary commencement of a judgment.

Consignation [fr. *consigno*, Lat., to write down], the deposit of a thing owed with a third person, under the authority of the Court.—*Civil Law*.

Consignment, the sending of goods to another for sale or purchase; also the goods themselves so sent. He who consigns the goods is called the *consignor*, and the person to whom they are sent is called the *consignee*.

Consistory Court, the *prætorium*, or tribunal of every diocesan bishop, held in their several cathedrals for the trial of all ecclesiastical causes arising within their jurisdiction. The bishop's chancellor, or his commissary, is the judge, and from his sentence an appeal lies, by virtue of 24 Hen. 8, c. 12, to the archbishop of each province respectively.

Consistorial Causes. In Scotland, actions concerning the matrimonial relations.

Consolato del mare, a code, ascribed to the fourteenth century and Barcelona, of the usages governing the intercourse of the maritime communities of the Mediter-

ranean ; see *Encyc. of Eng. Law*, where the authorities are referred to.

Consolidated Fund of the United Kingdom, a repository of public money, which now comprises the produce of customs, excise, stamps, and several other taxes, and some small receipts from the royal hereditary revenue, surrendered to the public use. It constitutes almost the whole of the public income of the United Kingdom of Great Britain and Ireland. See 56 Geo. 3, c. 98. This fund is pledged for the payment of the whole of the interest of the national debt of Great Britain and (now Northern) Ireland (see s. 6 of the National Debt Act, 1870) ; and besides this is liable to several other specific charges imposed upon it at various periods by Act of Parliament, such as the civil list, and the salaries of the judges and ambassadors and other high official persons ; after payment of which the surplus is to be indiscriminately applied to the service of the United Kingdom under the direction of Parliament. See 10 & 11 Geo. 5, c. 57, and as to Northern Ireland (establishment of separate consolidated fund there; Irish Free State (Agreement) Act, 1922 (12 & 13 Geo. 5, c. 4) ; and Irish Free State Constitution Act, 1922 (13 Geo. 5, c. 1).

Consolidating Actions. If several actions between the same parties were brought, and were pending for the same cause, or substantially so, the Court may stay the proceedings in all but one. And if two or more actions were brought by the same plaintiff, at the same time, against the same defendant, for causes of action which might have been joined in the same action, the Court or a judge, if they deemed the proceeding vexatious or oppressive, would in general compel the plaintiff to consolidate them. *Chitty's Arch. Pr.* Under the Rules of the Supreme Court, actions may be consolidated by order as before (R. S. C. 1883, Ord. XLIX., r. 8).

Consolidation, in the Civil Law, the uniting possession, occupancy, or profits, etc., of land with property, and *vice versâ ;* in the Ecclesiastical Law, the uniting two benefices by assent of the ordinary, patron, and incumbent ; in the Statute Law, the fusing many Acts of Parliament into one.

Consolidation Acts. Acts by which several Acts upon the same subject are reduced into one. Of such a character are the Larceny Act, 1861, now largely repealed and replaced by the Larceny Act, 1916, and other Criminal Law Consolidation Acts of 1861, the Public Health Act, 1875, the Municipal Corporations Act, 1882, the Sheriffs Act, 1887, the Arbitration Act, 1889, the Factors Act, 1889, the Lunacy Act, 1890, the Stamp Act, 1891, the Merchant Shipping Act, 1894, the Friendly Societies Act, 1896, the Factory and Workshop Act, 1901, the Coal Mines Act, 1911, the Forgery Act, 1913, the Companies Act, 1929, the Poor Law Act, 1930, the Local Government Act, 1933, the County Court Act, 1934.

The Interpretation Act, 1889 (see that title), by s. 38 (1) enacts that—

> Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

This is a generalization of a modern common form in Consolidation Acts : see, e.g., s. 13 of the Public Health Act, 1875, and see also *Stevens* v. *Gen. Steam Navigation Co.*, 1905, 1 K. B. 890.

Compare the title CODE.

Consolidation of Mortgages. When different properties are mortgaged by the same mortgagor to the same mortgagee for different debts, it was formerly the right of the mortgagee to refuse to allow the mortgagor to redeem one of the mortgages without also redeeming the others, the effect being to throw the whole of the debts on the whole of the properties and thus 'consolidate' the mortgages. This right of the mortgagee was an application of the maxim, 'He who seeks equity must do equity' ; it was not considered fair to the mortgagee to allow the mortgagor to pay off one mortgage, which perhaps was well secured, and leave the mortgagee with another mortgage on his hands which might be very insufficiently secured. But though the doctrine was not unfair or unreasonable as originally applied, it came to be extended to cases where, owing to devolutions of title having taken place, its application was manifestly unjust, and attempts were made by the Courts to limit its exercise. Finally, the right was abolished by s. 17 of the Conveyancing Act, 1881, as replaced and amended by s. 93 of the Law of Property Act, 1925 (where the mortgages or one of them are or is made after the 31st December, 1881), but only in cases where a contrary intention is not expressed in the mortgage deeds or one of them, and it is not unusual to exclude the operation of the section, thus preserving the rights of the mortgagee as defined by the decided cases. For the general law, see *Jennings* v. *Jordan*, (1881)

6 App. Cas. 698; *Pledge* v. *White*, 1896, A. C. 187; *Fisher on Mortgages*. 'Consolidation' must not be confounded with 'tacking' which arose where successive mortgages have been created upon the same estate, whereas consolidation arises where there have been separate mortgages on different estates. See TACKING.

Consols, funds formed by the consolidation (of which word it is an abbreviation) of different Government annuities, payable by way of interest to persons who had lent money to the Government on the security of different taxes, or for the maintenance of different parts of the public service. See CONSOLIDATED FUND, and CONVERSION OF STOCK.

Consortium. The marital right of cohabitation and mutual service. An action for damages lies for loss of consortium or of the services of the spouse if that loss is caused by any wrongful act such as enticement, slander, assault or negligence, see *Jackson* v. *Watson & Sons*, 1909, 2 K. B. 193; and see ENTICEMENT.

Conspiracy. 'A conspiracy is an agreement by two or more persons to carry out an unlawful common purpose, or to carry out a lawful common purpose by unlawful means. It is a misdemeanour at common law, punishable with fine and imprisonment to any extent; and also with hard labour in the case of " any conspiracy to cheat or defraud, or to extort money or goods, or falsely to accuse of any crime, or to obstruct, prevent, pervert or defeat the course of public justice " ' (14 & 15 Vict. c. 100, s. 29); see *Odgers on the Common Law*, 2nd ed. p. 255. 'If in carrying into effect a criminal conspiracy the conspirators inflict loss and damage on a private individual, he will have a private action for the particular damage which he has thus separately suffered'; *ibid.* pp. 256, 625. There are also, it seems, what may be called civil conspiracies, i.e., conspiracies which may be the foundation of an action, though not of an indictment; and there are undoubtedly cases in which two or more persons can render themselves liable to civil proceedings by combining to injure the plaintiff, although if one of them did the same act by himself he would escape all liability (*ibid.* p. 629); but see, as to the limits of this rule, *Mogul Steamship Co.* v. *McGregor*, 1892, A. C. 95; *Quinn* v. *Leathem*, 1901, A. C. 495; *Pratt* v. *British Medical Association*, 1919, 1 K. B. 244; *Sorrell* v. *Smith*, 1923, 2 Ch. 32. Actions of this kind, however, have generally arisen in connection with trade disputes, and the law as to them now depends principally on the two statutes of 1875 and 1906 (as amended by the Act of 1927) next referred to, which have greatly altered the old law of conspiracy. By the Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86), s. 3, as amended by the Trade Disputes Act, 1906, an agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime. And by the Trade Disputes Act, 1906 (s. 1), an act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable. But the Trade Disputes and Trade Unions Act, 1927 (17 & 18 Geo. 5, c. 22), s. 1, declares what is an illegal strike or lockout, and that the 1906 Act shall not apply in the case of an illegal strike.

See *Chitty's Statute*, tit. '*Master and Servant*,' and TRADE DISPUTE.

Conspiracy to murder. Misdemeanour, by the Offences against the Person Act, 1861, s. 4, punishable by penal servitude not exceeding ten years, or by imprisonment; see *R.* v. *Most*, (1881) 7 Q. B. D. 244.

Conspiratione, the writ that lay against conspirators.—*Reg. Brev.* 134; *Fitz. N. B.* 114.

Conspirators, those who bind themselves by oath, covenant, or other alliance, that each of them shall aid the other falsely and maliciously to indict persons; or falsely to move and maintain pleas, etc.—33 Edw. 1, st. 2. Besides these, there are conspirators in treasonable purposes: as for plotting against the Government.

Constable [fr. *comes stabuli*, Lat., in the eastern empire a superintendent of the imperial stables, or the emperor's master of the horse, who at length obtained the command of the army], an officer to whom our law commits the duty of maintaining the peace, and bringing to justice those by whom it is infringed.

Provision is made for the abolition of the office of High Constable by the High Constables Act, 1869 (32 & 33 Vict. c. 67), and of that of Parish Constable by the Parish Constables Act, 1872 (35 & 36 Vict. c. 92), which Act, however, still allows of their appointment in exceptional cases.

By the Municipal Corporations Act, 1882, s. 191, in all boroughs to which that Act applies, ' borough constables ' are appointed by the Watch Committee, but the Local Government Act, 1888, has, in the case of boroughs having a population of less than 10,000, transferred the appointments to the county councils.

In counties constables were appointed by the justices of the peace under 2 & 3 Vict. c. 93 ; 3 & 4 Vict. c. 88 ; and 19 & 20 Vict. c. 69, the County and Borough Police Act, 1856, by which provision was made for the consolidation of the county and borough police ; but the Local Government Act, 1888, has transferred the appointments to joint committees of the justices and the county councils.

The Police Act, 1919, empowers the Home Secretary to make regulations as to the pay, allowances, pensions, conditions of service, etc., of all police forces within England and Wales, which regulations are binding on every police authority. The Act also makes provision for the establishment of an organization called the Police Federation for the purpose of enabling members of the police forces of England and Wales to consider and bring to the notice of the Home Secretary all the matters affecting their welfare and efficiency, other than questions of discipline and promotion, and further contains a prohibition against joining trade unions. By the Police (Weekly Rest-Day) Act, 1910, a constable is to be off duty at least 52 days in the year, and as far as practicable to have one day's rest in seven. By the Police (Appeals) Act, 1927 (17 & 18 Geo. 5, c. 19), a member of a police force dismissed or called upon to resign has a right of appeal to a Secretary of State.

Scotland.—See the Police (Scotland) Act, 1890 (53 & 54 Vict. c. 67), and the Amendment Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 10) ; and the Police (Scotland) (Limit of Age) Act, 1914 (4 & 5 Geo. 5, c. 69).

Special constables may be appointed by two or more justices of the peace under the Special Constables Act, 1831 (1 & 2 Wm. 4, c. 41), on particular occasions, upon it being made to appear to them on the oath of any credible witness that ' any tumult, riot, or felony has taken place ' in any place, and the justices being of opinion that the ordinary officers appointed for preserving the peace are not sufficient for that purpose. Under this Act very numerous appointments were made in November, 1887, on the occasion of public meetings being held in Trafalgar Square, and in August, 1914, on the outbreak of the war with Germany ; see the Special Constables Act, 1914, as made perpetual and slightly amended by 13 & 14 Geo. 5, c. 11, and the Special Constables Order, 1923, No. 905 ; and as to Scotland, the Special Constables (Scotland) Acts, 1914 and 1915. See *Chitty's Statutes*, tit. ' *Police.*'

Canals (Offences) Act, 1840 (3 & 4 Vict. c. 50), provides for the appointment of special constables for keeping peace on canals and navigable rivers, see also POLICE and METROPOLITAN POLICE.

The relation of master and servant is created by a railway company appointing special constables (*Lambert* v. *G. E. Ry.*, 1909, 2 K. B. 776).

Constablewick, the jurisdiction of a constable.

Constat, a certificate which the Clerk of the Pipe and auditors of the Exchequer made, at the request of any person who intended to plead or move in that Court, for the discharge of anything. The effect of it was the certifying what appears (*constat*) upon record touching the matter in question. It was held to be superior to an ordinary certificate, because it did not contain anything but what appeared on record. An exemplification of the enrolment of letters-patent under the Great Seal is called a *constat.*—*Co. Litt.* 225 ; *Page's case*, 5 *Rep.* 52.

Constat, it appears. See NON CONSTAT.

Constituent, (1) one who appoints an agent, particularly (2) one who, by his vote, constitues or elects a member of parliament.

Constitution, any regular form or system of government. Also a particular law, ordinance, or regulation made by the authority of any superior ; as the Novel Constitutions of Justinian and his successors ; the Constitutions of Clarendon ; the Ecclesiastical Constitutions, etc.

Constitutor, a person who has promised to pay the debt of another.

Constraint, duress. See DURESS.

Constructio legis non facit injuriam. The construction of the law does not do any injury.

Construction, interpretation.

As to construction of statutes, see ACT OF PARLIAMENT ; and of contracts, see *Chitty on Contracts*, ch. v. ; and of deeds, see *Norton on Interpretation of Deeds.*

Partem aliquam recte intelligere nemo potest, antequam totum, iterum atque iterum, perlegerit. 3 *Rep.* 52.—(No one can rightly understand any part until he has read the whole again and again.)

In contractibus benigna; in testamentis, benignior; in restitutionibus, benignissima interpretatio facienda est. Co. Lit. 112.—(In contracts, the construction ought to be liberal; in wills, more liberal; in restitutions, most liberal.)

Construction, Court of. The High Court in its Chancery or King's Bench Division, as the case may be, is called the Court of Construction with regard to wills, as opposed to its Probate, etc., Division, whose duty is to decide whether an instrument be a will at all.

Constructive Notice. The knowledge which is imputed to a party: (*a*) if he omits to make the usual and proper inquiry into the title of property which he has purchased; (*b*) if he omits to investigate some fact which has been brought to his notice suggesting the existence of such title or claim; (*c*) if he deliberately refrains from inquiry in order to avoid notice. See *Halsbury, L. E.*, vol. 13, and the person affected with constructive notice takes, if at all, subject to the title or claim, whether he knew of it or not; for instance, a purchaser of land who is satisfied to take a shorter title than he could call for by statute is affected by notice of all trusts and equities of which he would have had notice if he had seen the full title. See *Cox and Neve's Contract*, 1891 2 Ch. 109. *Patman* v. *Harland*, (1881) 17 C. D. 353 illustrates the doctrine. It was there held that: (*a*) notice of a material document is notice of its contents, and (*b*) although the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 2, enacted that, subject to any stipulation to the contrary, an intended lessee was not entitled to call for the title to the freehold reversion upon a contract for the lease, a lessee who had omitted to make the special stipulation and was bound by the prohibition in the section, had intentionally shut his eyes to the freehold title which was subject to restrictive covenants and was affected by notice of the covenants. Section 45 of the L. P. Act, 1925, sub-ss. (2), (3) and (4), has replaced the corresponding section in the V. & P. Act, 1874, as extended in regard to leasehold reversions by the C. Act, 1881, s. 3, but sub.-s. (5) of s. 44 of the Act of 1925, provides that where, under sub-ss. (2), (3) and (4) of that section, an intended lessee or assign is not entitled to call for the title to the freehold or leasehold reversion, he shall not, where the contract is made after 1925, be affected with notice of any matter or thing, of which, if he had contracted that such title should be furnished he might have had notice. To that extent *Patman* v. *Harland* is overruled but the principle remains that a purchaser will be affected by constructive notice if he omits to take reasonable precautions which are not less required because the law facilitates his disregard of them, or if he obtains actual notice of a defect in title. The facts from which constructive notice will be deemed to arise are not necessarily documentary. Absence of title deeds or the possession of a tenant gives notice of the tenant's interest, *Taylor* v. *Stibbert*, (1794) 2 Ves. 437, but not necessarily of an adverse claim to the reversion, see *Barnhart* v. *Greenshields*, (1853) 9 Moo. P. C. C. 18, unless there is notice that the rent is paid to another than the vendor, in which case there is constructive notice of the adverse claimant's interest. The doctrine of constructive notice has been relaxed or disregarded in commercial transactions, e.g., debentures, *Re Standard Rotary Machine Co.*, (1906) 95 L. T. 829.

The doctrine has received statutory interpretation, s. 44 (8) of the L. P. Act, 1925, provides that a purchaser shall not be deemed to be or ever to have been affected with notice of any matter, or thing, of which, if he had investigated the title, or made enquiries in regard to matters prior to the period of commencement of title fixed by that Act, or any other statute or by any rule of law he might have had notice, unless he actually makes such investigation or enquiries. Contracts for less than the statutory or other legally producible length of title still fix the purchaser with notice of any defect which would have been disclosed if he had stipulated the full length of title. By s. 199 of L. P. Act, 1925, replacing the C. Act, 1882 (45 & 46 Vict. c. 39), s. 3:—

(1) A purchaser shall not be prejudicially affected by notice of:—

(i) Any instrument or matter capable of registration under the provisions of the Land Charges Act, 1925, or any enactment which it replaces which is void or not enforceable as against him under that Act or enactment by reason of the non-registration thereof.

(ii) Any other instrument or matter or any fact or thing, unless (*a*) it is within his own knowledge, or would have come to his knowledge if such enquiries and inspections had been made as ought reasonably to have

been made by him; or (*b*) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor or other agent, as such, or would have come to the knowledge of his solicitor or other agent, as such, if such enquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2) Paragraph (ii) of the last sub-section shall not exempt a purchaser from any liability under or any obligation to perform or observe any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately, or immediately; and such liability may be enforced in the same manner and to the same extent as if that paragraph had not been enacted.

(3) Nothing in s. 198 is to affect a purchaser in cases where he would not have been affected by notice if the section had not been enacted.

By s. 205 of the same Act, 'notice' includes constructive notice. See also NOTICE.

Constructive Total Loss, a term used in the law of marine insurance to denote a loss which entitles the assured to claim the whole amount of his insurance, on giving to the assurers notice of abandonment. Generally there is a constructive total loss when the subject-matter assured has not actually perished or lost its form or species, but has, by one of the perils insured against, been reduced to such a state or placed in such a position as to make its total destruction, though not inevitable, yet highly imminent, or its ultimate arrival under the terms of the policy, though not utterly hopeless, yet exceedingly doubtful. In such a case the assured, by giving notice within a reasonable time to the assurers of *abandonment*, i.e., the relinquishment of all his right to whatever may be saved, is entitled to recover against them as for a total loss.

If notice is not given, the loss is treated as a partial loss unless the ship in fact has become a total loss or if there would be no possibility of benefit to the insurer if notice were given to him. See Marine Insurance Act, 1906 (6 Edw. 7, c. 41) ss. 55–263.

One test is that a wrecked ship has become a constructive total loss if the cost of repairing her would exceed her value when repaired. The other is that she will become so when a prudent uninsured owner would not repair her having regard to all the circumstances: in the case of a wreck the owner is entitled to take into account the break-up value, as well as the estimated cost of repairs, in reckoning whether there has been a constructive total loss (*Macbeth* v. *Maritime Insce. Co.*, 1908, A. C. 144). As to a total loss by capture, see *Andersen* v. *Marten*, 1908, A. C. 334. See *Arnould on Marine Insurance*.

Constructive Treason, an attempt to establish treason by circumstantiality, and not by the simple genuine letter of the law, and therefore highly dangerous to public freedom.—*Erskine's Defence of Lord George Gordon*; 3 *Hall, Const. Hist.* c. xv. See TREASON.

Constructive Trust, a trust which the Court elicits by a construction put upon certain acts of parties. It arises upon a vendor's lien or charge upon land sold for unpaid purchase money, and generally, when an estate is subject to a trust or equitable interest or lien, and a person purchases it for value, with either actual or constructive notice of it, the estate will still be subject to the trust or equitable interest in the hands of such a purchaser.

The doctrine of constructive trusts also arises upon the renewal of a lease by a trustee, or person having a limited interest, in his own name, even in the absence of fraud and upon the refusal of the lessor to grant a new lease to the *cestui que trust* or expectant; for such renewed lease is held upon trust for the person beneficially entitled to the old lease or the expectant, in order to prevent persons in fiduciary situations from acting so as to take a benefit for themselves. This doctrine is extended to the renewal of leases by one of several persons or partners jointly interested, by an agent, mortgagor, or mortgagee, or by a person jointly interested with an infant, but, if the renewed lease turn out not to be beneficial, the person renewing must sustain the loss; if beneficial, the infant can claim his share of the benefit to be derived from it.

A renewing trustee, and a volunteer claiming under him, as well as a purchaser from him with notice, will be directed to assign the lease free from incumbrances, except a *bonâ fide* lease made by him at the best rent, and to account for the mesne rents and profits; but he will be entitled to be indemnified against his covenants with the lessor, and will have a lien upon the

estate for the costs of renewal, and the expenses of lasting improvements with interest. See *Keech* v. *Sandford*, otherwise called the *Rumford Market Case*, (1726) 1 *W. & T. L. C.*: *Lewin on Trusts*, ch. x. Reference to trusts in the Settled Land Act, 1925, include constructive trusts, s. 117 (xii) *ibid.*, and see the definition in the T. Act, 1925, s. 68 (17).

Consuetudinarius, a ritual or book, containing the rights and forms of divine offices, or the customs of abbeys and monasteries.

Consuetudinibus et servitiis, a writ of right close, which lay against a tenant who deforced his lord of the rent or service due to him.—*Reg. Brev.* 159; *Fitz. N. B.* 151; and *New Nat. Brev.* 330.

Consuetudo debet esse certa; nam incerta pro nulla habentur. A custom should be certain, for uncertain things are held as nothing.

Consuetudo est altera lex. 4 *Rep.* 21.—(Custom is another law.)

Consuetudo ex certa causa rationabili usitata privat communem legem. A custom based upon a certain reasonable cause supersedes the Common Law. See CUSTOM.

Consuetudo loci observanda est. *Litt.* s. 169. (The custom of a place is to be observed.)—See CUSTOM; CUSTOM OF THE COUNTRY.

Consuetudo regni Angliæ est lex Angliæ. *Jenk. Cent.* 119.—(The custom of the kingdom of England is the law of England.)

Consul, an officer appointed by competent authority to reside in a foreign country, to facilitate and extend the commerce carried on between the subjects of the country which appoints him and those of the country or place in which he is to reside. The office appears to have originated in Italy, about the middle of the twelfth century, and was generally established all over Europe in the sixteenth century. British consuls were formerly appointed by the Crown, upon the recommendation of great trading companies, or of merchants engaged in trade with a particular country and place; but they are now directly appointed by Government, without requiring any such recommendation, though it, of course, is always attended to when made. The right of sending consuls to reside in foreign countries depends either upon a tacit or express convention.

The duties of a consul, even in the confined sense in which they are commonly understood, are important and multifarious. It is his business to be always on the spot, to watch over the commercial interests of the subjects of the State whose servant he is; to be ready to assist them with advice on all doubtful occasions; to see that the conditions in commercial treaties are properly observed; that those he is appointed to protect are subjected to no unnecessary or unjustifiable demands in conducting their business; to represent their grievances to the authorities at the place where they reside, or to the ambassador of the sovereign appointing him, at the Court on which the consulship depends, or to the Government at home; in a word, to exert himself to render the condition of the subjects of the country employing him, within his consulship, as comfortable, and their transactions as advantageous and secure, as possible.

Any person, whether he be a subject of the State by which he is appointed, or of another, may fill the office of consul, provided he be approved and admitted by the Government in whose territory he is to reside. In most instanes, however, but not always, consuls are the subjects of the state appointing them.—*McCull. Com. Dict.* See also Merchant Shipping Act, 1894, and subsequent years; Air Force and Army Acts, as to enlistment. Administration of Oaths and Notaries Acts under 52 & 53 Vict. c. 10, and 54 & 55 Vict. c. 50; various forms of registration and other duties, see e.g. next title.

Consular Marriage Acts of 1849 and 1868, (12 & 13 Vict. c. 68), and (31 & 32 Vict. c. 61), for the marriage of British subjects abroad by consuls, extended by the Marriage Act, 1890 (53 & 54 Vict. c. 47), and Regulations made by Order in Council thereunder, and amended by the Foreign Marriage Act, 1891 (54 & 55 Vict. c. 74); but all these Acts are repealed and with amendment re-enacted by the Foreign Marriage Act, 1892 (55 & 56 Vict. c. 23).

Consulta ecclesia, a church full or provided for.—*Cowel.*

Consultary Response, the opinion of a Court of law on a special case.

Consultation, a writ in the nature of a *procedendo*, whereby a cause, having been removed by prohibition from the Ecclesiastical Court to the King's Court, is returned thither again; for if the judges of the King's Court, upon comparing the libel with the suggestion of the party, find the suggestion false or not proved, and therefore the cause to be wrongfully removed from the Ecclesiastical Court, then upon this consultation or deliberation they decree it to be returned, whereupon the writ in this case obtained is called a consultation.—*Reg. Brev.* 44.

Also a meeting of two or more counsel and the solicitor instructing them for deliberating or advising. A similar meeting of the solicitor with a junior counsel is called a conference.

Consummation, (1) the completion of a thing; (2) the completion of a marriage between wedded persons by cohabitation.

Consummation of tenancy by the curtesy is when a husband, upon his wife's death, becomes entitled to hold her lands in fee simple or fee tail, of which she was seised during the marriage, for his own life, provided he has had issue by her, capable of inheriting. His estate becomes *initiate* upon birth of a child.

Contagious Diseases. See ANIMALS; INFECTIOUS DISEASES; PUBLIC HEALTH.

Contagious Diseases Prevention Acts (29 Vict. c. 35, and 32 & 33 Vict. c. 96). These Acts, sometimes termed the C. D. Acts, were passed to prevent 'venereal diseases, including gonorrhœa,' by the medical examination and detention of prostitutes. They were in force at certain naval and military stations, and were repealed in 1886 by 49 & 50 Vict. c. 10. See *Amos on the Laws for the Regulation of Vice.*

Contango. See CARRY OVER.

Contemner, one who has committed contempt of Court.

Contemporanea expositio est optima et fortissima in lege. 2 *Inst.* 11.—(A contemporaneous exposition is the best and most powerful in law.)—2 *Inst.* 211. A maxim applicable both to ancient grants and statutes: see *Broom's Legal Maxims.*

Contempt of Court. A disobedience to or disregard of the rules, orders, process, or dignity of a Court, which has power to punish for such offence by committal. Contempts are either *direct,* which only insult or resist the powers of the Court, or the persons of the judges who preside there; or *consequential,* which, without such gross insolence or direct opposition, plainly tend to create a universal disregard of their authority. Contempts may be divided into acts of contempt committed in the Court itself (*in facie curiæ*) and out of Court. Among the former are all unseemly behaviour (for which, and which only (see *Reg.* v. *Lefroy,* (1873) L. R. 8 Q. B. 134), there is an express power to punish by s. 162 of the County Courts Act, 1888), as talking boisterously, applauding any part of the proceedings, refusing to be sworn or to answer a question as a witness, interfering with the business of the Court on the part of a person who has no right to do so, and refusing to acquiesce in the ruling of the Court or speaking disrespectfully of or to the judge or jury or any other person on the part of one who has a right to speak properly, i.e., either of the parties or his representative. Among the latter is the attempting by intimidation to cause any suitor to discontinue his action, kidnapping or corrupting witnesses or attempting to do so, corrupting or attempting to corrupt jurors, obstructing or attempting to obstruct the officers of the Court on their way to their duties, speaking or writing disrespectfully of the authorities of the Court, and commenting on pending proceedings.

Every judge of a court of record has power immediately to commit for a contempt committed in his presence, but the power of an *inferior* court to commit for contempt does not extend to contempt out of Court (*Reg.* v. *Lefroy, supra*). In the case of contempt out of Court, the individual is called upon to show cause why he should not be committed, and is allowed to file affidavits in the matter. See *R.* v. *Castro* (*Onslow and Whalley's case*), (1873) L. R. 9 Q. B. 219; *McLeod* v. *St. Aubyn,* 1899, A. C. 549; and *Reg.* v. *Gray,* 1900, 2 Q. B. 36, in which the defendant was fined 100*l.* and 25*l.* costs for contempt in very insultingly and intemperately criticizing in the *Birmingham Daily Argus* a warning of Mr. Justice Darling at the Stafford Assizes to the Press not to publish a report of a trial for the delivery of an indecent lecture, the criticism appearing the day after the trial. The High Court has power to attach for contempt any one who publishes improper comments upon a case which though it has not come before the High Court, subsequently may do so (*R.* v. *Parke,* 1903, 2 K. B. 432; *R.* v. *Davies,* 1906, 1 K. B. 32). As to the principles upon which the Court acts in such cases, see *R.* v. *Payne,* 1896, 1 Q. B. 580. See *Odgers on Libel,* 5th ed. pp. 535 *et seq.*; *Oswald's Contempt of Court*; and CRIME.

Contempt of Parliament. Any violation of the privileges of either House of Parliament may be punished by the House by committal. See *May's Parliamentary Practice*; *Hall, Const. Hist.* ch. xvi.

Contenement, a man's countenance or credit, which he has with, and by reason of, his freehold; or that which is necessary for the support and maintenance of men, agreeably to their several qualities or states of life.—*Jac. Law Dict.*

Contentious Business, the business of legal practitioners where there is a contest, as

opposed to non-contentious business when there is no such contest; the latter term is most frequently used in connection with obtaining probate or administration, but is also applied to business in the Chancery Division where there are no facts in dispute, and the aid of the Court is only invoked to determine some point of law or construction, or to direct trustees or executors in the discharge of their duty.

Contentious Jurisdiction, jurisdiction to hear and determine any matter in dispute between party and party in an action or other judicial proceeding.

Contestatio litis, the plea and joinder of issue in the Ecclesiastical Courts.

Contestatio litis eget terminos contradictarios. *Jenk. Cent.* 117.—(The joinder of issue in a suit needs contradictory terms.)

Contestation, an issue or controversy.

Contingency with a Double Aspect, is a kind of executory interest which may be termed an alternative interest. This is an 'interest that is only to vest in case the next preceding interest should never vest in any way, through the failure of the contingency on which such preceding interest depends. As when a testator devises to A. for life; and if he have issue male, then to such issue male and his heirs for ever; and if he die without issue male, then to B. and his heirs for ever; or, where a testator bequeaths personal estate to the first son of A., and if A. should have no son, then to B.' These interests, considered in conjunction with those for which they are substitutionary, are sometimes termed 'contingencies with a double aspect.'—*Smith's Compendium of Real and Personal Property*, 6th ed. p. 376.

Contingent Legacy, one bequeathed on a contingency; e.g., if the legatee attain twenty-one.

The contingency may only relate to the disposal of the fund, or it may relate to the position or existence of the beneficiary; in the first case as in a bequest to be paid or payable to A. when he shall attain twenty-one years, the legacy is vested and not contingent and although he may never attain the age his personal representatives will be entitled to the legacy, but if the words 'paid' or 'to be payable' are omitted and the legacy is to A. on attaining twenty-one years of age his personal representatives will not be entitled to the legacy if he dies under that age. These are said to be positive rules of construction, *Williams on Executors and Administrators*, 12th ed. p. 794, but the *primâ facie* inference may be negatived by the context of the will taken as a whole. There are certain other guides to construction, e.g., in general, a gift of interest in the interim or a direction to pay maintenance points to a vested and not a contingent gift and where a previous interest is given to one for life and after his decease to another, the interest of the second legatee is vested even if he predeceases the first; legacies which are charged on land, as a rule, however, are not vested until the contingency happens, but this last rule is not applied to proceeds of sale of land and in the case of a direction to pay out of a mixed fund where the proceeds of sale are to be mixed with personalty the legacy is payable according to the rules applicable to personalty. Where legacies are charged on both real and personal estate the rule relating to real estate only arises after the personal estate has been exhausted.

The rule that contingent gifts which cannot vest within a life or lives in being and 21 years afterwards are void not only in regard to gifts to particular persons but in regard to the whole class if it includes some in whom the gift would not vest within the period has been mitigated by s. 163 of the L. P. Act, 1925, which provides that in cases where more than 21 years of age of an unborn donee has been fixed for vesting, the gift is to take effect as if 21 years had been fixed. See also MAINTENANCE and PERPETUITIES.

Contingent Remainder, a remainder limited so as to depend on an event or condition which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate.—*Fearne, Cont. Remainders.*

The legal estate in contingent remainders has been abolished by the Law of Property Act, 1925, s. 1. Section 4, however, provides that they can take effect as equitable interests, and any instrument creating a contingent remainder has become a settlement under s. 1 (ii) of the S. L. Act, 1925. See SETTLED LAND.

In *Smith* d. *Dormer* v. *Parkhurst*, (1740) 18 *Vin. Abr.* 413; 6 *Bro. Cas. Par.* 351, the Court held that, in every case where an estate is given to A. for life, the grantor has an interest remaining in him to enter upon the estate, if it should determine by any act of the tenant amounting to a forfeiture; that this right is inherent in the grantor, from the nature of the estate itself, and may be conveyed to trustees; and that, when it is conveyed to them, it vests in them as a vested remainder for the life of A. On this

ground, the limitation (usual in old settlements) to trustees 'for preserving contingent remainders' was held to confer on them a vested estate and not a contingent remainder.

The interposition of trustees to preserve contingent remainders was rendered unnecessary in most cases by the Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 8, which enacts 'that a contingent remainder existing at any time after the 31st day of December, 1844, shall be, and, if created before the passing of this Act, shall be deemed to have been capable of taking effect, notwithstanding the determination by forfeiture, surrender, or merger of any preceding estate of freehold, in the same manner, in all respects, as if such determination had not happened.'

Contingent remainders, it will be observed, were not preserved by this statute in all possible cases of the determination of the particular estate; they were only preserved against those destructive acts by or with the concurrence of the owner of the particular estate which prematurely determine it, and a contingent remainder still failed of effect, if the particular estate regularly and naturally expired before the contingency happened, upon which the remainder vested.

As to contingent remainders created by any instrument executed after 2nd August, 1877, however, the Contingent Remainders Act, 1877 (40 & 41 Vict. c. 33), provides that every contingent remainder shall, in the event of the particular estate determining before the contingent remainder vests, be capable of taking effect in all respects as if the contingent remainder had originally been created as a springing or shifting use or executory devise or other executory limitation. Contingent remainders are subject to the rule against perpetuities (*Re Ashforth*, 1905, 1 Ch. 535).

Before the Act of 1877 was passed the rules for the creation of a contingent remainder, said Mr. Joshua Williams, might be reduced to two :—

1. The seisin, or feudal possession, must never be without an owner, i.e., every contingent remainder of an estate of freehold must have a particular estate of freehold to support it.

This rule has disappeared with the abolition of the legal estates for life and remainder under the L. P. Act, 1925, and has been supplanted by the modern doctrine of an estate owner with power to alienate the entire fee simple or term of years in the property.

2. An estate cannot be given to an unborn person for life followed by any estate to any child of such unborn person; for in such a case the estate given to the child of the unborn person is void.—*Williams on Real Property;* and see, as to this second rule, *Whitby* v. *Mitchell*, (1890) 44 Ch. D. 85; *Re Nash*, 1910, 1 Ch. 1.

This rule has been subjected to very strong criticism. It is apparently an extreme extension of the meaning of the original rule that the law will not give effect to a possibility upon a possibility such as a gift to an unborn person if his name shall be Nicodemus, and it has been applied to cases where the gift complied with the rules against perpetuities in every other respect. A gift to A. for life remainder to the right heirs of B., a living person, is good, but the heirs are not ascertainable until B.'s death and might well be unborn children of unborn children of B. So far as a remainder or gift in an instrument taking effect after 1925 may be limited to the unborn children or issue of an unborn child the rule has been abrogated by the L. P. Act, 1925, s. 161 (1). See also s. 163 of that Act.

The only rule now is that the remainder must vest within lives in being at the date of settlement or at the death of the testator and twenty-one years thereafter plus a period of gestation, and see also CONTINGENT LEGACY, and s. 163 L. P. Act, 1925.

The whole subject of contingent remainders, together with that of executory limitations, is elaborately dealt with in a celebrated treatise by Charles Fearne, of the Inner Temple (see a good account of him in the *Dictionary of National Biography*), first published as a comparatively short essay in 1772, expanded into two volumes by the author shortly before his death in 1794, and edited in that form by Charles Butler, and afterwards by Josiah Smith, who in his preface to the 10th and last edition, published in 1844, spoke of the 'justly celebrated treatise of the profound Fearne.' An epitome by 'H. W. C.' appeared in 1878, and the *Law of Real Property*, by the late H. W. Challis, published in 1892, contains a chapter on 'Contingent Remainders' which is recommended for careful perusal.

Contingent Use, is a use limited in a conveyance of land, which may or may not happen to vest, according to the contingency expressed in the limitation of such use: see *Cun. Law. Dict.;* 1 *Rep.* 121; *Gilbert on Uses*, 3rd ed. by *E. B. Sugden*, p. 164 n.

Continual Claim, a claim made annually

to land in order to prevent the claim from being barred by the Statute of Limitations (32 Hen. VIII., c. 2), abolished by 3 & 4 Wm. 4, c. 27, s. 11.

Continuance, Notice of Trial by, when notice of trial had been given, and the plaintiff was not ready to proceed, instead of countermanding his notice, he might continue it to any sitting by notice of trial by continuance (*R.* 36, *H. T.* 1853). It could be given only once in a term.—1 *Chit. Arch.* It is now obsolete, notice of trial not being given now for any particular sittings. See NOTICE OF TRIAL.

Continuances, the successive entries (after the first) which in former days were made on the record as the pleadings proceeded; abolished by *Reg. Gen. H. T.* 1853, r. 31. See *Odgers on Pleading,* 7th ed. pp. 75, 232.

Continuando, a word which was formerly used in a special declaration of trespass when the plaintiff would recover damages for several trespasses in the same action; and, to avoid multiplicity of actions, a man might in one action of trespass recover damages for many trespasses, laying the first to be done with a continuando to the whole time in which the rest of the trespasses were done; which was in this form, continuando (by continuing) the trespasses aforesaid, etc., from the day aforesaid, etc., until such a day, including the last trespass.—*Termes de la Ley.*

Continuation Clause. In English time policies it has been usual to provide by a clause attached to the policy, called the continuation clause, that if at the end of the period of insurance the ship is at sea, the insurance may be extended until her arrival at some port.—*Arnould's Marine Insurance,* 8th ed. p. 570. The Finance Act, 1901, (1 Edw. 7, c. 7), s. 11, provides that a policy of sea insurance shall not be invalid on the ground only that by reason of such a clause it may become available for a period exceeding twelve months, and a continuation clause is for this purpose defined as an agreement to the effect that in the event of the ship being at sea or the voyage otherwise not completed on the expiration of the policy, the subject-matter of the insurance shall be held covered until the arrival of the ship, or for a reasonable time thereafter not exceeding thirty days.

Continuous Voyage. See CONTRABAND.

Contors. See COUNTORS.

Contra bonos mores, against good morals.

Contra formam collationis, a writ that issued where lands given in perpetual alms to any late houses of religion, as to an abbot and convent, or to the warden or master of any hospital and his convent, to find certain poor men with necessaries, and do divine service, etc., were alienated, to the disherison of the house and church. By means of this writ the donor or his heirs could recover the lands.—*Reg. Brev.* 238; *Fitz. N. B.* 210.

Contra formam feoffamenti, a writ that lay for the heir of a tenant enfeoffed of certain lands or tenements, by charter of feoffment from a lord, to make certain services and suits to his court, who was afterwards distrained for more services than were mentioned in the charter.—*Reg. Brev.* 176; *Old Nat. Br.* 162.

Contra formam statuti, contrary to the form of the statute [in such case made and provided]. The usual conclusion of every indictment, etc., brought for an offence created by statute prior to the Indictments Act, 1915. The Criminal Procedure Act, 1851 (repealed by the Act of 1915), provided that no indictment be had for the insertion of the words 'against the form of the *statute*' instead of the words 'against the form of the *statutes.*' See Sched. I. of the Indictments Act, 1915, for examples of indictments now in use.

Contra pacem (against the peace). It was formerly necessary, in indictments to allege that the offence was committed against the peace of our Lord the King (or Lady the Queen).—Criminal Procedure Act, 1851, s. 24. See now Indictments Act, 1915.

Contraband [fr. *contra,* Lat., against; and *bando,* Ital., edict], such goods as are prohibited to be imported or exported, bought or sold, either by the laws of a particular state or by special treaties; also a term applied to designate that class of commodities which neutrals are not allowed to carry during war to a belligerent power.

It is a recognized general principle of the law of nations, that ships may sail to and trade with all kingdoms, countries, and states in peace with the princes or authorities whose flags they bear; and that they are not to be molested by the ships of any other power at war with the country with which they are trading, unless they engage in the conveyance of contraband goods. But great difficulty has arisen in deciding as to the goods comprised in this term.

In order to obviate all disputes as to what commodities should be deemed contraband, they have sometimes been specified in treaties or conventions. But this classification is not

always respected during hostilities. See DECLARATION OF LONDON.

Where goods which would be contraband if carried to an enemy port are being carried to a neutral port, they can be seized as contraband if it be proved that they are intended to be forwarded by land or sea from that neutral port to an enemy country. This doctrine was first applied by the American Prize Courts during the American Civil War, and is known as the doctrine of 'Continuous Voyage.' For recent application of the doctrine, see *The Bonna*, 1918, P. 123.

The right of visitation and search is a right inherent in all belligerents; for it would be absurd to allege that they had a right to prevent the conveyance of contraband goods to an enemy, and to deny them the use of the only means by which they can give effect to such right.—*Vattel*, b. 3, c. vii., s. 114. The object of the search is twofold: first, to ascertain whether the ship is neutral or an enemy, for the circumstance of his hoisting a neutral flag affords no security that it is really such; and secondly, whether it has contraband articles or enemies' property on board.—*McCull. Com. Dict.* See *The Jonge Margaretta*, (1799) 1 C. Rob. 189; *Tudor's L. C. in Merc. & Mar. Law*, pp. 981 *et seq.*; and *Hall*, or *Smith and Sibley, on International Law*; VISIT AND SEARCH.

Contracausator, a criminal; one prosecuted for a crime.

Contract, an agreement between competent parties, to do or to abstain from doing some act. For numerous other definitions, see Chalmers's *Sale of Goods Act*, App. II., where it is said that the 'disposition of the best modern writers appears to be to define "contract" as an agreement enforceable at law,' but contended that this definition seems rather too narrow.

Every contract is founded upon the mutual agreement of the parties; the other essentials are legality, capacity (depending on age, mental ability, sex and status) a mutual identity of consent (*consensus ad idem*), and form. When an agreement is stated either verbally or in writing, it is usually called an express contract; when the agreement is matter of inference and deduction, it is called an implied contract. (See IMPLIED CONTRACT.)

Contracts may be classified in various ways.

As to their form, they may be divided into (1) contracts of record, e.g., a recognizance; (2) contracts under seal, otherwise called 'specialty contracts'; (3) simple contracts, which may be either in writing or by parol, or may arise by implication of law from the acts of the parties. All simple contracts require a consideration to support them.

Contracts are also distinguished into executed and executory: *executed*, where nothing remains to be done by either party, and where the transaction is completed at the moment that the arrangement is made; as where an article is sold and delivered, and payment for it is made on the spot; *executory*, where some future act is to be done; as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest payable at a future time.

There is also another distinction, namely, that between entire and severable contracts. An *entire* contract is one the consideration of which is entire on both sides. The entire fulfilment of the promise by either is a condition to the fulfilment of any part of the promise by the other. Whenever, therefore, there is a contract to pay a gross sum for a certain and definite consideration, the contract is entire. 'If a man engages to carry a box of cigars from London to Birmingham, it is an entire contract, and he cannot throw the cigars out of the carriage half-way there, and ask for half the money; or if a shoemaker agrees to make a pair of shoes, he cannot offer you one shoe, and ask you to pay one half the price' (*Re Hall*, (1878) 9 Ch. D. p. 545, per Jessel, M.R.). A *severable* contract, on the other hand, is one the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as corresponds to a sample. As to the evidence required to prove certain kinds of contracts, see FRAUDS, STATUTE OF; Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 17, Copyright Act, 1911. Acknowledgments of debt barred by the Statute of Limitations. Representations as to credit, 9 Geo. 4, c. 14, s. 1; guarantee, Mercantile Law Amendment Act, 19 & 20 Vict. c. 97, s. 13. L. P. Act, 1925, s. 40, partly replacing s. 4 of the Statute of Frauds and Companies Act, 1929, and as to contracts generally, see the works on Contracts of *Addison*, *Anson*, *Chitty*, *Leake*, *Pollock*, *Pothier*, or *Story*. See also CONSIDERATION, COMMON

SEAL, CORPORATION, COMPANY, ILLEGALITY, IMPOSSIBILITY.

Contract, Breach of, Inducement of. In the case of seamen it is by s. 236 of the Merchant Shipping Act, 1894, an offence to persuade or attempt to persuade seamen or apprentices to desert or absent themselves from duty. As to whether such inducement can, apart from any statutory provision, be an actionable wrong, see *Lumley* v. *Gye*, (1853) 2 E. & B. 216, and *Temperton* v. *Russell*, 1893, 1 Q. B. 715 ; but the principles laid down in these cases were commented on in *Allen* v. *Flood*, 1898, A. C. 1. An act done by a person in contemplation or furtherance of a 'trade dispute,' *q.v.* as defined by the Trades Disputes and Trade Unions Act, 1927 (17 & 18 Geo. 5, c. 22), is not actionable on the ground only that it induces some other person to break a contract of employment (Trade Disputes Act, 1906, s. 3).

Contract for Sale. A sale implies a consideration in money or money's worth in return for the thing sold and consequently consideration is an integral part of a contract for sale. The legal incidents of a contract for sale of goods have been embodied and codified in the Sale of Goods Act, 1893. See SALE.

Contract for Sale of Land. The incidents of a contract for sale of land are regulated partly by statute and partly by the practice of conveyancers. A contract for sale of land must be in writing, L. P. Act, 1925, s. 40. See FRAUDS, STATUTE OF. If the contract is a simple, unconditional, or open contract for sale of land, it is implied that the vendor is to make a good title to the land for an estate in fee simple free from incumbrances. *Hughes* v. *Parker*, 8 M. & W. 344. He is under an obligation to show a good title (in ordinary circumstances for the thirty years preceding the date of contract, see ABSTRACT), and to prove that title by sufficient evidence. The expenses of showing the title, i.e., the abstract, falls on the vendor and so also the expenses of production of material documents in his possession or in that of his trustees and mortgagees. The expenses of production for verification of those which are not in such possession are to be borne by the purchaser, L. P. Act, 1925, s. 45. It is incumbent upon the vendor to disclose the incumbrances, if any, material to the title on the land such as leases, mortgages, and easements, rights and defects of title which could not have been discovered by inspection of the property, *Hardman* v. *Child*, 28 C. D. 712, and on that account it has sometimes been said that a contract for sale of land is a contract *uberrimæ fidei*. This doctrine apparently only relates to the title; the rule *caveat emptor* is generally applicable to the physical nature or qualities of the land sold, apart from any representations or the plain and expressed intentions of the contract. From the date of the contract of sale the property belongs in equity to the purchaser and is at the purchaser's risk, see INSURANCE, but until the date of completion or other agreed data such as when a good title has been shown the fruits belong to the vendor and the outgoings are payable by him and he is under a duty to take reasonably good care of the property on behalf of the purchaser. From and after that date the vendor becomes accountable for the rents and profits, and the purchaser as a rule is accountable for interest on the unpaid price. See further CONDITIONS OF SALE, VENDORS LIEN, NOTICE, LAND CHARGES.

Contracting out of a statute. In accordance with the maxim, *Quilibet potest* [or *Cuilibet licet*] *renunciare juri pro se introducto*, persons for whose benefit a statute has been passed may contract with others in such a manner as to deprive themselves of the benefit of the statute, as, for instance, the benefit of the Employers Liability Act, 1880 ; see *Griffiths* v. *Earl of Dudley*, (1882) 9 Q. B. D. 357.

Certain Acts prohibit 'contracting out' or impose limitations. For example, by s. 1 (3) of the Workmens Compensation Act, 1925, contracting out of the Act is allowed upon the certificate of the Registrar of Friendly Societies that a proposed scheme of compensation is not less favourable to the workmen than the scheme of compensation provided by the Act. See also s. 45 of the Agricultural Holdings Act, 1923 ; and s. 146 (12) of the Law of Property Act, 1925, which provides for relief against the forfeiture of a lease ; and also ss. 95 and 96 as to mortgages which exclude contracting out, whereas s. 93 (1) allows it. Again, s. 9 of the Landlord and Tenant Act, 1927, excludes contracting out except for adequate consideration. See CONTRACT, FREEDOM OF.

Contract, Freedom of. Modern legislation has frequently interfered with freedom of contract, as, e.g., by invalidating contracts exempting railway companies from their liabilities as carriers of goods by the 7th section of the Railway and Canal Traffic Act, 1854, or depriving a tenant of his right to kill hares and rabbits under the

Ground Game Act, 1880; and see a list of such invalidations in *Chitty on Contracts*, 18th ed., 778.

Contract Note, a short statement of the effect of a contract. The expression is defined in s. 77 (3) of the Finance (1909–10) Act, 1910, as follows :—

> For the purposes of this Part of this Act, the expression 'contract note' means the note sent by a broker or agent to his principal, or by any person who by way of business deals, or holds himself out as dealing, as a principal in any stock or marketable securities, advising the principal or the vendor or purchaser, as the case may be, of the sale or purchase of any stock or marketable security, but does not include a note sent by a broker or agent to his principal where the principal is himself acting as broker or agent for a principal, and is himself either a member of a stock exchange in the United Kingdom or a person who bonâ fide carries on the business of a stockbroker in the United Kingdom, and is registered as such in the list of stockbrokers kept by the Commissioners.

The same section imposes stamp duties on contract notes varying with the value of the stock or marketable security dealt with. Thus if the value is between 5*l.* and 100*l.* the stamp is 6*d.*, while the maximum is 1*l.* for values exceeding 20,000*l.* The duties may be denoted by adhesive stamps, and may be added to the charge for brokerage or agency.

Contract of Benevolence, a contract made for the benefit of one of the contracting parties only, as a mandate or deposit.

Contradiction in Terms, a phrase of which the parts are expressly inconsistent, as e.g., 'murder but not wilful,' 'a fee-simple for life.'

Contrafaction, a counterfeiting.—*Blount.*

Contramandatio placiti, a respiting or giving a defendant further time to answer, or a countermand of what was formerly ordered.—*Leg. Hen.* 1, c. 59.

Contramandatum, a lawful excuse, which a defendant in a suit by attorney alleges for himself to show that the plaintiff has no cause of complaint.—*Blount.*

Contrapositio, a plea or answer.

Contrarients, used *temp.* Edw. 2, to signify those who were opposed to the king, though it was not thought fit, in respect of their great power, to call them rebels or traitors.—*Jac. Law Dict.*

Contratenere, to withhold.

Contravention, an act done in violation of a legal condition or obligation; particularly any act by an heir of entail in opposition to the provisions of the deed of entail; also, the action founded on the breach of law-burrows. —*Bell's Dict.*

Contribution, the performance by each of two or more persons, jointly liable by contract or otherwise, of his share of the liability. It frequently arises between sureties, who are bound for the same principal, when, upon his default, one of them is compelled to pay the money, or to perform any other obligation for which they all became bound; the surety, who has paid the whole, being entitled to receive contribution from all the others, or from the solvent sureties, if any of them become insolvent, for what he has done in relieving them from a common burthen. See *Dering* v. *Earl of Winchelsea*, (1787) 1 Cox, 318; 1 *W. & T. L. C.* and notes; *Rowlatt on Principal and Surety.*

By the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), s. 5, a co-surety or co-debtor is entitled on payment of the debt to a transfer of the securities held by the creditor.

Legatees are sometimes compelled to refund and contribute for the payment of debts. In like manner, contribution lies between partners for any excess, which has been paid by one partner beyond his share, if, upon the winding-up of the partnership affairs, such a balance appears in his favour; or if, upon a dissolution, he has been compelled to pay any sum for which he ought to be indemnified. It also lies between joint-tenants, tenants-in-common, and part owners of ships, and other chattels, for all charges and expenditures incurred, for the common benefit.—1 *Story's Equity*, 393–415. So there is contribution between co-defendants in contract, if the goods of one be taken by *fi. fa.* for the whole amount of judgment.

There was no contribution among wrongdoers (*Merryweather* v. *Nixan*, (1799) 8 T. R. 186; 2 Sm. L. C.), unless the person seeking contribution did not know that he was doing an unlawful act (*Clerk and Lindsell on Torts*; *Palmer* v. *Wick, etc., Co.*, 1894, A. C. 318), or a special right of action existed by statute, as by s. 37 of the Companies Act, 1929; but see LAW REFORM. In equity, however, there may be contribution as between trustees who have concurred in a breach of trust (*Blyth* v. *Fladgate*, 1891, 1 Ch. 337, and cases there cited).

In an action in the High Court, where a defendant claims to be entitled to contribution over against any other person, such other person may be brought in as a 'third party' and relief obtained against him. See THIRD PARTY.

Contributione facienda, a writ where tenants in common were bound to do some

act, and one was put to the whole burthen, to compel the rest to make contribution.—*Reg. Brev.* 175 : *Fitz. N. B.* 162.

Contributory, a person liable to contribute to the assets of a company in the event of it being wound up. See also *Re Aidall Ltd.*, 1933, Ch. 323. Two lists of contributories are prepared by the liquidator, viz., one (the ' A list ') of those who are shareholders at the time of the winding-up order, and who are primarily liable to contribute, and another (the ' B list ') of those who have ceased to be shareholders but have been shareholders within the twelve months previously, and who are liable in a secondary degree. A shareholder may sometimes avoid liability by transfer to a pauper. See *Re Discoveries Finance Corporation*, 1910, 1 Ch. 312, but see *Hyam's Case*, (1859) 1 De 9 F. & J. 75. Directors with unlimited liability of a limited company are (in addition) liable as if they were members of an unlimited company unless they have ceased to hold office for a year or upwards before the commencement of the winding-up. See generally Companies Act, 1929, ss. 157–192; COMPANY, and LIMITED LIABILITY.

Contributory Mortgage, a mortgage in which the money secured is advanced by two or more lenders in separate amounts. It is not available for trustees in the absence of an express power (*Webb* v. *Jonas*, (1888) 39 Ch. D. 660).

Contributory Negligence, negligence on the part of a plaintiff disentitling him to recover. ' Sometimes, however, he [the defendant] is driven to admit that he was guilty of some negligence, which may have been one of the causes conducing to the plaintiff's injury. But at the same time he asserts that the plaintiff was himself negligent, and that it was this negligence on the part of the plaintiff, and not his own, that was the proximate or decisive cause of the injury for which the plaintiff now seeks to recover damages from him. This is called the defence of contributory negligence.'—*Odgers on the Common Law*, 2nd ed. p. 497. See NEGLIGENCE.

Controller [fr. *contrôle*, Fr., the copy of a roll of accounts], an overseer or officer appointed to examine and verify the accounts of other officers, also Controller under Patents Act, 1911.

Contubernium, the union of slaves with their masters' consent; the children of such unions were the property of their parents' owners.—*Sand. Just.*

Contumace capiendo. Excommunication in all cases of contempt in the spiritual courts is discontinued by 53 Geo. 3, c. 127, s. 2, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the judge has power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the Court of Chancery, whereupon a writ *de contumace capiendo* issues from the High Court of Justice (Chancery Division).—2 & 3 Wm. 4, c. 93; 3 & 4 Vict. c. 93, and Clergy Discipline Act, 1892, s. 7. See *Ex parte Bell Cox*, (1887) 20 Q. B. D. 1; CONTEMPT OF COURT.

Contumacy (contumacia), a refusal to appear in court when legally summoned; or disobedience to the rules and orders of a court.

Conusance of Pleas, a privilege that a city or town has to hold pleas. See COGNIZANCE.

Conusant [fr. *connaissant*, Fr.], knowing or understanding.

Convent, the fraternity of an abbey or priory, as *societas* is the number of fellows in a college. More generally applied to a sisterhood of religious nuns in the Roman Catholic Church.

Conventicle, a private assembly or meeting for the exercise of religion; forbidden by Canons 12, 13, and 73. See DISSENTERS.

By the Conventicle Act, 22 Car. 2, c. 1, repealed by 52 Geo. 3, c. 155, all meetings of five or more persons, exclusive of the family, for nonconforming worship, were prohibited.

Conventio, an agreement or covenant.

Conventio in unum, the agreement between the two parties to a contract upon the sense of the contract proposed. It is an essential part of the contract, following the pollicitation or proposal emanating from the one, and followed by the agreement of the other.—*Civil Law.* If the second party does not assent to the proposal in the sense in which it is made, he is not bound by his assent unless his mistake (*q.v.*) is unreasonable.

Conventio privatorum non potest publico juri derogare. Wing. 746.—(An agreement of private persons cannot affect public right.)

Convention, an extraordinary assembly of the Houses of Lords and Commons, without the assent or summons of the sovereign. It can only be justified *ex necessitate rei*, as in the case of the Convention Parliament which restored Charles II., and that which disposed of the crown and kingdom to William and Mary in 1688. Also a treaty or agreement with a foreign government. See EXTRADITION.

Conventional Estates, estates for life which are created by the express acts of the parties, i.e., by deed or grant, in contradistinction to those which are *legal*, or created by construction and operation of law.—2 *Bl. Com.* 120.

Conventione, a writ for the breach of any covenant in writing, whether real or personal. —*Reg. Brev.* 115 ; *Fitz. N. B.* 145.

Conventual Church, one which consists of regular clerks professing some order of religion ; or of dean and chapter ; or other societies of spiritual men.

Conventuals, religious men united in a convent or religious house.—*Cowel.*

Converse (in logic), the transposition of the subject and predicate in a proposition. The proposition ' X is Y,' converted, becomes ' Y is X.' ' By far the most fertile source of purely syllogistic fallacies is the tendency of the mind to convert universal affirmatives without limitation.'—*Bain's Logic, Deduction*, p. 114.

Conversion. Where a man who is, lawfully or unlawfully, in possession of the goods of another deals with them in a manner which is inconsistent with the dominion of the owner over them, he is guilty of a conversion. It must be ' an unauthorized act which deprives another of his property permanently or for an indefinite time ' (*Hiort* v. *Bott*, (1874) L. R. 9 Ex. 89). The taking possession of the goods of another is a trespass, as distinct from a conversion, though the latter term is often used to include both. Refusal to restore the goods is *primâ facie* sufficient evidence of a conversion, though it does not amount to a conversion.—10 *Rep.* 56. See *Fouldes* v. *Willoughby*, (1841) 8 M. & W. 540 ; *Hollins* v. *Fowler*, (1875) L. R. 7 H. L. 757 ; *Union Credit Bank Cases*, 1899, 2 Q. B. 205 ; *Clerk and Lindsell on Torts*, 7th ed., ch. xi. ; and TROVER.

Conversion, Equitable. It is an established principle that money directed to be employed in the purchase of realty, and realty directed to be sold and turned into money, are considered in equity as that species of property into which they are directed to be converted ; and this, in whatever manner the direction is given ; whether by will, or contract, marriage articles, settlement, or otherwise ; and whether the money is actually deposited, or only covenanted to be paid, or whether the land is actually conveyed, or only agreed to be conveyed (*Fletcher* v. *Ashburner*, (1779) 1 Bro. C. C. 497 ; 1 W. & T. L. C.). This principle is governed by the doctrine of equity, that that which ought to be done shall be deemed as actually done.

The property thus equitably transmuted by anticipation will possess all the qualities, incidents, and peculiarities of that kind of property into which it is destined to be changed. See 3 & 4 Wm. 4, c. 74, s. 71.

But the beneficiary, or all the beneficiaries together, provided they are *sui juris* and unanimous, may elect to take the property in its existing shape before the actual conversion has taken place, and the property is then said to be ' reconverted ' (*Re Davidson*, (1879) 11 Ch. D. 341). Slight evidence of an intention so to elect will be sufficient (*Re Lewis*, (1885) 30 Ch. D. 656). Thus, when a person entitled to the fee simple of an estate to be purchased with trust money causes some of the securities for the money to be changed and held in trust for himself, *his executors and administrators* (*Lingen* v. *Sowray*, (1711) 1 P. Wms. 172) ; or where a person entitled absolutely to the money to arise by the sale of real estate makes a lease of the estate, reserving rent payable to himself, his *heirs and assigns* (*Crabtree* v. *Bramble*, (1747) 3 Atk. 680), these circumstances have been considered to amount to an election.

The nature of the property cannot be altered by the election of a trustee or an infant. Before 1926 money equitably converted into land descended to the heir upon an intestacy and land converted into money to the personal representatives. The importance of this distinction has been diminished in the case of deaths occurring after 1925, the rule of descent of realty and personalty having been assimilated, s. 45, A. E. Act, 1925, except as to the rights of descent under the old law of the heirs of a lunatic who had attained the age of 21 in 1925 and died intestate without having recovered his testamentary capacity (s. 51 (2) *ibid.*) and otherwise, cf. ss. 51 (1) and 51 (3) *ibid.* The doctrine is still of importance in regard to the question whether the property is subject to a trust for sale or whether it is settled land and the rights of persons entitled as residuar, devisees or legatees under wills or settlements.—Consult *Lewin*, *Godefroi*, or *Underhill on Trusts*.

Conversion of Shares into Stock and Reconversion. This may be effected ; see Companies Act, 1929, s. 50.

Conversion of Stock, the change of it from one denomination to another, generally from a higher to a lower, as was done in the case of a small part of the National Debt,

under the National Debt (Conversion of Stock) Acts, 1884 and 1933, and nearly 2000 millions of War Loan, 1929–1947, by the Finance (No. 2) Act, 1931.

Conveyance, an instrument which transfers property from one person to another, defined for the purposes of the Law of Property Act, 1925, s. 205, as including 'mortgage charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of any interest therein by any instrument, except a will.' See CONVEYANCING ACT; DEED; LAW OF PROPERTY; TRUSTS.

Conveyancers, persons who, being neither barristers nor solicitors, employ themselves solely in the preparation of deeds or assurances of property. They must, by the Stamp Act, 1891, s. 44, and Sched. I., take out yearly a certificate upon which a stamp duty of 4*l.* 10*s.* for the first three years, and 9*l.* afterwards, is payable if they carry on business in London, Edinburgh, or Dublin, and 3*l.* for the first three years, and 6*l.* afterwards, if they carry on business elsewhere.

Conveyancing, the art of the alienation of property, by means of appropriate instruments or 'conveyances.' See next title.

Conveyancing Acts. See LAW OF PROPERTY. These Acts, of which the principal were the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), the C. Act, 1881, as amended by the Acts of 1882 (45 & 46 Vict. c. 39), 1892 (55 & 56 Vict. c. 13), 1911 (1 & 2 Geo. 5, c. 37), were all repealed, and partly replaced and extended by the Law of Property Act, 1925. The Conveyancing Act, 1881, was a simplifying and codifying Act introduced by Lord Cairns. It embodied the provisions of previous statutes, the effect of legal decisions, and the practice of conveyancers much of which had already been crystallized in common form. Some of the old forms were very lengthy, and required to be inserted with or without modification in every important conveyance of land. The Act of 1881 related *inter alia* to contracts, conveyances, mortgages, leases, dispositions by married women, or on behalf of infants or other persons under incapacity.

Conveyancing Counsel. The Lord Chancellor may nominate any number of conveyancing counsel in actual practice, not less than six who have practised as such for ten years at least, to be the conveyancing counsel upon whose opinion the Court or any judge thereof may act; see Court of Chancery Act, 1852 (15 & 16 Vict. c. 80), s. 40; *Dan. Ch. Pr.* No special provision is made for these counsel by the Jud. Acts, 1873 and 1875; except in so far as they can retain their offices as officers of a court whose jurisdiction is transferred to the Supreme Court (Jud. Act, 1873, ss. 77 *et. seq.*). See now Judicature Act, 1925, s. 217. See R. S. C. 1883, Ord. LI., rr. 7 to 13.

Convicium, anything which publicly insults another.—*Civil Law.*

Convict, a person found guilty of a crime or offence alleged against him, either by a verdict of a jury or other legal decision. The Forfeiture Act, 1870 (33 & 34 Vict. c. 23), for abolishing forfeitures for treason and felony enables the Crown to appoint administrators of the property of any convict sentenced to death or penal servitude for any treason or felony. The administrator has an absolute discretionary power of dealing with the convict's property (*Carr* v. *Anderson*, 1903, 2 Ch. 279).

Conviction, the act of a legal tribunal adjudging a person guilty of a criminal offence. Thus a person will have been 'convicted' even though no punishment follows, e.g., where he is let out on his own recognizances to come up for judgment when called on (*R.* v. *Blaby*, 1894, 2 Q. B. 170). As to the powers of justices to convict summarily, see the Summary Jurisdiction Acts of 1848 and 1879, amended by the Criminal Justice Administration Act, 1914, Criminal Justice Act, 1925, and the Summary Jurisdiction Rules of 1886. Schedule to Summary Jurisdiction Rules, 1915, and Summary Jurisdiction Rules, 1932, 1933. Consult *Paley on Summary Convictions.*

When a person previously convicted is tried for a subsequent offence, proof of his previous conviction cannot be given until after a finding of guilty of such subsequent offence, unless evidence of his good character be given.—Previous Conviction Act, 1836, (6 & 7 Wm. 4, c. 111); Larceny Act, 1861, s. 116. A previous conviction is proved by producing a record or extract of it, and by giving proof of the identity of the person against whom the previous conviction is sought to be proved with the person appearing in the record or extract of conviction to have been convicted. Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 18. And see PREVIOUS CONVICTION; PROBATION

Convivium, the same among the laity as *procuratio* with the clergy, viz., when a tenant, by reason of his tenure, is bound to

provide meat and drink for his lord once or oftener in the year.—*Blount.*

Convocation, an assembly of the clergy protected from molestation by 8 Hen. 6, c. 1. Its purpose is stated to be the enactment of canon law, subject to the license and authority of the sovereign (as required by the Act of Submission (25 Hen. 8, c. 19)), and the examination and censure of all heretical and schismatical books and persons. It is held during the session of parliament, and is convened by the sovereign. There are two convocations, one for the province of Canterbury, the other for that of York. Convocation consists of an upper and a lower house. In the upper sit the bishops and in the lower all the deans, the senior archdeacons, and the proctors of the clergy. A canon made in 1922 provides in detail for the consolidation of the lower houses. Convocation, by express license from the Sovereign, may legislate by making canons, which bind the clergy only. See *Steph. Com.*, book 4, c. vi. ; *Hook's Church Dictionary*, tit. '*Convocation*' ; *Reg.* v. *Archbishop of York*, (1888) 20 Q. B. D. 740. See NATIONAL ASSEMBLY OF THE CHURCH OF ENGLAND).

Convoy, ships of war which accompany merchantmen in time of war, to protect them from the attacks of the enemy. There are five things essential to sailing with convoy :— viz. (1) It must be with a regular convoy under an officer appointed by government ; (2) it must be from the place of rendezvous appointed by government ; (3) it must be a convoy for the voyage ; (4) the master of the ship must have sailing instructions from the commanding officer of the convoy ; (5) the ship must depart and continue with the convoy till the end of the voyage, unless separated by necessity. See Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), and s. 46 of the Naval Prize Act, 1864 (27 & 28 Vict. c. 25), by which the master of a ship deserting a convoy is liable to a penalty of 500*l.* and one year's imprisonment. See *Hall* or *Wheaton on International Law.*

Coolie, porter, labourer.—*Indian.*

Coopertio, the head or branches of a tree cut down ; though *coopertio arborum* is rather the bark of timber trees felled, and the chumps and broken wood.—*Cowel.*

Coopertura, a thicket or covert of wood.—*Chart. de Forest.*

Co-ordinate and **Subordinate** are terms often applied as a test to ascertain the doubtful meaning of clauses in an Act of Parliament. If there be two, one of which is grammatically governed by the other, it is said to be subordinate to it ; but if both are equally governed by some third clause, the two are called co-ordinate.

Coparceners or **Parceners.** The name given to persons who until 1926 inherited an inheritable estate by virtue of descents from the ancestor which conferred on them all an equal title to it. It arose by act of law only, i.e., by descent, which, in relation to this subject was of two kinds :—(1) Descent by the common law, which took place where an ancestor died intestate, leaving two or more females as his co-heiresses ; these, according to the canon of real property inheritance, all took together as coparceners or parceners, the law of primogeniture not obtaining among women in equal relationship to their ancestor : they were, however, deemed to be one heir ; and (2) descent by particular custom, as in the case of gavelkind lands, which descended to all the males in equal degree, as the sons, brothers, or uncles of the deceased intestate ancestor ; in default of sons, they descended to all the daughters equally.

Coparceners had a unity though not an entirety, or necessarily an equality, of interest ; if there were two only, each was properly entitled to the whole of a distinct moiety ; and being seised in moiety there was no *jus accrescendi* between them, for on the death of one of them intestate, her moiety descended to her heir-at-law, who held, subject to curtesy (if any), with the surviving parcener in coparcenary, although such heir might be a male and a collateral. Indeed, their estates are held in coparcenary so long as they claimed by descent. As soon as any part was severed by conveyance, from the title of the remaining part, the part so severed was held in common.

Between the alienee and the other coparceners there was a tenancy in common. The remaining coparceners would, as between themselves, continue to hold in coparcenary.

They were seised both jointly and severally, and possessed a unity of title, but the estate might vest in them at different periods.

Coparcenary was like joint-tenancy so far as the same unity of title and similarity of interest was common to both, but they differed in this, that while coparceners always must have claimed by descent (for if two sisters purchased an estate to hold to them and their heirs they were not parceners, but joint-tenants), joint-tenants always claimed by act of parties.

This estate might be dissolved in any of the following modes :—

(1) By deed of partition, as

(α) Where coparceners agreed to divide the estate into equal parts in severalty, each to have a determinate portion.

(β) Where they appointed some third person to divide the estate, and after a division by him, each coparcener, according to seniority of age, or as should be agreed between them, selected her own portion. The privilege of seniority was in this case personal; for if the eldest sister were dead, her issue should not choose first, but the next sister. But if an advowson descended in coparcenary, and the sisters could not agree in the presentation, the eldest and her issue, nay, her husband, or her assigns, should present alone, before the younger. And the reason given is, that the former privilege of priority in choice upon a division arose from an act of her own, the agreement to make partition, and therefore was merely personal; the latter, of presenting to the living, arose from the act of the law, and was annexed not only to her person but to her estate also.

(λ) Where the eldest coparcener divided the estate, in which case she took the portion remaining after her sisters have made their choice.

(δ) Where they agreed to cast lots for their shares.

(2) By the alienation of one of the parties which destroyed the unity of title.

(3) By all the estate at last descending to one person, which reduced it to a severalty; and

(4) By a compulsory partition or sale under the Partition Acts. See PARTITION.

The legal estate in coparcenary was abolished by the L. P. Act, 1925, s. 1, the entirety of the legal estate becoming vested in trustees for sale under s. 34 of that Act, but as from the 1st January, 1926, coparceners retain all their equitable rights in the proceeds of sale and in the land until sold as equitable interests under s. 39 and the 1st Sched. Part I. of the Act. Further the future creation of equitable interests in coparcenary has been prevented by A. E. Act, 1925, s. 45, which abolished descent to the heir, since the tenure depended on that descent except in cases where the heir is still ascertainable by under the old law, under s. 132 of the Law of Property Act, 1925, see Administration of Estates Act, 1925, s. 51, or by descent (*a*) of an entailed estate in certain cases, and (*b*) on death of a lunatic who had attained 21 years of age in or before 1925, as provided by the A. E. Act, 1925, s. 51 (a). Coparceners in whom the legal estate was vested on the 1st January, 1926, in general, if not more than four in number, hold the legal estate as joint tenants upon the statutory trusts, see 1st Sched. Part II. of the Act. As to partition by the court or otherwise, see PARTITION.

Copartnership. See PARTNERSHIP.

Cope, a custom or tribute due to the Crown or lord of the soil, out of the lead mines in Derbyshire; also a hill, or the roof and covering of a house; a church vestment, by Canon 24 to be worn in cathedral churches by those that administer the Holy Communion.

Copeman, or **Copesman,** a chapman.

Copesmate [fr. *koopman*, Du., fr. *koop*, chaffer, exchange], a merchant, a partner in merchandise.

Copia libelli deliberanda, a writ that lay where a man could not get a copy of a libel at the hands of a spiritual judge, to have the same delivered to him.—*Ref. Brev.* 51.

Coppa, a cop or cock of grass, hay, or corn, divided into titheable portions, that it may be more fairly and justly tithed.—*Jac. Law Dict.*

Coppice, or **Copse,** [fr. *couper*, Fr., to cut], a small wood, consisting of underwood, which may be cut at twelve or fifteen years' growth for fuel.

Copra, the dried kernel of the coco-nut, prepared and exported for the expression of coco-nut oil.—*Oxf. Dict.*

Copula, the corporal consummation of marriage. See PER VERBA DE PRÆSENTI.—*Copula* (in logic), the link between subject and predicate contained in the verb.

Copy [*copia*, Lat.], the transcript or double of an original writing; as the copy of a patent charter, deed, etc. As to when copies certified or examined are admissible in evidence, see *Taylor on Evidence*, ss. 1323 *et seq.*

Copyhold. Tenure in copyhold has been abolished under the L. P. Acts, 1922 and 1925, and the Amending Acts of 1924 and 1926, but the greater part of the former title on this subject has been retained verbatim in view of the importance of the subject in examining titles. In the previous edition of this work, copyhold was described as a base tenure founded upon immemorial custom and usage; its origin is undiscoverable, but it is said to be the ancient villeinage modified and changed by the commutation

of base services into specified rents, either in money or money's worth.

A copyhold estate is a parcel of the demesnes of a manor held at the lord's will, and according to the custom of such manor. The tenant may have the same *quantities of interest* in this tenure as he may enjoy in freeholds, as an estate in fee-simple or (by particular custom) fee-tail, or for life, and he may have only a chattel interest of an estate for years in it. By the custom of some manors, the estate devolves upon the heir on the ancestor's death, and is called a copyhold of inheritance. As far as the quantity and modification of interest are concerned, the tenant's estate partakes of the nature of a freehold, but because it is held by a base instead of a free tenure, it is called a copyhold. Viewing his estate, then, through the medium of its holding or tenure, the tenant is merely a tenant-at-will; but it is to be remarked that his tenancy-at-will must be according to custom, which always regulates the copyholder's interest, upon which interest the lord has no power whatever to encroach. Free copyholds or customary freeholds, however, are held according to the custom of the manor, and altogether independently of the will of the lord, while copyholds of base tenure are held merely at the lord's will. The law certainly considers the freehold to be in the lord (except in the case of strict customary freeholds, when the freehold is in the tenant), and the tenant to possess his customary estate according to the quantity of interest it is intended he should possess, but the law will protect the copyholder, and will not permit him to be at the will or wayward caprice of the lord. The minerals in copyhold land belong to the lord, and so does the timber, whence the maxim, 'The oak scorns to grow save on free land.'

There are four circumstances necessary to the existence of a copyhold estate:—(1) A manor; (2) a court; (3) the land must be parcel of the manor; and (4) it must have been demised or demisable by copy of court roll from time immemorial.

A manor is essentially necessary, for all copyholds must be parcels of manors; and so is a court, for a copyholder has no other evidence of his title than the rolls of the court, which he can inspect and take copies of to use as he may think proper; and the Court of Queen's Bench (now the King's Bench Division of the High Court of Justice) will order the lord to allow such inspection, and if the lord then refuse, he will be attached. There are two courts incident to every manor —a court baron or freeholder's court, and a customary court, which only relates to the copyholders, who form the homage and transact the necessary business, the lord or his steward presiding as judge. Although these courts are essentially distinct, yet they are usually held at the same time, and the same roll serves to record the proceedings of both. In the court-baron the suitors are judges. In the customary court the suitors are assistants to the lord, or his steward, who is the judge. It is obvious that the lands granted must be parcel of a manor, seeing that a copyhold is part of the demesnes of a manor, but it is not absolutely necessary that the lands should continue parcel of the manor. And because this tenure derives its whole force from custom, the lands must have been demisable by copy of court roll from time immemorial, for the two pillars, upon which every custom rests, are common usage and existence time out of mind. No copyhold estate can, therefore, be created at the present day.

Copyhold customs are divided into two species:—(1) *General*, which extend to all manors in which there are copyholders, and are warranted by the common law, and of which the courts of law take judicial notice, without being specially pleaded; and (2) *Particular*, which prevail in some manors only, and which must be specially pleaded. They are construed strictly, and when they are contrary to reason, morality, or justice, or cannot be reduced to a certainty, the courts will not give effect to them.

The following services and incidents are by general custom annexed to copyholds:—

(1) Fealty, but the oath of fealty is now generally respited.

(2) Suit of Court, for every copyholder is bound to attend the lord's court, and be sworn of the homage.

(3) The copyholder is entitled to estovers, i.e., housebote, hedgebote, and ploughbote, unless restrained by particular custom.

(4) He cannot commit any kind of waste, unless there exists a particular custom to warrant it.

(5) Copyholds of inheritance are descendible according to the rules of the common law, unless the custom be otherwise, in which case custom must prevail. Subject to any such custom, the alterations effected by the Inheritance Act, 1833 (3 & 4 Wm. 4, c. 106), are applicable to this species of tenure.

(6) Copyholds are alienated by surrender, according to general custom, followed by

admittance at the hands of the lord or his steward, and they are devisable.

(7) A copyholder by general custom may make a lease for a year, and with the lord's licence he may lease for any number of years.

(8) Copyholds are liable to all sorts of debts, by 3 & 4 Wm. 4, c. 104, and the Judgments Act, 1838 (1 & 2 Vict. c. 110).

(9) The widow of a copyholder, according to a particular custom, is entitled to a certain portion of her husband's lands, which varies in quantity, as a half, a third, a fifth, or the whole. It is called her free-bench. It is generally an estate for life, but is forfeited by a second marriage or incontinency.

The widow's free-bench is barred by a jointure, whether legal or equitable; or by the alienation of the copyhold lands by the husband, or even by an agreement to convey, or by forfeiture, or by a grant of the freehold by the lord to the husband, for then the copyhold is destroyed, or by a devise expressed to be in satisfaction of it.

(10) Copyholds, by special custom, are subject to curtesy, and, by the custom of some manors, the husband is entitled to curtesy, though he have no issue by his wife, but is forfeitable on a second marriage.

(11) Upon every descent of a copyhold estate, a sum of money or fine is due to the lord from the heir upon his admission, as a consideration for the renewal of a grant. If the heir refuse to be admitted, the lord may seize the estate to his own use. The lord is also entitled to fines upon all voluntary grants, upon the admission of tenants by the curtesy, the free-bench, and indeed upon alienation generally, the only exception being in case of bankruptcy. No fine is due upon the admission of a remainderman, unless by special custom, because the admission of the tenant for life is generally deemed the admission of the remainderman, nor are fines due upon a mere change of the tenant's interest, nor upon a covenant or agreement to surrender, because it is only due upon an actual admittance. Tenants in common pay this fine apportionably, each according to his share. Joint-tenants and coparceners pay a single fine for al.. The practice as to the payment of the fine on the admittance of joint-tenants is this: two years' value is paid for the first life, half of that on the second, and a half of that half on the third, and so on, according to the number of the tenants. Joint tenants succeed each other by right of survivorship and without a new admittance, and fines are not due but upon admittance; the application, therefore, of the general rule to the case of joint-tenants would be unfair to the lord. By the custom of many manors, fines are due from copyholders on every change of the lord which happens by the act of God. The *quantum* of all these fines is not to exceed two years' value of the lands, which is recoverable by action of debt. See FINES IN COPYHOLDS.

(12) Besides a fine, a heriot is due to the lord on his tenant's death, though he be only a tenant for life, provided he be a *legal* and not an *equitable* tenant. It is usually the best beast or *averium*; it is sometimes the best chattel, as a jewel or a piece of plate, but it must be a personal chattel. Heriots are in some manors commuted to a customary composition in money, but it must be an indisputably ancient custom. See HERIOT.

Copyholds were forfeited to the lord of the manor, and not to the Crown, unless by the express words of an Act of Parliament, by the tenant being attainted of treason or felony; and are still so by his attempting to alienate his estate by any mode which is contrary to custom, or by committing any kind of waste, or by disclaiming the tenure, or by refusing to perform the services.

Copyholds may be enfranchised, i.e., converted into free tenure, in several ways:—

(1) If the copyholder surrender his estate to the rightful lord, to the use of the lord.

(2) If the copyholder release all his right and interest to the lord.

(3) If the lord convey the freehold of the copyhold to a stranger, and the copyholder release to the stranger.

(4) If the lord convey to the copyholder the land for an estate of freehold, or even for a term of years.

(5) The efforts of the Legislature have been much directed to the facilitation of enfranchisement, but the Copyhold Act, 1841 (4 & 5 Vict. c. 35), and its amending Acts were purely permissive, and merely facilitated the commutation and enfranchisement by the establishment of the 'Copyhold Commissioners' as a tribunal to determine differences between lords and tenants.

The Act of 1852 (15 & 16 Vict. c. 51), afterwards amended by 21 & 22 Vict. c. 94 (the Act of 1858), and more materially by the Act of 1887 (50 & 51 Vict. c. 73), provided for compulsory enfranchisement by either lord or tenant, preserving, however, under s. 48 of the Act of 1852, the lord's right of way and sporting and to minerals, and also the lord's right in case of escheat for want of heirs.

By the Act of 1887 a notice of the tenant's

right to enfranchise ' upon paying the lord's compensation and the steward's fees ' was directed to be given by the steward of the manor to every tenant admitted in or after 1888, rent-charges were made redeemable, limited owners of enfranchised land might charge the land with the money paid for the enfranchisement, and the ' Land Commissioners ' were directed (see s. 30) to ' frame and cause to be printed and published such a scale of compensation for the enfranchisement of land as in their judgment would be fair and just and would facilitate enfranchisement,' and also a scale of allowances to valuers, and ' all such directions for the guidance of lord, tenant, and valuers, as the commissioners might deem necessary,' it being expressly provided that these scales were ' to be for guidance only.'

The Copyhold Act, 1894 (57 & 58 Vict. c. 46), as amended, consolidated the above Acts without any amendment of the law, by substituting the Board of Agriculture (*q.v.*) for the Land Commissioners in accordance with the Board of Agriculture Act, 1889.

Under the Law of Property Acts, 1922, (Amendment) 1924, 1925, and (Amendment) 1926, copyhold and customary tenures have been converted into a qualified form of freehold or leasehold, land formerly copyhold being in any event still subject to certain rights of the lord of the manor in regard to which the parties are free to make their own terms. These rights are the lord's right (if any) to mines, minerals, limestone, clay, stone and gravel pits or quarries; also rights, franchises, royalties, or privileges of the lord in respect of fairs, markets, chase, warren, fishery or other rights of shooting, fishing, hunting or fowling. But subject to the lord's rights to minerals and access thereto, the enfranchised owner may disturb or remove the soil so far as is necessary for the purpose of making roads or drains or erecting buildings or obtaining water, L. P. Act, 1922, 12th Sched., s. 5.

Notwithstanding enfranchisement copyholds were, until 1935, still subject until extinguishment to the manorial incidents: (1) Quit and Chief Rents; (2) Fines, Reliefs and Heriots; (3) Customary or reasonable fines on alienation (see s. 130 (1) of the L. P. Act, 1922 and 13th Sched. Part II. para. 13 *ibid.*, and L. P. Amendment Acts, 1924 and 1926); (4) Forfeiture upon any ground subject to right of relief (L. P. Act, 1922, s. 132); (5) The lord's right to timber, all, if he had the right of entry; half, if he had no right of entry; (6) All fees payable to the steward. These manorial incidents could be extinguished by compensating the lord either by agreement with or notice to him at any time before the 1st January, 1936. Compensation might be paid in cash within thirty days after agreement or if exceeding 20*l.* by agreement or by 20 annual instalments including interest at 5½ per cent. secured by a charge on the enfranchised land, or by mortgage (L. P. Act, 1922, s. 139). In exceptional cases the compensation may be agreed with 5½ per cent. interest, under Part II. of the Copyhold Act, 1894 (L. P. Act, 1922, s. 138 (3)). No stamp is required if the agreement is made before 1st January, 1936, L. P. Act, 1922, s. 139 (1) (vii.).

After 1935 these incidents became extinguished automatically unless the Minister of Agriculture extend the time, but a right to partial compensation for loss of profits or rights accruing before 1936 is still available.

Unless and until the manorial incidents have been extinguished the legal estate will not pass upon conveyance unless the assurance has been produced to the steward of the manor within six months from the date of execution and duly endorsed by him, see L. P. Act, 1922, ss. 129 and 130. Subject to these provisions copyholds are now held as freeholds or leaseholds. The latter include life estates which have been converted to terms for ninety years determinable by notice upon cessor of the life or lives, see L. P. Acts, 1922, s. 133 and 1925, s. 149; and where leases for lives or years were perpetually renewable by custom the tenure is converted into a fee simple, L. P. Act, 1922, s. 135. Under s. 145 of the L. P. Act, 1925, leases with a perpetual right of renewal by lease or grant from the copyholder have been converted into long terms of 2,000 years. All customary modes of descent were abolished in regard to deaths happening after 1925 and also all customary modes of conveyance made after the same date.

The scale of compensation payable upon extinguishment of manorial incidents is regulated by L. P. Act, 1922, Part VI. and the 13th Sched. as amended by the L. P. Acts, 1924 and 1926, and see also S. R. & O., 1925, No. 810, Manorial Incidents (Extinguishment) Rules. The 14th Sched. of the L. P. Act of 1922, sets out the scale of the steward's compensation, and solicitor's remuneration is regulated by S. R. & O., 1926, No. 1071, L. 24.

The Court Rolls and other manorial documents have been placed under the

superintendence of the Master of the Rolls, but the possession and care of these documents remains in the lord of the manor (L. P. Act, 1924, 2nd Sched.). Consult *Scriven on Copyholds, Elton on Copyholds*, and *Chitty's Statutes*, tit. '*Copyhold.*'

Copyhold Commissioners. The tithe commissioners for England and Wales, appointed under the Copyhold Act of 1841 to be the commissioners for carrying that Act into execution.

Copyhold, Inclosure, and Tithe Commissioners, a board constituted under the Inclosure Act, 1845 (8 & 9 Vict. c. 118). The powers of these commissioners, of the copyhold commissioners, and of the tithe commissioners, were by s. 48 of the Settled Land Act, 1882, vested in one board called 'the Land Commissioners,' whose powers were in their turn transferred to the Board of Agriculture (now the Ministry of Agriculture and Fisheries), by the Board of Agriculture Act, 1889.

Copyright, an incorporeal right, being the exclusive privilege of printing, reprinting, selling, and publishing his own original work which the statute law first gave to an author in 1709, by 8 Anne, c. 19, for the term of fourteen years. Whether the right existed at Common Law is a long-vexed and still undetermined question. See *Jeffries* v. *Boosey*, (1854) 4 H. L. C. 815. There is no copyright in an illegal or immoral publication (*Southey* v. *Sherwood*, (1817) 2 Mer. 435; *Stockdale* v. *Onwhyn*, (1826) 5 B. & C. 173).

The law of copyright now depends mainly on the Copyright Act, 1911 (1 & 2 Geo. 5, c. 46) (July 1, 1912), and 'no person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force' (s. 31).

By sub-s. 2 of s. 1 of this Act 'copyright' is thus defined:—

'For the purposes of this Act "copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof, and shall include the sole right—

'(*a*) to produce, reproduce, perform or publish any translation of the work (see *Byrne* v. *Statist Co.*, 1914, 1 K. B. 622);

'(*b*) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;

'(*c*) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise;

'(*d*) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered,

and to authorize any such acts as aforesaid.'

Save as otherwise expressly provided by the Act, the term for which copyright subsists is the life of the author and fifty years after his death (ss. 3, 31, 24). The owner may assign his right wholly or partially, and may grant any interest in it by license, but any such assignment or grant must be in writing and signed by him or his agent (s. 5 (2)); and there is a provision for the granting of compulsory licenses, after the death of the author, in certain cases (s. 4). The author of a work is *primâ facie* the first owner of the copyright; but see s. 5. As to what acts amount to an infringement, see s. 2; and as to the civil remedies for infringement, see ss. 6–10; in certain cases a summary remedy is provided (ss. 11–13). Special provisions apply in the case of joint-authors (s. 16), posthumous works (s. 17), Government publications (s. 18), mechanical contrivances for reproducing sounds (s. 19); and see *Chappell & Co.* v. *Columbia Gramophone Co.*, 1914, 2 Ch. 745; *Monckton* v. *Pathé Frères*, 1914, 1 K. B. 395), political speeches (s. 20); and see *Walter* v. *Lane*, 1900, A. C. 539; photographs (s. 21), designs registrable under the Patents and Designs Act, 1907 (s. 22), works of foreign authors (s. 23), and existing works (s. 24). As to the application of the Act to British Possessions, see ss. 25–28; and as to the position with respect to copyright of a trustee in bankruptcy, see Bankruptcy Act, 1914, s. 60. The Act of 1911 repeals a great number of statutes relating to copyright, but the Musical (Summary Proceedings) Copyright Act, 1902 (2 Edw. 7, c. 15), and the Musical Copyright Act, 1906 (6 Edw. 7, c. 36), authorizing the seizure and destruction of pirated copies, are left unrepealed; and so are s. 7 and (with slight alteration) s. 8 of the Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), under which penalties may be recovered for infringement of copyright. See also *Performing Right Society, Ltd.* v. *Hammond's Bradford Brewery Co. Ltd.*, 1934, Ch. 121 (reproduction by receiving set and loudspeaker); *Hawkes & Son (London) Ltd.* v. *Paramount Film Service Co.*, 1934, Ch. 593 (sound film reproducing musical work); and

the Dramatic and Musical Performers Protection Act, 1925 (15 & 16 Geo. 5, c. 46); which penalizes making records without performers' permission, see *Musical Performers' Protection Assoc.* v. *British International Pictures Ltd.*, 1930, 46 T. L. R. 485.

As to International Copyright, see Part II. of the Copyright Act, 1911. International copyright has in modern times been very generally recognized, but until 1891 the United States of America refused to recognize it. In that year, however, an Act was passed granting it, but with the very serious restriction, in the case of books, that the books must have been printed from type set within the limits of the United States. See the Treaty of Berne, and *Sarpy* v. *Holland*, 1908, 2 Ch. 198.

Consult *Macgillivray's Copyright Act*, 1911; and *Copinger on Copyright*; and see PUBLISHER.

Coraage, an extraordinary imposition, upon some unusual occasion; it seems to be of certain measures of corn.—*Blount.*

Coram nobis (before us ourselves) [the king, i.e., in the King's Bench].

Coram non judice (in presence of a person not a judge). When a suit is brought and determined in a Court which has no jurisdiction in the matter, it is said to be *coram non judice*, and the judgment is void.

Coram paribus (before his peers).

Cord of Wood, a quantity of wood eight feet long, four feet broad, and four feet high.

Cordwainer, or **Cordiner** [fr. *cordonnier*, Fr., fr. *cordouan*, Old Fr., originally leather from Cordova], a shoemaker.

Co-respondent, the man charged with adultery. The Judicature Act, 1925, s. 177, enacts that, on a petition for divorce presented by the husband or in the answer of a husband praying for divorce, the petitioner or respondent, as the case may be, shall make the alleged adulterer a co-respondent unless he is excused by the Court on special grounds from so doing. On a petition for divorce presented by the wife the Court may, if it thinks fit, direct that the person with whom the husband is alleged to have committed adultery be made a respondent.

By s. 189, the husband may claim damages from any person on the ground of adultery with the wife; and the claim for damages shall, subject to the provisions of any enactment, relating to trial by jury in the court, be tried on the same principles and manner as actions for criminal conversation were tried before the commencement of the Matrimonial Causes Act, 1857 (partly repealed), and the provision of that Act with reference to the hearing and decision shall so far as necessary apply to the hearing and decision on petition on which damages are claimed.

Coretes [fr. *cored*, Brit.], pools, ponds, etc.

Corium forisfacere, to forfeit one's skin, applied to a person condemned to be whipped; anciently the punishment of a servant. *Corium perdere*, the same. *Corium redimere*, to compound for a whipping.—*Jac. Law Dict.*

Corn Production Act, 1917, was an Act for encouraging the production of corn, and provided, *inter alia*, for State payments to growers where the average price of wheat or oats fell below a minimum. It was amended by the Agricultural Act, 1920, and repealed by the Corn Production Acts (Repeal) Act, 1921. As to the Wheat Commission, Fund and Quota, see the Wheat Act, 1932 (22 & 23 Geo. 5, c. 24); and see CORN SALES ACT, 1921.

Corn-rent. A rent paid either in corn, or on a sliding scale in accordance with the price of corn. See *Kendall* v. *Baker*, (1852) 11 C. B. 842. It was directed by 18 Eliz. c. 6, that one-third of the whole rent then paid on college leases should be reserved in wheat or malt, reserving a quarter of wheat for each 6*s.* 8*d.*, or a quarter of malt for every 5*s.*; or that the lessees should pay the same according to the price that wheat or malt should be sold for in the market next to the respective colleges; but this Act, though specially saved by s. 7 of the Ecclesiastical Leases Act, 1800 (39 & 40 Geo. 3, c. 41), was repealed by the Universities and College Estates Act, 1925.

Corn Returns. By the Corn Returns Act, 1882 (45 & 46 Vict. c. 37), consolidating with amendments 5 & 6 Vict. c. 14, and 27 & 28 Vict. c. 87, certain towns as named by Order in Council from time to time and being not less that 150 nor more than 200 in number, supply through 'inspectors of corn returns' weekly returns of the purchases of British corn made in such towns. The inspectors make up these returns from the dealers and corn factors, etc., who are bound by s. 11 of the Act to supply particulars under a penalty not exceeding 20*l.* Averages are computed by the Board of Trade from the weekly returns, and published in the *London Gazette*. The Corn Sales Act, 1921, ss. 2, 4, makes a minor amendment to the Act of 1882.

Corn Sales Act, 1921, provides, with certain exceptions, that all sales of corn (i.e., wheat, barley, oats, rye, maize, and the bran and meal therefrom) shall be by weight and in terms of and by reference to the one hundredweight of 112 imperial standard pounds, otherwise transactions are null and void. The Act also applies to dried peas, dried beans, linseed and potatoes, and to the seeds of grass, clover, vetches, swedes, field turnips, rape, field cabbages, field kale, field kohl-rabi, mangels, beet and sugar-beet, flax and sainfoin. By s. 5 *ibid.* the price and value under any Act, award, or instrument of an imperial bushel shall have effect as if the price or value were calculated on that of sixty imperial pounds of wheat, fifty of barley and thirty-nine of oats.

Corn Tax Abolition Act, 10 & 11 Vict. c. 46. This Act, however, left a duty of 1*s.* a quarter (measure) remaining—a duty repealed by the Customs and Inland Revenue Act, 1869 (32 & 33 Vict. c. 14), s. 4, reimposed under the guise of 3*d.* per cwt. by the Finance Act, 1902 (2 Edw. 7, c. 7), s. 1, but taken off again by the Finance Act, 1903 (3 Edw. 7, c. 8), s. 1.

Cornage [fr. *cornu*, Lat., a horn], a kind of tenure in grand serjeanty, the service of which was to blow a horn when any invasion of the Scots was perceived; and by this tenure many persons held their lands northward about the place commonly called Picts' Wall. This old service of horn-blowing was afterwards paid in money, and the sheriffs accounted for it under the title of *Cornagium.*—*Camd. Brit.* 609.

Cornare, to blow on the horn.

Cornwall, Duke of, one of the titles of the eldest son of the reigning sovereign of the United Kingdom. He is Duke of Cornwall by inheritance, and is usually made Prince of Wales and Earl of Chester by special creation and investiture. Cornwall is a Royal Duchy, the revenues of which belong to the eldest son of the sovereign for the time being, and are administered under the Duchy of Cornwall Management Acts, 1863 and 1868 (26 & 27 Vict. c. 49), (31 & 32 Vict. c. 35), s. 25 of the earlier Act abolishing leases for lives (see LIVES). The special jurisdiction and powers of the Vice-Warden of the Stannaries Court (see Stannaries Acts, 1836 and 1837) were abolished by the Stannaries Court (Abolition) Act, 1896 (59 & 60 Vict. c. 45), the jurisdiction and powers being transferred to the County Court of Cornwall, see County Courts Act, 1934 (24 & 25 Geo. 5, c. 53); *Chitty's Statutes*, tit. '*Local Courts*,' See also STANNARY.

Corodio habendo, a writ to exact a corody of an abbey or religious house.—*Reg. Brev.* 264.

Corody, or **Corrody** [fr. *conredium*, *corredium*, *conrodium*, *corrodium*, Monk. Lat.; *corredare*, Ital., to fit out], a sum of money or allowance of meat, drink, and clothing due to the Crown from the abbey or other religious house, whereof it was founder, towards the sustentation of such one of its servants as is thought fit to receive it. It differs from a pension in that it was allowed towards the maintenance of any of the King's servants in an abbey; a pension being given to one of the king's chaplains, for his better maintenance, till he may be provided with a benefice.—*Fitz. N. B.* 250.

Corollary, a collateral consequence.

Corona mala, the clergy who abused their character were so called.—*Blount.*

Coronare filium, to make one's son a priest. *Homo Coronatus* was one who had received the first tonsure, as preparatory to superior orders, and the tonsure was in form of a corona, or crown of thorns.—*Cowel.*

Coronation Oath. At the public ceremony of crowning a sovereign of this kingdom in acknowledgment of his right to govern the kingdom, the sovereign swears to observe the laws, customs, and privileges of the kingdom, and to maintain the Protestant reformed religion. The exact form of the oath was prescribed by 1 W. & M. s. 2, c. 2, but was altered in 1910: see BILL OF RIGHTS.

Coronatore eligendo, the writ issued before the commencement of the Local Government Act, 1888, to the sheriff, commanding him to proceed to the election of a coroner.

Coronatore exonerando, a writ for the removal of a coroner, for a cause which is to be therein assigned, as that he is engaged in other business, or incapacitated by years or sickness, or has been guilty of extortion.

Coroner. A very ancient officer at the Common Law, so called because he has principally to do with pleas of the Crown, appointed in boroughs by the Borough Council under ss. 171–174 of the Municipal Corporations Act, 1882, and in counties by the County Council, under s. 5 of the Local Government Act, 1888, prior to which Act county coroners were elected by the freeholders in each county.

An early definition of his duties was provided by the statute 'De Officio Coronatoris,' 4 Edw. 1, repealed by the consoli-

dating Coroners Act, 1887, which codifies the law as follows :—

Where a coroner is informed that the dead body of a person is lying within his jurisdiction, and there is reasonable cause to suspect that such person has died either a violent or an unnatural death, or has died a sudden death of which the cause is unknown, or that such person has died in prison, or in such place or under such circumstances as to require an inquest in pursuance of any Act, the coroner, whether the cause of death arose within his jurisdiction or not, shall, as soon as practicable, issue his warrant for summoning not less than 12 nor more than 23 good and lawful men to appear before him at a specified time and place, there to inquire as jurors touching the death of such person as aforesaid.

The coroner also has jurisdiction to inquire concerning ' treasure trove ' (see that title), and acts as substitute for the sheriff when that officer is incapacitated by interest.

The law relating to coroners and their rights and duties is now regulated by the Coroners (Amendment) Act, 1926 (16 & 17 Geo. 5, c. 59), and the Coroners Rules, 1927.

As to coroners' inquests on deaths from accidents in mines, see Coal Mines Act, 1911, ss. 84, 102 (6) ; on deaths from accidents connected with petroleum spirit, see Petroleum Act, 1926 (16 & 17 Geo. 5, c. 25).

A coroner is required to give a special certificate to permit cremation of a body upon which he has held an inquest, Cremation Act, 1902 (2 Edw. 7, c. 8).

The dead body of a person may not be removed out of England until the local coroner has been informed. See Removal of Bodies from England Regulations, 1927.

See *Jervis on Coroners ; Encyc. of the Laws of England*, vol. iii.

Coroner of the King's Household hath an exempt jurisdiction within the verge which the coroner of the county cannot intermeddle with.—2 *Hawk. P. C.* c. 9, s. 15.

Corporal, an epithet for anything applying to the body, also a non-commissioned rank in the Army.

Corporal Oath, so called because the party taking it laid his hand on the New Testament ; 3 *Inst.* 165. See KISSING THE BOOK ; OATH.

Corporate Name. When a corporation is created a name is always given to it, or supposing none to be actually given, will attach to it by implication, and by that name alone it must sue and be sued and do all legal acts, and see COMPANY ; ASSOCIATION.

Corporate Office, in Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 305, means the office of ' mayor, alderman, councillor, or elective auditor of a borough.'

Corporation or Body Politic, an artificial person established for preserving in perpetual succession certain rights, which being conferred on natural persons only would fail in process of time. It is either *aggregate*, consisting of many members, or *sole*, consisting of one person only, as a parson. It is also either *spiritual*, created to perpetuate the rights of the Church, or *lay*—subdivided into *civil*, created for many temporal purposes, and *eleemosynary*, to perpetuate founders' charities. It is by virtue of the sovereign's prerogative exercised by a charter, or of an Act of Parliament, or of prescription, that the artificial personage called a corporation, whether sole or aggregate, civil or ecclesiastical, is created. The royal charter gives it a legal immortality, and a name by which it acts and becomes known. It has power to make bye-laws for its own government, and transacts its business under the authority of a common seal—its hand and mouthpiece ; it has neither soul nor tangible form, so it can neither be outlawed nor arrested ; it only enjoys a legal entity, sues and is sued by its corporate name, and holds and enjoys property by such name. A corporation can sue or be sued for a libel, but it cannot one in respect of an imputation of murder, or incest, or adultery, because it could not commit those crimes (*Odgers on Libel*). The several members of a corporation and their successors constitute but one person in law. The duty of a corporation is to answer the ends of its institution—to enforce which it may be visited : if spiritual, by the ordinary ; if lay, by the founder or his representatives ; viz., the *civil* by the king (who is the *fundator incipiens* of all), represented in the King's Bench Division of the High Court : the *eleemosynary*, by the endower (who is the *fundator perficiens* of such), or by his heirs or assigns. The distinction between corporations and trading partnerships is, that in the first the law sees only the body corporate and knows not the individuals, who are not liable for the contracts of the corporation in their private capacity, their share in the capital only being at stake : but in the latter the law looks, not to the partnership, but to the individual members of it, who are therefore answerable for the debts of the firm to the full extent of their assets.

As to the difference at Common Law between the powers of a corporation created

by the king's charter and those of a corporation created by statute, see *Baroness Wenlock* v. *River Dee Co.*, (1887) 36 Ch. D. 685 *n.*, per Bowen, L.J.

It is a general rule that a corporation must contract under its common seal, but whenever the observance of this rule would occasion great inconvenience, or tend to defeat the very purpose of the business, it is not observed: e.g., the retainer of an inferior servant, the acceptance of bills of exchange, or making of promissory notes by companies incorporated for the purpose of trade, or the doing of acts frequently occurring; in these cases, the affixing of the common seal is not necessary; and see s. 97 of the Companies Clauses Act, 1845, s. 174 of the Public Health Act, 1875; *Young* v. *Corporation of Leamington*, (1883) 8 App. Cas. 517; *Lawford* v. *Billericay Rural Council*, 1903, 1 K. B. 772; *Douglass* v. *Rhyl U. D. C.*, 1913, 2 Ch. 407; *Nixon* v. *Erith U. D. C.*, 1924, 1 K. B. 87; and by the Companies Act, 1929, s. 29, a contract made by a company must be under seal if required to be under seal between private persons, or signed, if signature only would be required between private persons; or by parol, if parol is sufficient between private persons; these respective contracts must be made by authorized persons. Further, s. 74 of the Law of Property Act, 1925, provides alternative methods of execution by corporations of deeds after 1925 in favour of a purchaser, of appointment of agents to sign instruments after 1925 not under seal, of the execution of conveyances by the corporation as or by attorney.

By s. 19 of the Interpretation Act, 1889, the word 'person' in any Act passed in or after 1890 includes any body of persons corporate or unincorporate. See, however, *Hirst* v. *West Riding Bank, Ltd.*, 1901 2 K. B. 560, and cases there cited. See also TRUST; CORPORATION.

Corporation Act, 13 Car. 2, s. 2, c. 1, by which no person could thereafter be elected to office in any corporate town who should not within one year previously have taken the Sacrament of the Lord's Supper according to the rites of the Church of England.—An obligation to subscribe a declaration was substituted for the necessity of taking the Sacrament by 9 Geo. 4, c. 17, and the Corporation Act itself, with a body of similar Acts, was repealed by 34 & 35 Vict. c. 48.

Corporations, Municipal. The many statutes affecting these bodies are consolidated by the Municipal Corporations Act, 1882. See also Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), which repeals many of the previous Acts, except as to London, and codifies the enactments relating to England and Wales. See MUNICIPAL CORPORATIONS.

Corporation Profits Tax, an annual tax of 5 per cent. imposed by the Finance Act, 1920, ss. 52–56, on the profits of all limited companies with a few exceptions, e.g., gas, water, dock and railway companies, and the like. Subsequent legislation extended the exceptions in favour of companies which are prohibited from distributing profits to members. The tax was reduced to 2½ per cent. in 1923 and abolished in 1924.

Corporation Property Duty. A 5 per cent. duty on income in lieu of death duties is imposed on corporations and bodies not incorporated, including fellowships, trustees, etc., by the Customs and Inland Revenue Act, 1885 (48 & 49 Vict. c. 51), ss. 11–20. The exceptions include property of the Crown, Local Authorities, religious, charitable, educational bodies, friendly societies, and the capital of a body corporate or incorporate established for any trade or business, or of a body whose capital stock is so divided as to be liable to be charged for legacy or succession duties.

Corporeal Hereditaments, those subjects of tangible property which are comprised under the denomination of things real.—*Fearne, Reading on the Statute of Inrolments.*

Corps Diplomatique [Fr.], the body of ambassadors and diplomatic persons.

Corpse. Removing a corpse from a grave is a misdemeanour at Common Law (*Reg.* v. *Sharpe*, (1857) 26 L. J. M. C. 47; *R.* v. *Kenyon*, (1901) 36 L. J. News. 571). Refusing to bury dead bodies by those whose duty it is to do so is punishable by the temporal courts, independently of spiritual censures, on indictment or information. There is no property in a dead body (*Williams* v. *Williams*, (1882) 20 Ch. D. 659).

Dissection.—The Anatomy Act, 1832 (2 & 3 Wm. 4, c. 75), makes dissection legal. See DISSECTION.

As to post-mortem examinations, see Public Health Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 49), ss. 161 to 163, and Public Health (London) Act, 1936; for disposing of infectious bodies, see the same Acts respectively.

A gaoler cannot detain the dead body of a person in his custody under a *ca. sa.* (*capias ad satisfaciendum*) until the executors of the deceased person satisfy his pecuniary claims

upon the deceased (*R.* v. *Fox*, (1841) 2 Q. B. 246; S. C. *Re Wakefield*, (1841) 1 G. & D. 566). See BURIAL and CREMATION.

Corpus Christi Day, the 2nd June, a feast instituted in 1264 in honour of the Blessed Sacrament, and on which fairs and markets are prohibited by the still unrepealed 27 Hen. 6, c. 5, but which is omitted from the list of 'hollie daies' prescribed and limited by 5 & 6 Edw. 6, c. 2. By 32 Hen. 8, c. 21 (repealed by Stat. Law Rev. Act, 1873), a full Trinity Term was directed to begin on the Friday next after Corpus Christi Day.

Corpus cum causâ, a writ issuing out of Chancery to remove both the body and record touching the cause of any man lying in execution on a judgment for debt into the King's Bench, there to lie till he have satisfied the judgment.—*Fitz. N. B.* c. 21.

Corpus juris canonici. See CANON LAW.

Corpus juris civilis. The three great compilations of Justinian, the Institutes, the Pandects, and the Code, together with the Novellæ, form one body of law, and were considered as such by the glossatores, who divided it into five volumina. The Pandects were distributed into five volumina, under the respective names of Digestum Vetus, Infortiatum, and Digestum Novum. The fourth volume contained the first nine books of the Codex Repetitæ Prælectionis. The fifth volume contained the Institutes, the Liber Authenticorum or Novellæ, and the three last books of the Codex. The divi ion into five volumina appears in the oldest editions; but the usual arrangement now is the Institutes, Pandects, the Codex, and Novellæ. The name Corpus Juris Civilis was not given to this collection by Justinian, nor by any of the glossatores. Savigny asserts that the name was used in the twelfth century: at any rate, it became common from the date of the edition of D. Gothofredus of 1604.—*Smith's Dict.*

Correction, House of. See HOUSE OF CORRECTION.

Corrector of the Staple, a clerk belonging to the staple, to write and record the bargains of merchants there made.—27 Edw. 3, stat. 2, cc. 22, 23.

Corregidor, a Spanish magistrate.

Corresponding Societies Acts. (1) The Unlawful Societies Act, 1799 (39 Geo. 3, c. 79), by which certain societies, including the London Corresponding Society, having treasonable objects, and all societies 'of which the names of the members or of any committee should be kept secret from the society at large,' etc., were declared to be unlawful combinations. (2) The Seditious Meetings Act, 1817 (57 Geo. 3, c. 19), which repeated the provisions of the above Act, with amplifications. Friendly societies (see that title) are exempted from the provisions of these Acts by s. 32 of the Friendly Societies Act, 1896, if in the society or branch or at any meeting no business is transacted but that which directly and immediately relates to the objects of the society or branch as declared in the rules thereof.

Corroboration, evidence in support of principal evidence, e.g., in addition to that of the mother, to charge the father of an illegitimate child under the Bastardy Acts. See AFFILIATION.

In an action for breach of promise of marriage the plaintiff may give evidence, but cannot recover a verdict unless corroborated by other material evidence in support of the promise.—32 & 33 Vict. c. 68, s. 2. See MARRIAGE, PROMISE OF. Corroboration is also required in certain cases under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), ss. 2, 3, and 4, and also by s. 15 (1), (2) of the Prevention of Cruelty to Children Act, 1904 (4 Edw. 7, c. 15). By the Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 38, the evidence of children of tender years, though not given on oath, needs corroboration. See UNUS NULLUS RULE.

Corrosive Fluid. Throwing corrosive fluid with intent to do serious bodily harm is an offence under the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 29.

Corrupt Practices. At elections these are treating, undue influence, bribery, personation, making a false declaration as to election expenses, and incurring election expenses without the election agent's written authority. See Parliamentary Elections Act, 1868 (31 & 32 Vict. c. 125), s. 3; Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), ss. 1-3, 33 (7); Municipal Corporations Act, 1882; Municipal Elections (Corrupt and Illegal Practices) Act, 1884 (47 & 48 Vict. c. 70), ss. 2, 21 (5); Local Government Acts, 1888 (s. 75) and 1894 (s. 48); Representation of the People Act, 1918, ss. 34, 35, 38, and R. of the P. Act (No. 2), 1922. The Municipal Elections (Corrupt and Illegal Practices) Act, 1911, makes it an illegal practice to publish certain false statements concerning a candidate. See also Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), ss. 79 *et seq.*

Corrupt practices at parliamentary elections are offences punishable by fine or

imprisonment, conviction in respect of which disqualifies for membership of the House of Commons and from voting at parliamentary elections or from holding public or judicial office for seven years. Corrupt practices at municipal and local government elections entail similar consequences.

Corrupt practices by or in connection with members of public bodies, such as town councils, county councils, local boards, vestries, etc., are punishable under the Public Bodies Corrupt Practices Act, 1889 (52 & 53 Vict. c. 69), by which any member of such body soliciting or receiving, and any person promising or giving any member of such body any advantage as an inducement to do or not to do anything in respect of a transaction in which the public body is concerned, are alike punishable.

See BRIBE and ELECTION PETITIONS ; and consult *Archbold, Crim. Pleading and Practice*, tit, ' *Corrupt, etc., Practices at Elections*,' and *Fraser on Parliamentary Elections, etc.*, and *Houston on Electioneering*.

Corruption. See BRIBE and preceding title.

Corruption of Blood (now abolished), one of the immediate consequences of attainder for treason or felony. The blood of the attainted person was said to be corrupted or attainted both upwards and downwards, so that he could neither inherit lands nor hereditaments, retain the possession of those in his possession, nor transmit them by descent to any heir, but the same escheated to the lord of the fee, subject to the king's superior right of forfeiture.—4 *Bl. Com.* 388. See ATTAINDER.

Corselet [fr. *corpusculum*, Lat., a little body], ancient armour which covered the body.

Corsepresent [fr. *corps*, Fr., body], a mortuary, thus termed because when a mortuary became due on the death of a man, the best or second-best beast was, according to custom, offered or presented to the priest, and carried with the corpse ; see 21 Hen. 8, c. 6. In Wales a corsepresent was due upon the death of a clergyman to the bishop of the diocese till abolished by 12 Anne, st. 2, c. 6. See 2 *Bl. Com.* 425.

Corsned Bread [fr. *corsian*, to curse, and *snaed*, a morsel, A.S. ; *panis conjuratus*, or *offa execrata*, Lat., the morsel of execration, or ordeal bread]. It was a kind of superstitious trial or ordeal used among the Saxons, to purge themselves of any accusation, by taking a piece of barley bread and eating it with solemn oaths, curses, and execrations, that it might prove poison, or their last morsel, if what they asserted, or denied, were not true. 4 *Bl. Com.* 345, 414 ; and see *Norton's City of London*, 3rd ed. 36, 265.

Cortes, the assembly of the estates of Spain or Portugal, answering in some measure to the parliament of Great Britain.

Cortis, a court or yard before a house.

Cortularium, or **Cortarium,** a yard adjoining to a country farm.—*Old Records.*

Corvee [Fr.], a feudal service, as to repair roads, etc.

Cosduna, custom or tribute.—*Dugd. Mon.* tom. 1, p. 562.

Cosenage, or **Cosinage,** kindred, cousinship. Also a writ that lay for the heir where the *tresail*, i.e., the father of the *besail*, or great-grandfather, was seised of lands in fee at his death, and a stranger entered upon the land and abated.—*Fitz. N. B.* 221.

Cosening, Cozenage [fr. *cosen*], cheating, defrauding.

Coshering, a feudal custom, whereby the lords may lie and feast themselves and their followers at their tenants' houses, etc., forbidden by many Acts of the Irish Parliament. Compare SORNER.

Cosmus [fr. κοσμος, Gk.], clean.—*Blount.*

Coss, a term used by Europeans in India to denote a road-measure of about two miles, but differing in different parts.

Costard, a head.—*Shaksp.* Also a kind of apple.

Costera, sea coast.

Cost-book Mining Companies. The statutory regulations relating to these Companies are contained in the Stannaries Acts, 1869 (32 & 33 Vict. c. 19) and 1887 (50 & 51 Vict. c. 43), and the Companies Act, 1929. The latter Act (s. 357) has preserved the then existing provisions of the earlier Acts. Subject to the statutory provisions, it may be said that these companies are formed thus :—A number of adventurers, who have obtained permission from the landowner to work a lode, assemble : they decide on the number of shares into which their capital is to be divided, and the number to be allotted to each ; they appoint an agent, commonly called a purser, for the purpose of managing the affairs of the mine, and enter in a book, called the cost-book, the minutes of their proceedings, which are signed by all present. A license to try for ores, for twelve months, or some short period, is then obtained ; followed, if the search be promising, by a sett, that is, a lease of the minerals, or a license to dig, or both, granted by the landowner to the

purser, or to one or two of the adventurers, without any declaration of trust on their part for the rest, or for any other person, for a term of years, commonly twenty-one, but with a stipulation for the annual payment to the landowner of some portion of the ore raised.

The cost-book contains the names of all the shareholders, and the number of shares held by each is set opposite to his name. In a cost-book partnership, a shareholder may get rid of his shares, and with them his liabilities, so far as his partners are concerned, without their consent, either by transfer or simple relinquishment, provided the cost-book regulations do not prohibit such a course; in the former case the fact of transfer being entered by the purser in the cost-book, and in the latter notice being given to the purser of his having so relinquished his shares, and all his claims upon the mine.

Although there are several theories of the cost-book principle of working mines, the meaning of which the Courts are not bound to take judicial notice of (*Re Gt. Cambrian, Hawkins' case,* (1856) 2 K. & J. 253), yet it appears clear that, whatever may be the rules and regulations between the adventurers themselves, each shareholder is liable to be sued by a creditor who has furnished the mine with necessaries for its due working, ordered according to the customary course in such concerns, and this whether the creditor knew at the time of crediting the mine that he was a shareholder or not. — See *MacSwinney on Mines.*

Co-stipulator, a joint promisee.

Costs, expenses incurred in litigation or professional transactions, consisting of money paid for stamps, etc., to the officers of the Court, or to the counsel and solicitors, for their fees, etc.

Costs in actions are either between *solicitor and client,* being what are payable in every case to the solicitor by his client, whether he ultimately succeed or not; or between *party and party,* being those only which are allowed in some particular cases to the party succeeding against his adversary, and these are either interlocutory, given on various motions and proceedings in the course of the suit or action, or *final,* allowed when the matter is determined.

Neither party was entitled to costs at Common Law, but the Statute of Gloucester (6 Edw. 1, c. 4), gave costs to a successful plaintiff, and 2 & 3 Hen. 8, c. 6, and 4 Jac. 1, c. 3, to a victorious defendant; see *Garnett* v. *Bradley,* (1878) 3 App. Cas. 944.

In proceedings between the Crown and a subject the general rule is that the Crown neither receives nor pays costs, but there are many statutory exceptions, as, for example, in petitions of right (Petitions of Right Act, 1860 (23 & 24 Vict. c. 34), s. 12) and in revenue cases, where the position is as between subject and subject. See *R.* v. *Archbishop of Canterbury,* 1902, 2. K. B. at p. 571; *Thomas* v. *Pritchard,* 1903, 1 K. B. 212; *Johnson* v. *The King,* 1904, A. C. at p. 824; *Rowland* v. *Air Council,* 1923, W. N. 72; *Re Carbonit,* 1923, W. N. 208.

Several Acts have also been passed to restrain the bringing of vexatious actions, and needless costliness in litigation. See (43 Eliz. c. 6, s. 2; 22 & 23 Car. c, c. 9; 8 & 9 Wm. 3, c. 11, s. 4; 3 & 4 Vict. c. 24); modern enactments aiming at this end are the County Courts Act, 1934, s. 47, reproducing s. 11 of the County Courts, 1919, as amended by s. 20 of the Administration of Justice Act, 1925, which substituted a new s. 116 of the County Courts Act, 1888; the Slander of Women Act, 1891 (54 & 55 Vict. c. 51); and the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).

In equity costs rested entirely in the discretion of the Court, for the *primâ facie* claim of the successful litigant to costs might be rebutted by the particular circumstances of the case, and it was for the Court to decide whether those circumstances were or were not sufficient to rebut the claim. See *Morgan and Wurtzburg on Costs; Johnson on Costs.*

High Court Costs.—By R. S. C. 1883, Ord. LXV., r. 1, 'the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court'; but there is a saving for the right of a trustee, mortgagee, or other person to costs out of a particular estate or fund. The discretion given by this rule is made subject by the Judicature Act, 1925, s. 50, replacing the Judicature Act, 1890, s. 5, to the express provision of any other Act. The discretion conferred by the rule is very wide, but must be exercised judicially (see *Sharpe* v. *Wakefield,* 1891, A. C. 173, and cases referred to in the notes in *Annual Practice* to the abovementioned rule). For the cases in which a judge sitting without a jury can deprive a wholly successful defendant of costs, see *Ritter* v. *Godfrey,* 1920, 2 K. B. 47. As to what constitutes 'good cause,' see *Roberts* v. *Jones,* 1891, 2 Q. B. 194, and notes to abovementioned rule in *Annual Practice.* The

general rule is that the successful party gets his costs (*The Ophelia*, 1911, P. 46; *Cooper* v. *Whittingham*, (1880) 15 C. D. 501).

A plaintiff who makes several distinct claims in an action may be ordered to pay the defendant's costs of the issues upon which he fails (*Foster* v. *Farquhar*, 1893, 1 Q. B. 564; see also *Reid, Hewitt & Co.* v. *Joseph*, 1918, A. C. 717).

County Courts Act, 1934 (c. 53), s. 47, regulates the costs of actions of contract or tort (s. 59, Admiralty proceedings) commenced in the High Court which could have been commenced in the County Court.

(1) Where an action is commenced in the High Court which could have been commenced in a County Court, then, subject to the provisions of sub-s. (3) and sub-s. (4) of this section :—

(*a*) if the plaintiff recovers a sum less—

(i) in the case of an action founded on contract, than forty pounds; or

(ii) in the case of an action founded on tort, than ten pounds;

he shall not be entitled to any costs of the action.

(*b*) if the plaintiff recovers—

(i) in the case of an action founded on contract, a sum of forty pounds or upwards, but less than one hundred pounds; or

(ii) in the case of an action founded on tort, a sum of ten pounds or upwards, but less than fifty pounds;

he shall not be entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in a county court.

(2) When a plaintiff is entitled to costs on a county court scale only, the taxing master shall have the same power of directing on what county court scale and under what column in the scale costs are to be allowed, and of allowing any items of costs as the judge would have had if the action had been brought in a county court.

(3) In any such action as aforesaid, whether founded on contract or tort, the High Court or a judge thereof (or when the matter is tried before a referee or officer of the Supreme Court, that referee or officer) if satisfied :—

(*a*) that there was sufficient reason for bringing the action in the High Court; or

(*b*) that the defendant or one of the defendants objected to the transfer of the action to the county court;

may make an order allowing the costs or any part of the costs thereof on the High Court scale or on such one of the county court scales and under such one of the columns in the scale as he may direct.

(4) If in any action the claim is for a debt or liquidated demand for a sum of twenty pounds or upwards, and—

(*a*) the defendant pays the amount claimed or a sum of not less than twenty pounds within the time limited in that behalf by the endorsement made on the writ in accordance with the rules of the Supreme Court; or

(*b*) the plaintiff, within twenty-eight days after the service of the writ, or within such further time as may be allowed by the High Court or a judge thereof, obtains judgment in default of appearance or of defence for a sum of twenty pounds or upwards; or

(*c*) the plaintiff, within twenty-eight days after the service of the writ, or within such further time as may be allowed by the High Court or a judge thereof, obtains, under any rule of the Supreme Court providing for summary judgment without trial, an order empowering him to sign judgment for a sum of twenty pounds or upwards, either unconditionally or unless that sum is paid into court or to the plaintiff's solicitor;

the plaintiff shall, unless otherwise ordered by the High Court or a judge thereof, be entitled to costs on such scale as may be prescribed by the rules of the Supreme Court.

(5) This section applies only to the costs of the proceedings in the High Court, and shall have effect subject to the provisions of section fifty-nine of this Act (that section relates to costs in Admiralty proceedings).

(6) This section shall not apply in the case of any proceedings by the Crown.

The costs of an appeal are in the discretion of the court which hears the appeal, and as a rule follow the event of the appeal.

County Court Costs.—County Court costs of any action or matter are by s. 113 of the County Courts Act, 1888 (if not otherwise provided for by that Act), to be paid by or apportioned between the parties in such manner as the Court shall think just, and in default of any special direction are to abide the event. See also County Court Rules, 1936, Ord. XLVII.

Costs in Criminal Cases.—The costs in Criminal Cases Act, 1908 (c. 15), as amended by the Criminal Justice Administration Act, 1914 (c. 58), s. 10 (4), and the Poor Prisoners Defence Act, 1930 (c. 32), now contains all the provisions relating to this matter, and by ss. 1 and 2 provides as follows :—

1.—(1) The following courts, namely,—

(*a*) a court of assize or a court of quarter sessions before which any indictable offence is prosecuted or tried, and

(*b*) a court of summary jurisdiction by which an indictable offence is dealt with summarily under the Summary Jurisdiction Acts, and

(*c*) any justice or justices before whom a charge not dealt with summarily is made against any person for an indictable offence (in this Act referred to as the examining justices)

may on any such proceedings by order direct the payment of the costs of the prosecution or defence or both in accordance with the provisions of this Act out of the funds of the county or county borough out of which they are payable under this Act (in this Act referred to as local funds).

(2) The costs which may be so directed to be paid are such sums as, subject to the regulation of the Secretary of State under this Act, appear to the court reasonably sufficient to compensate the prosecutor for the expenses properly incurred by him in carrying on the prosecution, and to compensate any person properly attending to give evidence for the prosecution or defence, or called

to give evidence at the instance of the court, for the expense, trouble, or loss of time properly incurred in or incidental to the attendance and giving of evidence, and the amount of any costs so directed to be paid shall be ascertained as soon as practicable by the proper officer of the court.

(3) [Repealed by Poor Prisoners Defence Act, 1930.]

(4) No expenses to witnesses, whether for the prosecution or defence, shall be allowed at a court of assize or quarter sessions before which any indictable offence is prosecuted or tried, if such witnesses are witnesses to character only, unless the court shall otherwise order.

2. As soon as the amount due to any person in respect of costs directed by a court of assize or a court of quarter sessions to be paid out of local funds has been ascertained, the proper officer shall make out and deliver to that person, or to any person who appears to the proper officer to be acting on behalf of that person, an order upon the treasurer of the county or borough out of the funds of which the costs are payable under this Act for the payment of that amount.

Section 6 also empowers the Court to order the convicted person to pay the costs of the prosecution, or in certain cases the prosecutor to pay the costs of an acquitted person.

Section 3 of the Poor Prisoners Defence Act, 1930, provides for costs where a defence certificate or legal aid certificate has been granted. These include in the case of a defence certificate, the fees of counsel and solicitor and the cost of a copy of the depositions, and in the case of a legal aid certificate, the fees of a solicitor. Other expenses properly incurred may be included.

See also Summary Jurisdiction Acts, 1848 and 1879, ss. 18 and 54 respectively, which give justices power to order the unsuccessful party to pay the costs of his opponent in both civil and criminal matters within these Acts.

As to taxation of costs, see TAXATION.

As to charging order for solicitor's costs, see CHARGING ORDER. See also SCALES OF COSTS. As to costs as between the client and his own solicitor, see SOLICITOR.

Costs de incremento, costs of increase, i.e., those extra expenses incurred which do not appear on the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court fees, etc.

Co-surety, a fellow-surety.

Cotarius, a cottager, who held in fee socage, and paid a stated fine or rent in provisions or money, with some occasional personal services.

Cote, or **Cot** [fr. *koti*, Fin.], cottage.

Cotellus, or **Coteria,** a small cottage, house, or homestall.

Coterellus, a servile tenant, who held in mere villenage; his person, issue, and goods were disposable at the lord's pleasure.—*Paroch. Antiq.* 310.

Coteswold [fr. *cote* and *wold*, Sax.], a place where there is no wood.—*Jac. Law Dict.*

Cotland and **Cotsethland,** land held by a cottager, whether in socage or villenage.

Cotsethla, or **Consetle,** the little seat or mansion belonging to a small farm.

Cotsethus, a cottage-holder, who by servile tenure was bound to work for the lord.

Cottage, a small house without lands belonging to it. By 31 Eliz. c. 7 (repealed by 15 Geo. 3, c. 32, itself repealed by Stat. Law Rev. Act, 1871), 'An Act against the erecting and maintaining of cottages,' the building of any manner of cottage for habitation without four acres of ground to be continually occupied and manured therewith, was prohibited under a penalty of 10*l.* for each offence. As to cottage allotments for the poor, see ALLOTMENTS.

Cottier Tenure, one where a labourer makes his contract for land without the intervention of a capitalist farmer, and where the conditions of the contract, especially the amount of rent, are determined not by custom but by competition. Also a class of sub-tenants who rent a cottage and an acre or two of land from small farmers.—*Irish.* 1 *Mill's Pol. Eco.* 383.

Cotton Cloth Factories. These are specially regulated by the Factory and Workshop (Cotton Cloth Factories) Act, 1929 (c. 15), and the regulations made under that Act; the Cotton Cloth Factories Regulations, 1929 (S. R. & O. 1929, No. 300). This Act repeals the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), ss. 90–96, and Sched. IV., so far as it relates to cotton cloth factories which took the place of the repealed Cotton Cloth Factories Act, 1889, in respect to restricting the amount of moisture in the atmosphere, the admission of fresh air, and the prevention of the inhalation of dust.

Cotuca, coat armour.

Cotuchans, husbandmen.—*Domesday.*

Couchant, lying down; squatting.

Coucher, or **Courcher,** a factor who continues abroad for traffic, 37 Edw. 3, c. 16; also the general book wherein any corporation, etc., registered their acts.—3 & 4 Edw. 6, c. 10.

Council, an assembly of persons for the purposes of concerting measures of state or municipal policy—hence called councillors.

A municipal council, commonly called a town council, consists of the mayor, aldermen, and councillors, the councillors being

elected by the ratepayers (women included), and the aldermen being elected by the councillors, the term of office of a councillor being three years, and that of an alderman six. One-third of the councillors go out every year, and one-half of the aldermen (who always number one-third of the councillors) in every third year. See Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), ss. 17–23, which repeal and replace (except as to London) Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), ss. 10–14. As to Army Council, county councils, district councils, and parish councils, see those titles.

Council of Legal Education, a body consisting of twenty benchers, five nominated by each of the four Inns of Court, to whom is entrusted the business of superintending the education and examination of students in order to their being called to the Bar. The members remain in office for two years, and each Inn has power to fill up any vacancy that may occur in the number of its nominees during that period. See the 'Consolidated Regulations' of the Inns of Court.

Counsel, or **Counsellor,** a person retained by a client to plead his cause in a court of judicature; a barrister; an advocate. See BARRISTER.

Count. The different parts of a declaration, each of which, if it stood alone, would constitute a ground of action, were called the 'counts' of the declaration. Used also to signify the several parts of an indictment, each charging a distinct offence.

Count, or **Countee** [fr. *comte*, Fr.; *comes*, Lat.], the most eminent dignity of a subject before the Conquest. He was *præfectus* or *præpositus comitatûs*, and had the charge and custody of the county; but this authority is now vested in the sheriff.—9 *Rep.* 46.

Countenance [fr. *contenance*, Fr., *contineo*, Lat., to hold together], credit; estimation.

Counter, the name of two prisons in London, the Poultry Counter and Wood Street Counter, afterwards consolidated into one new-built prison, for the use of the city, to confine debtors, peace-breakers, etc. —*Cowel.*

Counterclaim. By R. S. C. 1883, Ord. XIX., r. 3, under the Judicature Act, 1873, s. 24 (3); replaced by the Judicature Act, 1925, s. 39 (1) (*a*), subject to the provisions of Rule 15, Order XXI. (exclusion of counterclaim), a defendant in an action may set off, or set up by way of counterclaim, against the claims of the plaintiff, any right or claim, whether such set-off or counterclaim sound in damages or not, and such set-off or counterclaim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. (As amended by R. S. C. No. 1, 1929). See SET-OFF.

As to counterclaim in an inferior court involving matters beyond the jurisdiction of the Court, see Jud. Act, 1925, s. 203, replacing Jud. Act, 1873, s. 90.

Counter-deed, a secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one.

Counterfeit, an imitation of something, made without lawful authority and with a view to defraud by passing off the false for the true. As to counterfeiting coin, see COIN.

Counterfeasance [Fr.], the act of forging.

Countermand, the revocation of an act; where a thing done is afterwards, by some act or ceremony, made void by the person who did it, it is either express, or implied by law. No notice of trial may be countermanded except by consent or by leave of the Court or a judge, which leave may be given subject to such terms as to costs or otherwise as may be just (R. S. C. 1883, Ord. XXXVI., r. 19). See NOTICE OF TRIAL.

Countermark, a sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to show that they must not be opened but in the presence of all the owners or their agents.

Counterpart, the corresponding part or duplicate; the key of a cipher. When the several parts of an indenture (as is almost invariably the case with a lease) are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the original, and the rest are counterparts. If a lease and counterpart differ, the ordinary rule is that the lease prevails; but the rule may be departed from if the mistake be clearly in the lease (*Burchell* v. *Clark*, (1876) 2 C. P. D. 88; *Matthews* v. *Smallwood*, 1910, 1 Ch. 777). The lessee cannot without agreement be made to pay the costs of the counterpart (*Re Negus*, 1895, 1 Ch. 73).

Counterplea. When the tenant in any real action, tenant by the courtesy or in dower, in his answer and plea vouched any one to warrant his title, or prayed in aid of another who had a larger estate, as of him in reversion, etc.; or where a stranger to the action came and prayed to be received to save his

estate; then that which the demandant alleged against it, why he should not be admitted, was called a counterplea; it was a replication to *aid prier*, and was called counterplea to the voucher. But when the voucher was allowed, and the vouchee came and demanded what cause the tenant had to vouch him, and the tenant showed his cause, whereupon the vouchee pleaded anything to avoid the warranty, that was termed a counterplea of the warranty.—*Termes de la Ley.* Obsolete.

Counter-rolls, the rolls which sheriffs have with the coroners, containing particulars of their proceedings, as well of appeals as of inquests, etc.—3 Edw. 1, c. 10.

Counter Security, a security given to one who has entered into a bond or become surety for another; a countervailing bond of indemnity.

Counter-sign, the signature of a secretary or other subordinate officer to any writing signed by the principal or superior to vouch for the authenticity of it; e.g., the order of a town council for payment of money out of the borough fund must be signed by three members of the town council, and countersigned by the town clerk, by Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 187, replacing (except as to London) Municipal Corporations Act, 1882, s. 141. Also the password in response to a military challenge by a sentinel or guard.

Counting-house of the King's Household, usually called the Board of Green Cloth, where sit the lord-steward and treasurer of the king's house, the comptroller, master of the household, cofferer, and two clerks of the Green Cloth, for daily taking the accounts of all expenses of the household, making provisions, and ordering payment for the same.—39 Eliz. c. 7. See *Jac. Law Dict.*

Countors, or **Contors** [fr. *contours*, Fr.], serjeants-at-law, whom a man retains to defend his cause and speak for him in court, for their fees.—See *Co. Litt.* 17 *a.*

Country, a name for the jury, as coming from the neighbouring country or surrounding parts of the country.

Country, Custom of the. See CUSTOM.

County [fr. *comté*, Fr.; *comitatus*, Lat.], a shire or portion of country comprehending a great number of hundreds. England is divided into forty counties or shires, Wales into twelve and Scotland into thirty. It seems probable that the realm was originally divided into counties with a view to the convenient administration of justice, the judicial business of the kingdom having, in former times, been chiefly despatched in local Courts held in each different county, before the sheriff as its principal officer. His duties are now more ministerial than judicial.

All the English counties except Rutland are subdivided for purposes of parliamentary representation.

As to the divisions of counties for holding petty and special sessions, see the Division of Counties Act, 1828 (9 Geo. 4, c. 43), the Petty Sessional Divisions Act, 1836 (6 & 7 Wm. 4, c. 12), and the Petty Sessional Divisions Act, 1859, *Chitty's Statutes*, tit. '*Justices* (*Sessions*).'

By Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 305, county means administrative county.

County Boroughs. The 83 boroughs which are named in Part II. of the First Schedule of the Local Government Act, 1923 (23 & 24 Geo. 5, c. 51), which replaces the Local Government Act, 1888 (51 & 52 Vict. c. 41), Sched. III., which named 61. As to the adjustment of financial relations between a county and borough, see *Durham County Council and West Hartlepool Borough Council*, 1905, 2 K. B. 340. See LOCAL GOVERNMENT.

County Corporate. To certain cities and towns the sovereigns of England have, out of special grace and favour, granted the privilege to be counties of themselves, and not to be comprised in any other county, but to be governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein. Twelve cities and five towns are counties of themselves, and have, consequently, their own sheriffs. The cities are London, Chester, Bristol, Coventry, Canterbury, Exeter, Gloucester, Lichfield, Lincoln, Norwich, Worcester, York. The towns are Kingston-upon-Hull, Nottingham, Newcastle-upon-Tyne, Poole, Southampton.

County Councils. The elective bodies established by the Local Government Act, 1888 (c. 41), to manage certain specified administrative business of each county (see LOCAL GOVERNMENT), formerly managed by the justices of the peace (who are nominated by the Crown) in quarter sessions, and other administrative business mentioned in the Act, and consisting of 'the chairman, aldermen, and councillors.' The Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), consolidates with amendments the enactments relating to local authorities.

The councillors are elected, for separate 'electoral divisions,' the qualification for

electors being that required under the Representation of the People Acts, and the qualification for being elected similar to that required for election to office on any local authority. Ministers of religion are not disqualified, and peers owning property in the county and persons registered as parliamentary voters in respect of the ownership of property in the county are qualified, as also by s. 8 of the Army Act, 1891, are officers in the army. Women may be elected (the Qualification of Women (County and Borough Councils) Act, 1907 (c. 33)); and see *infra*. The qualifications and disqualifications for election are set out in Local Government Act, 1933, ss. 57–59. The councillors are elected for three years, and then retire together. The ordinary day of election and retirement, which by the Local Government Act, 1888, was the 1st of November, was, by the County Councils (Elections) Act, 1891, reproduced by Local Government Act, 1933, s. 9, changed to the 8th of March.

The aldermen, who are termed 'county aldermen,' are elected by the councillors as borough aldermen are, from amongst the councillors or persons qualified so to be, the qualification for being elected being similar to that of county councillors. The number of aldermen shall be one-third of the whole number of county councillors. They are elected for six years, and one-half of the number goes out in every third year.

The chairman corresponds to the mayor in a borough council, and is elected by the council from among the aldermen or councillors, or persons qualified to be such.

Meetings and proceedings, see the regulations in Local Government Act, 1933, Sched. III., Part I.

By the County and Borough Councils (Qualification) Act, 1914, as amended by the Sex Disqualification (Removal) Act, 1919, the qualification to be elected in county councils has been extended.

The administrative business transferred to the county councils includes:—

(1) Making of rates;

(2) Borrowing of money;

(3) Supervision of county treasurer;

(4) Management of halls, offices and other buildings;

(5) Licensing of houses for music and dancing and of racecourses;

(6) Maintenance and management of hospitals and rate-aided mental hospitals.

(7) Education and maintenance of schools;

(8) Management of roads and bridges;

(9) Regulation of fees of inspectors and other officers;

(10) Control of officers paid out of the county rate;

(11) Coroner's salary, fees, and district;

(12) The execution as local authority of Acts relating to destructive insects, to fish conservancy, to wild birds, to weights and measures, to gas meters and of the Local Stamp Act, 1869;

(13) Any matters arising under Riot (Damages) Act, 1886;

(14) Registration of rules of scientific societies, under Scientific Societies Act, 1843; registration of charitable gifts, under Charitable Donations Registration Act, 1812; certifying and recording of places of religious worship, under Places of Religious Worship Act, 1812; the confirmation and record of the rules, under Loan Societies Act, 1840;

(15) Any other business transferred by Local Government Act, 1888, as amended by the 1933 Act.

Other administrative business assigned to county councils is the appointment of coroners (which is transferred from the freeholders of each county), the licensing of theatres, and the supervision of the trade in explosive substances (which are transferred from the justices of the peace out of session), and the maintenance of county roads.

The powers of justices out of session of appointing, etc., the county police belong to the quarter sessions and the county council jointly, and are exercised by a standing joint committee of the two bodies.

In addition to this business *ipso facto* transferred, the Act of 1933 by s. 270 empowers the Minister of Health by provisional order (which must be submitted to Parliament for confirmation, s. 285) to transfer to the County Council any functions arising within the county of any conservators or other public body (not being the council of a county district) as are conferred by any enactment.

The 15th section of the Act of 1888 conferred on county councils powers to oppose bills in parliament, and the County Councils (Bills in Parliament) Act, 1903 (3 Edw. 7, c. 9), extends these powers by authorizing the council to promote bills as well as to oppose them (replaced by the 1933 Act, s. 253). For the powers of a county council to borrow by the way of mortgage on debentures, see the 1933 Act, ss. 195 *et seq.* See also LOCAL GOVERNMENT; HOUSING; PUBLIC HEALTH.

The County Council is also constituted the local authority under various Acts, chief of which are the Education Act, 1921, and Education (Local Authorities) Act, 1931 (c. 6); Roads Act, 1920; Mental Deficiency Act, 1913 (c. 28); and Poor Law Acts.

County Courts. The old County Court was a tribunal incident to the jurisdiction of a sheriff, but was not a Court of Record. Proceedings were removable into a superior court by *recordari facias loquelam*, or writ of false judgment. Outlawries of absconding offenders were here proclaimed.

Far more important inferior tribunals have now been established throughout England. They were first established in 1846 by 9 & 10 Vict. c. 95, 'the Act for the more easy recovery of Small Debts and Demands in England,' repealed and re-enacted with fourteen amending Acts by the consolidating and amending County Courts Act, 1888 (51 & 52 Vict. c. 43), an Act very materially but very shortly amended by the County Courts Act, 1903 (3 Edw. 7, c. 42), which came into operation on the 1st January, 1905, and raised the common law jurisdiction from 50*l.* (to which amount it had been raised by an Act of 1850 from the original 20*l.* under the Act of 1846) to 100*l.* The number of jurors was also raised from five to eight. The County Courts Act, 1919, introduced further important amendments. The County Courts Acts have been amended and consolidated by the County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), which enacts as follows:—

Area.—The area for each court is as fixed by order of the Lord Chancellor from time to time (s. 2).

Judges.—The judges, who are appointed by the Lord Chancellor, and may not exceed sixty in number (s. 4 (1) (*b*)), must be barristers of at least seven years' standing (s. 5), who must not practise at the Bar, or act as arbitrators for any remuneration to themselves, and are incapable of being elected as M.P.'s (s. 6), and when permanently infirm and desirous of resigning may receive pensions (s. 9). Section 7 reproducing the County Court Judges (Retirement Pensions and Deputies) Act, 1919, a County Court judge must retire at 72 unless permitted to stay on by the Lord Chancellor to an age not exceeding 75. Sections 11–15 provide for the appointment and payment of a deputy to carry out the duties of a judge unavoidably absent.

Jurisdiction.—The subject matters of the general jurisdiction are all personal actions where the debt, demand or damage claimed is not more than 100*l.* except libel, slander, seduction, or breach of promise of marriage, ejectment where either the value of the lands or the rent exceeds 100*l.* a year, and actions in which 'the title to any corporeal or incorporeal hereditaments, or to any toll, fair, market, or franchise shall come in question' (ss. 40, 48). Also all actions by creditors or legatees for administration of the estate of a deceased person, or for execution of trusts, or for redemption of a mortgage, or for specific performance of an agreement for sale or lease of property, or under the Trustee Relief Acts, or Trustee Acts, or relating to the maintenance of infants, or for the dissolution of partnership, or for relief against fraud or mistake, provided in each of these actions that the subject-matter does not exceed in value the sum of 500*l.* (s. 52). By agreement all actions assigned to the King's Bench Division can be tried in any County Court (s. 43).

There are also, in addition to the general jurisdiction, varied and extensive jurisdictions under about 70 special Acts, including the Bills of Sale Act, 1882, the Inebriate Acts, the Agricultural Holdings Acts, the Charitable Trusts Acts, the Settled Land Acts, the Law of Distress Amendment Acts, and the Married Women's Property Act, 1882, by s. 17 of which, in any question between husband and wife as to the title to or possession of property, either party, or any such corporation or company as therein mentioned, may apply in a summary way to any judge of the High Court or (at the option of the applicant irrespectively of the value of the property in dispute) to the judge of the County Court of the district, and the judge of the High Court or of the County Court may make such order with respect to the property in dispute and as to costs as he thinks fit; and the section gives an appeal from the County Court to the High Court and a power of removal to the High Court.

By County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), ss. 45, 50, reproducing County Courts Act, 1919, s. 1 (which replaced s. 65 of the Act of 1888), the Court may remit to the County Court any action brought in the High Court—(1) where the claim does not exceed 100*l.*, whether the counterclaim (if any) does or does not exceed 100*l.*; (2) where the only matter remaining to be tried is a counterclaim, founded either on contract or

tort, where the matter in dispute does not exceed 100*l.*; (3) where the plaintiff's claim is for the recovery of land (with or without rent or mesne profits) by a landlord against a tenant, or person claiming through or under a tenant, whose title has been duly determined and the action could have been brought in the County Court. Any action of tort in the High Court may in like manner be remitted unless the plaintiff give security for the defendant's costs, or satisfy a judge of the High Court that he has a cause of action fit for the High Court (1934 Act, s. 46).

Jury.—The judge is the sole judge of all questions of fact and law (s. 87). In certain cases trial with a jury may be prescribed on application to the Court (s. 91).

Appeals now lie to the Court of Appeal instead of the Divisional Court. Administration of Justice (Appeals) Act, 1934 (c. 40), s. 2, and by County Courts Act, 1934, s. 90.

Any party dissatisfied with the determination of the judge in point of law or equity, or upon the admission or rejection of any evidence, may appeal to the Court of Appeal, but where the sum claimed does not exceed 20*l.*, only if the judge grant leave to appeal, unless there is a claim for an injunction (*Bourne* v. *James*, 1898, 1 Q. B. 417).

The bringing of unimportant actions in the High Court rather than in a County Court is discouraged by the provisions that if in an action of contract which could have been commenced in a County Court the plaintiff recover less than 40*l.* (tort 10*l.*), he shall not be entitled to any costs, and if he recover 40*l.* or more, but less than 100*l.* (tort 10*l.* or more, but less than 50*l.*), he shall not be entitled to more costs than he would have if the action had been brought in a County Court, unless the Court or judge certify that there was sufficient reason for bringing the action in the High Court (County Courts Act, 1934, s. 47, replacing County Courts Act, 1919, s. 11).—See COSTS.

Right of Audience.—Section 86 of the Act of 1934 provides that in any proceedings in a County Court any of the following persons may address the Court, namely:—

(*a*) any party to the proceedings;

(*b*) a barrister retained by or on behalf of any party;

(*c*) a solicitor acting generally in the proceedings for a party thereto, but not a solicitor retained as an advocate by a solicitor so acting;

(*d*) any other person allowed by leave of the Court to appear instead of any party:

Provided that—

(i) the right of a solicitor to address the Court shall not be excluded by reason only that he is in the permanent and exclusive employment of any other solicitor; and

(ii) a Court may refuse to hear a person claiming to address the Court as a solicitor, unless that person has signed and delivered to the Court a statement of his name and place of business and the name of the firm (if any) of which he is a member.

(A managing clerk being a qualified solicitor and having entire charge of proceedings is not 'acting generally in the action,' *R.* v. *Oxfordshire County Court Judge*, 1894, 2 Q. B. 440.

By s. 185 no person other than a solicitor is entitled to have or recover any fee or reward for appearing or acting on behalf of any other party in any proceeding: provided that nothing in the Act contained is to affect the right of any barrister to appear or act in any court, or of any solicitor to recover costs in respect of his employment of a barrister to appear or act as aforesaid.

Rules of practice are made by the Rules Committee, consisting of five County Court judges and three other persons, a barrister, a registrar and a solicitor, and must be submitted to the Lord Chancellor and be concurred in by the Rules Committee of the Supreme Court; see County Courts Act, 1934, s. 99, and County Court Rules.

Admiralty.—The County Courts Admiralty Jurisdiction Acts, 1868 and 1869, provided for the appointment of County Courts for Admiralty purposes. Between 40 and 50 courts have been so appointed, and have jurisdiction to deal with claims in Admiralty matters up to 300*l.*, and by consent to any amount. See new County Courts Act, 1934, s. 56.

Bankruptcy.—As to the extensive jurisdiction in bankruptcy exercised by County Courts, see Bankruptcy Act, 1914, ss. 96, 98 and 99.

County Debentures Act, 1873 (36 & 37 Vict. c. 35), repealed and replaced by the Local Loans Act, 1875.

County Electors Act, 1888 (51 & 52 Vict. c. 10), provided for the qualification and registration of the electors of the county authorities established by the Local Government Act, 1888, by extending the qualification for burgesses. Repealed by the Representation of the People Act, 1918.

County Franchise. This was conferred by

the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), on all county householders, and by the Representation of the People Act, 1884, on all county householders and lodgers in lodgings up to 10*l.* a year in value. See Representation of the People Act, 1918, Part I., for extent of local government franchise, and ELECTORAL FRANCHISE.

County Palatine [fr. *palatium*, Lat., a court]. There were three of these counties—Chester, Durham, and Lancaster. The two former were such by immemorial custom; the last was created by Edward III. The Bishop of Durham and the Duke of Lancaster had royal power within their respective counties. They could pardon treasons, murders, and felonies; they appointed judges and magistrates; all writs and indictments ran in their names, and offences were said to be done against *their* peace and not *contra pacem domini regis*. The Act (11 Geo. 4 & 1 Wm. 4, c. 70), abolished the Court Session of the County Palatine of Chester, and subjected the county in all things to the jurisdiction of the superior Courts at Westminster. By the Judicature Act, 1925, s. 18, replacing Judicature Act, 1873, s. 16, the jurisdiction of the Court of Common Pleas at Lancaster and of the Court of Pleas at Durham is transferred to the High Court of Justice. But the jurisdiction of the Chancery Courts of these counties is retained (Judicature Act, 1925, s. 19). (See *In re Conolly Bros., Wood* v. *Conolly Bros.*, 1911, 1 Ch. 731 C. A. (concurrent proceedings; injunction).) By a number of statutes the practice and proceedings in the Court of Common Pleas and of Chancery, at Lancaster and at Durham, were respectively regulated and made conformable, in most particulars, to those of the superior Courts. See LANCASTER and DURHAM.

The counties palatine are now in the hands of the Crown: the jurisdiction of Durham is vested, as a separate franchise and royalty, in the Crown, by 6 & 7 Wm. 4, c. 19; Lancaster was vested in the Crown by Henry IV., separated indeed from the other possessions of the Crown in order and government, but united in point of inheritance.

County Rate, an imposition levied on the occupiers of lands, and applied to many miscellaneous purposes; among which are those of defraying the expenses connected with prisons, reimbursing to private parties the costs they have incurred in prosecuting public offenders, and defraying the expenses of the county police. See County Rate Act, 1852 (15 & 16 Vict. c. 81), and Rating Valuation Act, 1925 (15 & 16 Geo. 5, c. 90).

County Sessions. They are the general quarter sessions of the peace for each county, and are held four times a year; by the Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86), s. 22, they shall instead of being held at the times prescribed by s. 35 of the Law Terms Act, 1830, be held at such times within the period of 21 days immediately preceding or immediately following March 25th, June 24th, September 29th, December 25th

In London County (see S. R. & O., 1932, No. 418) Quarter Sessions shall be held at Newington January, April, July and October, and the first sessions held in each of these months shall be General Quarter Sessions; Adjourned Quarter Sessions shall also be held in all months at intervals of not less than two weeks or more than three weeks after the beginning of each preceding Quarter Sessions or Adjourned Quarter Sessions. See QUARTER SESSIONS.

Coupons [fr. *couper*, Fr., to cut], interest and dividend certificates; also those parts of a commercial instrument which are to be *cut*, and which are evidence of something connected with the contract mentioned in the instrument. They are generally attached to certificates of loan, where the interest is payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payer. A coupon does not require a stamp; it is nothing more than an I.O.U.

Courier [fr. *courir*, Fr., to run], an express messenger of haste; a travelling attendant.

Courracier, a horse courser.—2 *Inst.* 719.

Course, Order of, an order in the Chancery Division to which no opposition can be offered, and which is drawn up without any direct application to the judge. See *Dan. Ch. Pr.*

Coursing. The chasing of an animal with dogs who follow by sight and not by scent and capture it by their swiftness. As to the coursing of captive animals, see the Protection of Animals Act, 1911, s. 1, sub-s. 3 (b); *Aplin* v. *Porritt*, 1893, 2 Q. B. 57; *Waters* v. *Meakin*, 1916, 2 K. B. 111; *Jenkins* v. *Ash*, (1929) 93 J. P. 229. As to dog racing on licensed tracks, see 24 & 25 Geo. 5, c. 28.

Court [fr. *curia*, Lat.; *cour*. Fr.; *keort*, Dut.]. 1. The person and suite of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. The English Government is spoken of in diplomacy as the Court of

St. James's, because the Palace of St. James is the official palace.

2. The place where the sovereign administers justice by his judge or a bishop, as the Supreme Court of Judicature, divided into the High Court of Justice and the Court of Appeal, the High Court of Parliament, to which an appeal lies from the Court of Appeal, the County Court, the Courts of Summary Jurisdiction, the Courts of Quarter Sessions, the Court of Arches, the Consistory Court.

Courts are either of *record*, where their acts and judicial proceedings are enrolled for a perpetual memorial and testimony, and they have power to fine and imprison; or *not of record*, being courts of inferior dignity, and in a less proper sense the King's Courts—and these are not entrusted by law with any power to fine or imprison the subjects of the realm, unless by the express provision of some Act of Parliament. Their proceedings are not enrolled or recorded. See *Odgers on the Common Law*, pp. 1028 *et seq.*; *Stephen's Commentaries*, chap. x.; *Blackstone's Commentaries*, III. p. 24; *Jac. Law Dict.*

Court-baron, a court which, before 1926 (see COPYHOLDS), although not one of record, was incident to every manor, and could not be severed therefrom. It was ordained for the maintenance of the services and duties stipulated for by lords of manors, and for the purpose of determining actions of a personal nature, where the debt or damage was under forty shillings.

This court might be held at any place within the manor, giving fifteen days' notice, including three Sundays, of the day when the court will be held; but three or four days' notice have been deemed sufficient. It was frequently held together with the court-leet, and generally assembled but once a year.

The freehold tenants alone were suitors to the Court-baron; and it was essential to the existence of the court that there should be two suitors at the least; for since freemen can only be tried by their peers or equals, should there be but one freeman, he could then have no peer or judge, and consequently he had to appeal to the court of the lord paramount. The court was held before the freeholders who owed suit to the manor, the steward being rather the registrar than the judge. Neither the lord nor his steward could fine or imprison, and see 1 Ja. 1, c. 5 (Ruff) as to profits.

The tenants of a manor might make bye-laws touching their commons and the like, to bind such tenants as assented thereto, unless they were made by prescription or under an immemorial custom. These laws could never bind strangers. The penalty for the breach of a bye-law was in the nature of a fine rather than amercement, and was not affeerable, i.e., assisable. Consult *Scriven on Copyholds*, 4th ed. pp. 600 *et seq.*

Courts-baron do not appear to have been affected by the Law of Property Act, 1922 (abolishing copyhold tenure), and are included in the general words implied in the conveyance of a manor, see Law of Property Act, 1925, s. 62 (3); but not being courts of record, were practically abolished as regards their jurisdiction as Courts of Common Law by the County Court Act, 1867 (30 & 31 Vict. c. 142), s. 28, which provided that no action which could be brought in any county court should thenceforth be maintainable in any inferior court not being a court of record.

Court Christian. The ecclesiastical judicature, opposed to the civil court or lay tribunal; and as in secular courts human laws are maintained, so in the Court Christian the laws of Christ should be the rule. And therefore the judges are divines, as archbishops, bishops, archdeacons, etc.—2 *Inst.* 488.

Courtesy. See CURTESY.

Court for Crown Cases Reserved. See CROWN CASES RESERVED.

Court for Divorce and Matrimonial Causes. See MATRIMONIAL CAUSES.

Court-lands, domains or lands kept in the lord's hands to serve his family.

Court-leet. [Coke says *leet* is a Saxon word, and comes from the verb *gelathian*, or *gelethian* (*g* being added *euphoniæ gratiâ*), i.e., *convenire*, to assemble together, *unde conventus*.—4 *Inst.* 261. For other opinions as to the derivation of the word, see *Lex Man.* 131; *Ritson on Courts-leet*; and *Scriv. on Copyholds.*] This court is expressly kept up by s. 40 of the Sheriffs Act, 1887, though for all but formal purposes it has long since fallen into desuetude, and there is still an annual Court-leet of the Manor and Liberty of Savoy which meets at St. Clement Danes Vestry Hall, the High Steward of the Manor presiding, a jury being empanelled one month after Easter and serving for a year from that date, the court being held 'for the purpose of preventing small offences in the nature of a common nuisance,' and still having 'power to impose fines for certain offences, such

as the stopping up of ways': *Solicitors' Journal*, vol. 49, p. 493.

The Court-leet is a court of record appointed to be held once a year within a particular hundred, lordship, or manor, before the steward of the leet, being the King's Court granted by charter to the lords of those hundreds or manors. Its original intent was to view the frank pledges, that is, the freemen within the liberty who, according to the institution of Alfred, were all mutually pledged for the good behaviour of each other. It was anciently the custom to summon all the king's subjects, as they respectively grew to years of discretion and strength, to come to the Court-leet, and there take the oath of allegiance to the king. The other general business is to present by jury all crimes whatsoever that happen within their jurisdiction; and not only to present, but also to punish all trivial misdemeanours, as all trivial debts were recoverable in the Court-baron and county court.—*Steph. Com.*, Book VI., ch. xiv. The lord was compellable to hold a court by *mandamus*, and a leet was forfeited by nonuser and by acts of abuser. By the Law of Property Act, 1922, s. 128, and the 12th sched. the jurisdiction of Courts-leet in certain matters, e.g., relating to works for the protection or benefit of any manor and registering any liability (under the Land Charges Act, 1925) is transferred to the High Court.

The steward of a Court-leet is an essential officer, and should be indifferent between the lord and the law (see *Powell on Courts-leet*, p. 43), for he is the judge, and presides in the court wholly in a judicial character; the ministerial acts of the court, such as empanelling the jury, are executed by the bedel or bailiff, sworn to a due performance of his duty. The steward may fine or imprison, and may take a recognizance of the peace. The steward may not retain the profits, 1 Ja. 1, c. 5 (Ruff), he cannot appoint a deputy, unless he be so empowered in his patent or deed of appointment, or there exist an established custom for it. All fines are recoverable by action of debt or by distress. A fine is imposed by the court, but an amercement is generally the act of the jury; it must always be affeered in open court by two or more persons appointed by the steward and duly sworn, and is then recoverable by distress or action.

Bye-laws, embodied in the presentments and verdicts of the jury and homage, may be good by custom.

In some manors, the jury of the Court-leet chose the mayor, port-reeve, or other chief municipal officer of the borough or town to which the leet jurisdiction was appended; but the Municipal Corporations Act, 1883, reorganized all such boroughs as were left untouched by the Municipal Corporations Act of 1835.

All offences cognizable in the leet are inquired of and presented by the suitors of the court, sworn and charged as a jury for that purpose; and all presentments may be removed, by *certiorari*, into the King's Bench and there traversed. Consult *Scriven on Copyholds*, 4th ed. pp. 669 *et seq.*

Court-martial, a court for the trial of military offences, under the authority of the Crown and the Army Act, 1881; the ordinary law of evidence must be applied in its proceedings (*ibid.* s. 128, and Rules of Procedure, r. 73). There are general, district, and regimental courts-martial. See JUDGE ADVOCATE. Their jurisdiction does not, however, exempt any officer or soldier from being proceeded against by the ordinary course of law.—Consult *Manual of Military Law* and the *King's Regulations*; *Clode's Military Forces of the Crown.*

As to Naval Courts-martial, see Navy Discipline Act, 1866 (29 & 30 Vict. c. 109), ss. 58-69; JUDGE ADVOCATE.

Court of Claims. See CLAIMS, COURT OF.

Court Rolls, a book, or series of books, in which an account of all the proceedings and transactions of the customary court of a manor was entered by a person duly authorized. The person who makes the entries is the steward, and the court rolls are kept by him, but subject to the right of the tenants to inspect them.

Copyhold tenure was abolished by the Law of Property Act, 1922, but the Law of Property (Amendment) Act contains provisions for the preservation and superintendence of Court Rolls, *ibid.* 2nd Sched. II. See MANORIAL DOCUMENTS; *Williams on Real Property.* Consult *Scriven* or *Elton on Copyholds.*

Courts (Emergency Powers) Acts empowered the Courts (*inter alia*) to defer execution, the levying of distress, realization of securities, etc., during the war. The policy of protecting certain classes of tenants and mortgagors was continued and extended by the Increase of Rent and Mortgage Interest (War Restrictions) Act, 1915, since replaced by various Acts which have been superseded by the Rent and Mortgage Interest (Restrictions) Acts, 1920

to 1935. See too INCREASE OF RENT ETC. ACTS, 1920–1935.

Cousenage. See COSENAGE.

Cousin [fr. *cousin*, Fr.; *cugino*, It.; *consobrinus*, Lat., whence *cusdrin*, *susrin*; *sabrino*, Sp.]. A cousin is any collateral relation except brothers and sisters, and their descendants, and the brothers and sisters of any ancestor. The child of A.'s uncle or aunt is called his cousin-german, or first cousin, and the child, grandchild, etc., of such cousin is called his first cousin once, twice, etc., removed. The grandchild of A.'s great-uncle is his second cousin, and the child, grandchild, etc., of such cousin is his second cousin, once, twice, etc., removed, and so on. This distinction between first cousins once removed and second cousins is well recognized by the law (see *Re Parker*, (1881) 17 Ch. D. 262). The word 'cousin' properly means the children of brothers and sisters and implies consanguinity, but it is sometimes used in a loose and vague sense without any such implication, as when the sovereign addresses a nobleman, or a member of the Privy Council, as a 'cousin,' and when we speak of our 'country cousins' (*Re Taylor*, (1886) 34 Ch. D. p. 260, per Fry, L.J.). In old English it often means any collateral relative. As to the meaning of 'half cousin,' see *Re Chester*, 1914, 2 Ch. 280.

In consequence of drastic changes which were introduced by s. 45 of the Administration of Estates Act, 1925, all kindred of an intestate more remote than first cousins and their issue have been debarred from any claim to the beneficial interest in property either real or personal on the death of the intestate with a few exceptions, see DEVOLUTION OF PROPERTY ON DEATH, the share of the excluded kindred goes to the Crown or the Duchy of Lancaster or Duke of Cornwall, who may make certain *ex gratia* distributions, see s. 46 of the A. E. Act, 1925.

Couthutlaugh [fr. *couth*, Sax., knowing, and *utlaugh*, an outlaw], a person who willingly and knowingly received an outlaw and cherished or concealed him; for which offence he underwent the same punishment as the outlaw himself.—*Bract.*

Covenable, convenient or suitable.

Covenant [fr. *covenant*, Fr.], any agreement, convention, or promise of two or more parties, *by deed* in writing, signed, sealed, and delivered, by which either of the parties pledges himself to the other that something is either done or shall be done, or stipulates for the truth of certain facts. He who thus promises is called the covenantor; and he to whom it is made the covenantee. A covenant being part of a deed is subject to the general rules for the construction of such instruments; as, first, to be always taken most strongly against the covenanter and most in favour of the covenantee; secondly, to be taken according to the intent of the parties; thirdly, to be construed *ut res magis valeat quam pereat*; fourthly, when no time is limited for its performance, that it be performed in a reasonable time.

Covenants are personal obligations; formerly they did not bind the heirs of the covenanter unless the heirs were named and in that case only to the extent of the lands descended, but if made after 31st December, 1881, the real estate became bound as well as the personal estate (s. 58, C. Act, 1881, reproduced and extended by the L. P. Act, 1925, s. 80 (1)), descent to heir being abolished at the same time by the A. E. Act, 1925, s. 45.

The R. P. Act, 1845, s. 5, enabled persons in existence at its date (*Kelsey* v. *Dodd*, 52 L. J. Ch. 34) who were not parties to a deed to take the benefit of any interest, right or covenant respecting land, and this was extended by s. 56 of the L. P. Act, 1925, to any property. It should be observed that this enactment relates to interests or covenants of which the benefit would otherwise pass to such persons and refers to those covenants only which run with the land (see below).

The benefits of covenants which come within the category of choses in action may be assigned, see L. P. Act, 1925, and ASSIGNMENT.

A deed addressed to all the world, sometimes called a deed poll, was not within the rule that only parties to the deed could take advantage of it, *Co. Litt.* 26 *a*, 231.

Covenants running with the land are express or implied covenants which touch and concern the land and do not create an active personal obligation in connection with the land. Implied covenants relate to covenants implied in the words or nature of the grant. The Real Property Act, 1845 (8 & 9 Vict. c. 106), abolished the implications in words such as 'dedi,' 'concessi'; but certain covenants (see *infra*) are still implied in technical expressions or arise out of the nature of the transaction. In a conveyance by deed of real or leasehold property certain qualified covenants for title, quiet enjoyment and further assurance

are implied if the person conveying is expressed to convey, such as 'beneficial owner,' 'trustee,' 'settlor,' 'mortgagee'; see s. 76, and the 2nd sched. of the L. P. Act, 1925, as to covenants implied in a conveyance (not a mortgage) for value of land subject to a rentcharge or an assignment for value of a lease similarly subject, see s. 77; but the section does not refer to the demise or letting of land on a lease for rent.

For covenants implied as between lessor and lessee, see *Woodfall's Landlord and Tenant*, and for covenants implied in perpetuity leases converted into long terms of 2,000 years by the Law of Property Act, 1922, s. 145, see the 15th Sched. to that Act.

The benefit to the covenantee of a covenant running with the land now ensures to his successors in title and the persons deriving title under him or them, s. 78, L. P. Act, 1925. The burden relating to the land of the covenanter now falls on his successor in title and the persons deriving title under him or them, s. 79, *ibid.* It is no longer necessary that heirs, executors, administrators and assigns should be referred to in the framing of covenants.

Covenants by a person with himself and another have been validated whether made before or after the L. P. Act, 1925, by s. 82, and see Settled Land Act, 1925, s. 68, in regard to leases by a tenant for life as estate owner with himself as tenant for life in equity.

Restrictive covenants bind all persons (including owners and occupiers for the time being, see s. 79 (3), L. P. Act, 1925) who take with notice of the restriction under the rule in *Tulk* v. *Moxhay*, 2 Ph. 774, and these covenants if made after 1925 must be registered as a land charge, see L. C. Act, 1925, s. 10, Class C. As to the discharge or modification of Restrictive Covenants, see s. 84 of the L. P. Act, 1925. See also Apportionment; Run with the Land.

No particular technical words are requisite to create a covenant, for any words or form of expression which import an agreement will suffice (*Re De Ros' Trust*, (1885) 31 Ch. D. 88). A covenant to do a thing which upon the face of it appears to be prejudicial to the public interest, or otherwise contrary to law, is absolutely void, as is an impossible covenant, if the impossibility existed at the time of making it.

The time within which an action must be brought for damages for breach of a covenant is twenty years (Civil Procedure Act, 1833 (3 & 4 Wm. 4, c. 42), s. 3).

A covenant is either express or implied—it subsists either in fact or in law. An express covenant, or one in fact, is expressed in words; an implied covenant, or one in law, is that which the law implies though not expressed in words. Express covenants are taken more strictly than implied. As to what covenants shall be construed to be precedent or not, it has been laid down that the dependence or independence of covenants must be collected from the sense and meaning of the parties; and that in whatever order covenants may stand in a deed, their precedency must depend on the order of time which the intent of the transaction requires.

Covenants are inherent that tend to the support of the land or thing granted, or are collateral to it; affirmative, or negative; executed, or that which is already done; executory, or that which is to be done.—*Shep. Touch.* 160; *Bac. Abr. Covenant* (*G*); *Com. Dig. Covenant* (*F*); *Vin. Abr. Covenant* (*O*). *Third report of R. P. Comrs.*, 1 *Dav. Conv.*, also Consideration; Contract; Restraint of Trade.

Covenant, Action of, a form of action in which the plaintiff claimed damages for breach of a promise under seal. Abolished by the Judicature Acts.

Covenant, Writ of (abolished by 3 & 4 Wm. 4, c. 27, s. 36), a writ for claiming damages for breach of covenant, superseded by the action of covenant where the damages were unliquidated and by the action of debt where liquidated; both of these forms of action have now been abolished. See Actions and preceding title.

Covent Garden Market. For its regulation by the Covent Garden Market Act, 1828 (9 Geo. 4, c. 113), see *Bedford* (*Duke of*) v. *Ellis*, 1901, A. C. 1, in which the respondent and five other growers of fruit, etc., were held to have a *locus standi* to sue for infringement of preferential rights.

Coventry Act (22 & 23 Car. 2, c. 1), by which it was made a capital felony to disable with intent to disfigure, so called because it was passed in consequence of an assault upon Sir John Coventry. Repealed by 9 Geo. 4, c. 31, s. 1.

Covert-baron, said of a wife who is under the protection of her husband.

Coverture, the condition of a woman during marriage, because she was then presumed to be under the influence of her husband, so as to be excused from punishment for crimes committed in his presence, except treason, murder, and manslaughter (see *Reg.* v. *Manning*, (1849) 2 C. & K. at

p. 903); but the presumption may be rebutted (*Reg.* v. *Torpey*, (1871) 12 Cox, C. C. 45). The Criminal Justice Act, 1925 (c. 86), s. 47, abolishes this presumption of coercion by the husband, but on a charge for any offence other than treason or murder, it shall be a good defence to prove that the offence was committed in the presence of, and under the coercion of the husband. See further HUSBAND AND WIFE.

Covin is a secret assent determined in the minds of two or more to the prejudice of another—*Termes de la Ley.* And see *Co. Litt.* 357 *b*; *Girdlestone* v. *Brighton Aquarium*, (1878) 3 Ex. D. 137; 13 Eliz. c. 5.

Covinous, fraudulent, 27 Eliz. c. 4; *Chitty's Statutes*, tit. '*Conveyancing.*'

Cowper-Temple Clause. Section 14 (2) of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), whereby 'no religious catechism or religious formulary, which is distinctive of any particular denomination,' might be taught in a school provided by a School Board, and therefore may not be taught in any of the schools provided by local education authorities who have succeeded the School Boards. Re-enacted by the Education Act, 1921 (11 & 12 Geo. 5, c. 51), s. 28 (2).

Craft, a guild; a small boat.

Cran, a barrel or basket used as a measure for buying or selling fresh herrings. Regulations as to determining the capacity of and branding these measures are contained in the Cran Measures Act, 1908 (8 Edw. 7, c. 17).

Cranage, a liberty to use a crane for landing goods from vessels at creeks or wharves and to make profit of it; also the money paid and taken for the same.

Crassa negligentia, gross negligence. Negligence, however great, does not of itself constitute fraud (*Le Lievre* v. *Gould*, 1893, 1 Q. B. 498). Consult *Beven on Negligence in Law.*

Crastino, the morrow after.

Crates, an iron gate before a prison.—1 *Vent.* 304.

Cravare, to impeach.—*Leg. Hen.* 1, c. 30.

Craven, or **Cravant,** a word of disgrace and obloquy, pronounced on either champion, in the ancient trial by battle, proving recreant, i.e., yielding. Glanville calls it *infestum et invereoundum verbum.* His condemnation was *amittere liberam legem*, i.e., to become infamous, and not to be accounted *liber et legalis homo*, being supposed by the event to have been proved foresworn, and not fit to be put upon a jury or admitted as a witness.

Cream. By the Artificial Cream Act, 1929 (19 & 20 Geo. 5, c. 32), 'cream' is defined as natural milk rich in milk fat which has been separated, and 'artificial cream' as containing no ingredient which is not derived from milk except water and substances allowed by the Food and Drugs (Adulteration) Act, 1928, in cream. The sale of any substance for human consumption under the word 'cream' is prohibited unless it is cream or artificial cream.

Creamer, a foreign merchant, but generally taken for one who has a stall in a fair or market.—*Blount.*

Creansor, a creditor.—*Old Nat. Br.* 66. 38 Edw. 3, c. 1.

Creast. See CREST.

Credit, a transfer of goods in confidence of future payment; that side of an account or any item set down in favour of one party against any sums or matters ('debit') which are set against him.

Creditor [Lat.], one who trusts or gives credit, correlative to debtor. A creditor is entitled to take out letters of administration if there be no next of kin, or the next of kin will not. And see BANKRUPTCY, ADMINISTRATION OF ASSETS, and COMPANY.

Creditrix, a female creditor.

Cremation, the disposal of a dead body by burning instead of by burial. This is not illegal, unless it be done so as to cause a nuisance, or with the intention of preventing a coroner's inquest (*Reg.* v. *Price*, (1884) 12 Q. B. D. 247). But it is the duty of executors to bury the body of their testator, although the will may direct some other person to cause it to be burnt (*Williams* v. *Williams*, (1882) 20 Ch. D. 659). If burial in consecrated ground and cremation are both desired, cremation should precede and not follow burial, and the Burial Service may be read in connection with the burial of the ashes; see *Re Dixon*, 1892, P. 394, where an application to exhume, after 18 years' burial, for the purpose of cremation, was refused. The Cremation Act, 1902 (2 Edw. 7, c. 8), empowers burial authorities (see BURIAL) to establish crematoria on plans approved by the Minister of Health and certified to be in accordance therewith by the Secretary of State, but no crematorium may be nearer than 200 yards to any dwelling house without the written consent of the owner. The incumbent of the parish where the deceased died is not bound to perform a funeral service. See *Chitty's Statutes*, and the elaborate official regulations required by the 7th section of the Act, *ibid.* See Crema-

tion Regulations, 28th October, 1930 (S. R. & O., 1930, No. 1016).

A coroner is required to give a special certificate to permit cremation of any body on which he has held an inquest.

Crementum comitatus (the increase of a county). The sheriffs of counties anciently answered in their accounts for the improvement of the king's rents, above the *viscontiel* rents, under this title.—*Jac. Law Dict.*

Crepare oculum, to put out an eye. An offence punishable among the Saxons by a fine of 50*s.*, the highest fine.—*Turner's Anglo-Saxons,* v. ii., ap. iii., c. ii., p. 515.

Crepusculum [Lat.], the twilight.

Crest, in heraldry, signifies the devices set over a coat of arms.

Cretinus, a sudden stream or torrent.

Cretio, the period fixed by a testator within which the heir must have formally declared his intention to accept.—*Civil Law.*

Crier—*Of the Court of Chancery,* abolished by 15 & 16 Vict. c. 87, s. 27. In the Courts of Common Law one of the judge's clerks acted as crier.—15 & 16 Vict. c. 73, s. 8. Continued under Jud. Act, 1873, s. 77. (See Judicature Act, 1925, s. 226 (2)).

Crime is a word, of which the interpretation has varied with the philosophic bias of the writer; it has been described as the violation of a right, when considered in reference to the evil tendency of such violation, as regards the community at large, but this definition is too wide; and would include any evil act or movement whether or not it is punishable by law. The Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), s. 5, defines crime for the limited purposes of the Act as either felonies or specified offences or misdemeanours, while 'offence' means any act which is not a 'crime' and is punishable on indictment or summary conviction. In our law misdemeanour is generally used in contradistinction to felony, and comprehends all indictable offences which do not amount to felony, as perjury, battery, libels, conspiracies, etc. See OFFENCE, and consult *Russell on Crimes,* and *Mellor* v. *Denham,* (1880) 5 Q. B. D. 467, and other cases decided upon the meaning of 'criminal cause or matter' in Judicature Act, 1925, s. 31 (1) (*a*), replacing s. 47 of the Judicature Act, 1873, which in *Mellor* v. *Denham, ubi supra,* was held to include a conviction for breach of a bye-law under the Education Act, 1870, s. 74. The question as to what is a 'criminal cause or matter' is important when there is an intention to appeal. Contempt of Court, if a substantive offence, will come within the words (*Lewis* v. *Owen,* 1894, 1 Q. B. 102), but not if the contempt is the mere non-compliance with an order made in civil proceedings (*Church's Trustee* v. *Hibbard,* 1902, 2 Ch. 784).

Crimen falsi, forgery.

Crimen falsi dicitur, cum quis illicitus, cui non fuerit ad hæc data auctoritas, de sigillo regis rapto vel invento, brevia cartasue consignaverit. Fleta, 1, c. xxiii.—(The crime of forgery is when any one illicitly, to whom power has not been given for such purposes, has signed writs or charters with the king's seal, either stolen or found.) See FORGERY.

Crimen furti, theft. See LARCENY.

Crimen incendii, arson. See ARSON.

Crimen læsæ majestatis, the crime of injured majesty; treason. See TREASON.

Crimen raptus, rape. See RAPE.

Crimen roberiæ, robbery. See ROBBERY.

Criminal, a person indicted for a public offence and found guilty.

Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), came into force on the 19th April, 1908. For a great number of years the merits and demerits of criminal appeal have been discussed in this country.

In 1844 Sir Fitzroy Kelly, in a remarkable speech in the House of Commons, advocated criminal appeal, the claim to which has also been recognized by Starkie, Sir John Holker, and Chief Baron Pollock; and even Blackstone, with whom, as Mr. Lecky has observed, admiration of our national jurisprudence was almost a foible, passed some severe criticisms on the state of the criminal law of his day. In more recent times Lord James of Hereford (then Sir Henry James) introduced a criminal appeal bill into the House of Commons, which was supported by Lord Russell of Killowen (then Sir Charles Russell). And in 1889 Lord Fitzgerald, when introducing a measure into the House of Lords, said that the absence of any provision for rectifying errors and mistakes in criminal cases constituted a blot upon the criminal jurisdiction of England which did not exist in any civilized country. The importance of the subject was well stated by Sir John Lawson Walton when he said that the criminal law and its administration constituted 'the absolute condition of individual happiness and welfare on the part of every member of the community throughout all classes of our population.' The Criminal Code Commission, which sat in 1878, made proposals as to criminal appeal on a point of law and on a question of fact, and these proposals have been adopted by most of our

colonies; and Lord James of Hereford said (House of Lords, March 27th, 1906) that in every nation in Europe, and certainly in America, there were courts of criminal appeal. The passing of this Act was probably brought about by the public concern and sensation which was aroused by two cases: first, the Beck case, which resulted in the Beck Commission of 1904 (and as to which see *Best on Evidence*, 10th ed. at p. 438); and, secondly, the Edalji case.

The Court of Criminal Appeal, which is constituted by the Act, consists of the Lord Chief Justice of England and *all* the judges of the King's Bench Division (altered from eight judges by the Criminal Appeal (Amendment) Act, 1908 (8 Edw. 7, c. 46).

The right of appeal is contained in s. 3, which is as follows:—

3. A person convicted on indictment may appeal under this Act to the Court of Criminal Appeal—
(*a*) against his conviction on any ground of appeal which involves a question of law alone; and
(*b*) with the leave of the Court of Criminal Appeal or upon the certificate of the judge who tried him that it is a fit case of appeal against his conviction on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or any other ground which appears to the court to be a sufficient ground of appeal; and
(*c*) with the leave of the Court of Criminal Appeal against the sentence passed on his conviction, unless the sentence is one fixed by law.

A parent or guardian may appeal to the Court of Criminal Appeal under s. 3 against an order made by a Court of Assize or Quarter Sessions under the Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 55. Also a woman charged with murder and the jury find her not pregnant, see Sentence of Death (Expectant Mothers) Act, 1931 (21 & 22 Geo. 5, c. 24), s. 2.

'A person convicted' includes a person who, upon the trial of an indictment, has been found insane (*R.* v. *Ireland*, 1910, 1 K. B. 654).

The Court has power (s. 4, see *R.* v. *Ettridge*, 1909, 2 K. B. 24) to increase the sentence on the prisoner, and the prisoner has (s. 11) the right to be present on the hearing of his appeal, except where it is on 'some ground involving a question of law alone' (*R.* v. *Dunleavey*, 1909, 1 K. B. 200). The procedure of stating a case for the opinion of the Court under the Crown Cases Act, 1848 (11 & 12 Vict. c. 78), is preserved (s. 20 (4)), but writs of error and motions for new trials are abolished (s. 20 (1)). See NEW TRIAL. Regarding an appeal to the Court of Appeal from a conviction in relation to non-repair of a highway, a saving was inserted in the Criminal Appeal Act, s. 20 (3), and the Judicature Act, 1925, s. 29, replaces this sub-section. In order to assist the Court of Criminal Appeal in coming to a determination, s. 16 contains provisions for taking shorthand notes, and is as follows:—

16.—(1) Shorthand notes shall be taken of the proceedings at the trial of any person on indictment who, if convicted, is entitled or may be authorized to appeal under this Act, and on any appeal or application for leave to appeal a transcript of the notes or any part thereof shall be made if the registrar so directs, and furnished to the registrar for the use of the Court of Criminal Appeal or any judge thereof: Provided that a transcript shall be furnished to any party interested upon the payment of such charges as the Treasury may fix.
(2) The Secretary of State may also, if he thinks fit in any case, direct a transcript of the shorthand notes to be made and furnished to him for his use.
(3) The cost of taking any such shorthand notes, and of any transcript where a transcript is directed to be made by the registrar or by the Secretary of State, shall be defrayed, in accordance with scales of payment fixed for the time being by the Treasury, out of moneys provided by Parliament, and rules of court may make such provision as is necessary for securing the accuracy of the notes to be taken and for the verification of the transcript.

Many of the matters in the Act are governed by the rules made under it (see Criminal Appeal Rules, April, 1908).

The decision of the Court is final, unless the Director of Public Prosecutions, or the prosecutor or the defendant, obtains the certificate of the Attorney-General that the Court's decision involves a point of law of exceptional public importance, and that it is desirable in the public interest that a further appeal should be brought, when appeal may be brought to the House of Lords (s. 1 (6), Act of 1907).

In Scotland, the Criminal Appeal (Scotland) Act, 1926 (16 & 17 Geo. 5, c. 15), gives a right to a person convicted on indictment—whether before a sheriff or before a judge of the High Court of Justiciary—to appeal to the High Court of Justiciary against conviction and/or against sentence. The grounds of appeal must be that the conviction is unreasonable or cannot be supported having regard to the evidence, that there has been a wrong decision by the trial judge on any question of law, or that there has been a miscarriage of justice. The Court may vary the verdict and/or the sentence.

Criminal Conversation, adultery. See ADULTERY. The action for this (called *crim. con.*) was nominally abolished by the Matrimonial Causes Act, 1857 (20 & 21 Vict.

c. 85), s. 59; but s. 33 (replaced by the Judicature Act, 1925, s. 189) gives a husband the right to claim damages from an adulterer, either in a petition for dissolution of marriage or for judicial separation, or in a petition limited to that object; and the damages claimed must be assessed by a jury upon the same principles and rules as were formerly applicable to the trial of actions for criminal conversation, and the Court may direct that they be settled for the benefit of the children of the marriage or as a provision for the wife.

Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), the general Act by which every person charged with an offence and his or her wife or husband became a competent, but not a compellable, witness for the defence at every stage of the proceedings.

The evidence Acts, 1851 and 1853, which made parties and spouses admissible witnesses (they having been previously incompetent on the ground of interest), expressly excepted criminal proceedings from its operation; but a series of enactments dealing with particular offences, from the Licensing Act, 1872, down to the Chaff Cutting Machines Accidents Act, 1897 (of which s. 20 of the Criminal Law Amendment Act, 1885, was by far the most important), did away with this exception, in particular cases and in varying phraseology, but without qualifications except that against compellability, and enabled accused persons to give evidence on oath in their own defence.

The Act of 1898, superseding (see *Charnock* v. *Merchant*, 1900, 1 Q. B. 474) but not expressly repealing these particular enactments, provides (s. 1) that every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings.

'Proceedings' do not include the inquiry before the grand jury (*R.* v. *Rhodes*, 1899, 1 Q. B. 77).

Eight provisos follow, to the following effect:—

(*a*) The person charged is not to be called except on his own application;

(*b*) Failure to give evidence is not to be commented on by the prosecution;

(*c*) The wife or husband is not to be called except on the application of the person charged;

(*d*) Spouses are not to be compellable to disclose communications to each other during marriage;

(*e*) A person charged and being a witness may be asked questions tending to criminate him as to the offence charged (see *R.* v. *Minsham*, (1921) 16 Cr. App. R. 38);

(*f*) Such person may not be asked, and if asked need not answer, any question tending to show that he has committed any other offence (see *R.* v. *Chitson*, 1909, 2 K. B. 945) or is of bad character, unless (i.) the commission of such other offence is legal evidence of the commission of the offence wherewith he is charged; *or* (ii.) he has either sought to prove his own good character 'or the nature or conduct of the defence is such as to involve imputations' (see *R.* v. *Rouse*, 1904, 1 K. B. 184; *R.* v. *Bridgwater*, 1905, 1 K. B. 131; *R.* v. *Preston*, 1909, 1 K. B. 568) 'on the character of the prosecutor or of the witnesses for the prosecution'; *or* (iii.) he has given evidence against any other person charged with the same offence;

(*g*) The witness-box is to be the place for giving evidence, unless otherwise ordered by the Court; and

(*h*) The provisions of s. 18 of the Indictable Offences Act, 1848 (repealed by Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86), and replaced by s. 12 thereof), and any right of the person charged to make a statement without being sworn, are to remain unaffected.

The Criminal Justice Act, 1925 s. 12, replacing Indictable Offences Act, 1848, s. 18, directs that before commitment for trial (see ACCUSED PERSON and COMMITMENT) justices of the peace before whom a person is charged with an offence must give him an opportunity of answering the charge, coupled with a caution that he is not obliged to answer it.

The Act of 1898 also provides (s. 4) that in certain cases specified in the Schedule to the Act (since extended) the wife or husband may be called as a witness either for the prosecution or defence, and without the consent of the person charged. Consult *Allen*, *Butterworth*, or *Jelf* on the Act; *Best* or *Taylor on Evidence*.

Criminal Information, a proceeding in the King's Bench Division of the High Court of Justice at the suit of the king, without a previous indictment or presentment by a grand jury. Criminal informations are of two sorts: (1) *Ex officio*, which is a formal, written suggestion of an offence committed, filed by the Attorney-General, or, in the vacancy of that office, by the Solicitor-General, in the King's Bench Division of the High Court, without the intervention of

a grand jury. It lies for misdemeanours only, and not for treasons or felonies. The information is filed in the Crown Office without the previous leave of the Court. (2) Information by the Master of the Crown Office, which is filed at the instance of an individual called 'the relator,' with the leave of the Court; and usually confined to gross and notorious misdemeanours, riots, batteries, libels, and other immoralities. Criminal informations may also be filed against judges and magistrates for illegal, unjust, and wilfully oppressive conduct if arising from corrupt and malicious motives, and not from mere error of judgment. The procedure on criminal information is regulated by the Crown Office Rules, 1906, rr. 35-39, which provide that the person procuring an information must file a recognizance in 50*l.* to prosecute it, that no application for a criminal information against a justice of the peace as such must be made without notice to him, etc. See *Odgers on the Common Law*.

Criminal Justice Administration Act, 1914 (4 & 5 Geo. 5, c. 58). The Act considerably enlarges the jurisdiction of Courts of Summary Jurisdiction; requires time to be allowed for payment of fines; substitutes 'detention' for imprisonment in certain cases; extends the powers of Courts as to commital to Borstal Institutions; and extends the right of appeal.

Criminal Law. Consult *Archbold's Criminal Pleading; Chitty's Statutes*, tit. '*Criminal Law*'; *Stephen's Digest of the Criminal Law; Russell on Crimes;* and see titles ARSON, ASSAULT, BURGLARY, EMBEZZLEMENT, FALSE PRETENCES, LARCENY, MANSLAUGHTER, MURDER, RAPE, TREASON, and WOUNDING.

Criminal Law Amendment Acts, 1885 to 1928. By the Act of 1885 the procuration of women under twenty-one, and illicit though unresisted intercourse with girls between thirteen and sixteen, are made misdemeanours, brothel-keepers are made liable to summary proceedings, and prisoners charged with sexual offences are allowed to give evidence on their own behalf. The Act is amended by the Criminal Law Amendment Act, 1912, which empowers a constable to arrest without a warrant any person offending against the Act of 1885, provides for flogging offenders, and makes better provision for the suppression of brothels and prostitution. The Act of 1922 provides that the consent to an act of indecency by a child or young person under sixteen shall be no defence to a charge of indecent assault (s. 1). Reasonable cause to believe that a girl was over sixteen shall not be a defence to a charge under ss. 5 and 6 of the Act of 1885 (i.e., defilement of a girl between thirteen and sixteen, or permitting the same on defendant's premises), provided that in the case of a man of or under twenty-three, reasonable cause to believe that the girl was over sixteen shall be a valid defence on the first occasion on which he is charged with such an offence. (*R.* v. *Chapman*, 1931, 2 K. B. 606 (a man of twenty-three years and six months can avail himself of this defence).) See AGE. The time within which a prosecution can be commenced under s. 5 of the Act of 1885 is extended to twelve months (s. 2) as amended by the 1928 Act. The penalties in summary proceedings against brothel-keepers are increased, and s. 5 repeals s. 5 of the Punishment of Incest Act, 1908, which required all proceedings under that Act to be held *in camera* (see *R.* v. *Forde*, (1923) 39 T. L. R. 322).

Criminal Lunatics Act, 1884 (47 & 48 Vict. c. 64), consolidating and amending the law as to the detention, custody, and discharge of criminal lunatics, the principal amendment being that effected by s. 10, which transfers the expense of maintenance of criminal lunatics from their parish or county to the country generally.

Criminal Procedure Act, 1885 (28 & 29 Vict. c. 18), sometimes called 'Mr. Denman's Act' (*Chit. Stat.* tit. '*Evidence*': Statutes Revised); an Act, as the preamble states, assimilating the law of evidence and practice on trials for felony and misdemeanour, and other proceedings in courts of criminal judicature, to that on trials at *nisi prius*, and enacting by s. 1 that—

> The provisions of section two of this Act shall apply to every trial for felony or misdemeanor . . . and that the provisions of sections from 3 to 8 inclusive of this act shall apply to all Courts of Judicature *as well criminal as all others*, and to all persons having, by law or by consent of parties, authority to hear, receive, and examine evidence.

The italicized words of the above enactment give the Act a great and general importance, especially because ss. 22-27 of the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), have been repealed by the Statute Law Revision Act, 1892, as being substantially identical with ss. 3-8 of 1885.

Section 2 (which applies only where defence is by counsel) allows counsel for the prosecution to sum up his evidence, if none be called for the defence.

Criminal Procedure (Scotland) Act, 1887

(50 & 51 Vict. c. 35), abolishes capital sentences except in certain cases, contains numerous forms of indictment, and otherwise simplifies and amends the Criminal Law of Scotland. See CAPITAL OFFENCES (SCOTLAND).

Crimp, one who decoys and plunders sailors under cover of harbouring them. As to the offence of 'crimping' under the Merchant Shipping Act, 1894, ss. 215–218, see *R.* v. *Abrahams*, 1904, 2 K. B. 859; *R.* v. *Goldberg*, *ibid.*, 866.

Criticism, Comment.—The judgment or opinion of anyone upon a book, play, or picture submitted for public approval. As to when criticism is fair and honest and no libel, see *Joynt* v. *Cycle Trade Publishing Co.*, 1904, 2 K. B. 292; *Thomas* v. *Bradbury, Agnew & Co., Ltd.*, 1906, 2 K. B. 627. Consult *Odgers on Libel.*

Crocards, a sort of old base money.

Crocia, the crosier, or pastoral staff.

Crociarius, the cross-bearer, who went before the prelate.

Croft [A.S., fr. *creaft*, Old Eng., handicraft, or *croit*, Gael., a hump], a little close adjoining to a dwelling-house or homestead, and enclosed for pasture, or arable, or any particular use.

Crofter, in the Crofters Acts (Scotland), means a person who is tenant of a holding from year to year and resides on his holding, the annual rent of which does not exceed 30*l.*, and which is situated in a 'crofting parish'; see the Crofters Acts of 1886, 1887, 1891, and 1908, and the Small Landholders (Scotland) Act, 1911 (1 & 2 Geo. 5, c. 49).

Croises, and **Croisado.** See CROYSES.

Croiteir, a crofter, one holding a croft.

Crop, corn, hay, and such other produce as can be cut and stored up. As to setting fire to crops, see the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 16. As to growing crops, see EMBLEMENTS.

As to freedom of cropping, see AGRICULTURAL HOLDINGS ACT.

Crore, ten millions.—*Indian.*

Cross-action, a claim by the defendant against the plaintiff put forward in a separate action but arising out of the subject-matter of the first action and before final judgment therein. Procedure by counterclaim (*q.v.*) has now practically superseded cross-actions, except in Admiralty cases. Cross-actions are generally consolidated and tried together. See R. S. C., Ord. XIX., r. 3.

Cross's Acts, the Artisans and Labourers Dwellings Improvement Acts of 1875 and 1879, repealed and re-enacted with amendments by the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70). See HOUSING ACTS.

Cross-bill, answering to the *reconventio* of the Canon Law, as a mode of defence by cross-examination, was one filed by a defendant in the Court of Chancery against the plaintiff or other defendants in the same suit, either to obtain (1) a necessary discovery of facts in aid of his defence to the original bill; or (2) full relief to all parties, touching the matters of the original bill. See now COUNTERCLAIM.

Also a bill of exchange given in consideration of another bill.

Cross-examination, the examination of a witness by the opposite side, generally after examination in chief, but sometimes without such examination; as in the case of an examination on the *voir dire*, which is in the nature of a cross-examination (see VOIR DIRE); and also if one party calls a witness, and he is sworn, the other party may cross-examine him, although the party who has called him put no question at all to him. Sometimes questions in cross-examination are allowed by the judge after re-examination. See RE-EXAMINATION. And if a witness be called to prove some preliminary and collateral matter only, as the handwriting of a document tendered in evidence, he is a witness in the cause, and may be cross-examined as to any of the issues in the cause.

As to the form of the cross-examination, leading questions are allowed, which is not the case in examination in chief.

The questions must be relevant to the issue (see *infra*), but great latitude is allowed, as a question seemingly irrelevant often turns out otherwise.

In the case of a witness proving himself hostile from interest or otherwise, the judge may allow the examination in chief to assume the form of cross-examination.

It is provided by R. S. C., 1883, Ord. XXXVI., r. 38, that the judge may disallow vexations and irrelevant questions, and by s. 25 of the C. L. P. Act, 1854, that if a witness deny a conviction for felony, it may be proved.

The following are some of the chief heads of cross-examination:—

I. *To cause the witness to alter or amend his evidence.*

1. (*a*) By showing—
   (1) he has spoken on a misconception of fact; or

(2) misunderstands the meaning of a word ; or
(3) has given his idea of the effect of a transaction instead of the details.
(*b*) by inquiring the grounds of his belief.
(*c*) by appealing to his consciousness of a weak memory [this course is taken with very old people].
(*d*) reminding him that he has spoken otherwise, or that others have ; and other methods of showing his evidence ought not to be believed, which will come more fully under II.

2. To modify the evidence given in chief, by causing the witness to speak to supplementary facts to show—
(*a*) the reason for what was done.
(*b*) the circumstances surrounding it. See *infra*, II. B.
(*c*) the manner in which it was treated at the time.

II. *To discredit the evidence of the witness.*

A. From reasons connected with himself—
(*a*) that he is of bad character
(1) generally.
(2) in regard to truthfulness.
(3) in regard to the subject-matter of the issue.
(*b*) that he is not impartial, as being
(1) a friend of the other side, through
(*α*) relationship.
(*β*) favour.
(*γ*) corruption.
(2) a friend of his cause
(*α*) to screen his own character.
(*β*) to conduce to his profit.
(3) an enemy of the cross-examining party.
(*α*) presumably, having been punished or unjustly injured by him.
(*β*) apparently, having spoken revengefully of or previously injured him.

Greater latitude is allowed in examining (on these heads) a party to a cause than another witness.

B. From reasons arising out of his evidence by causing him to give further evidence, inconsistent—
(1) with all reason and probability.
(*α*) absolutely.
(*β*) under the circumstances as (that he should remember the matter in hand, but nothing else at the same distance of time).
(2) with evidence of witnesses of indisputable credit.
(3) with parts of the case not in dispute.
(4) with what he himself has previously said,
(*a*) on a previous occasion.
(*b*) in the examination in hand.
(*α*) in chief.
(*β*) in the prior part of his cross-examination.
(5) with what a witness on the same side has said on the same subject. Now this will show either that the variance is a sign that the whole story is a fiction or that one of the two speaks true and the other false, and that, as it does not appear which speaks true, it is not safe to believe either, or it should be attempted to cast the discredit on the one whose evidence is more important.
(6) with his own conduct in the transaction, or the conduct of witnesses of undisputed credit.
(7) with his demeanour in court, as (if he deposes he was calm under provocation) to irritate him.

III. *To cause him to give evidence to be received as true.*

(*a*) confirming the evidence of the questioner's witnesses.
(*b*) contradicting that of the opponent's witnesses.
(*c*) on a region of facts not previously entered upon ; but this topic is more in the nature of examination in chief.

Of these, I. is the most generally useful. II. (A) may not be resorted to without just grounds of suspicion. The effect of s. 1 of the Criminal Evidence Act, 1898, on questions which may not be put to a person charged with a criminal offence should be noted. The propriety of selecting any of the others must depend upon the view suggested at the moment by the air of the witness and the general complexion of the case. The effect of s. 3 of the Criminal Procedure Act, 1865, should be noted with respect to both civil and criminal matters. It has been well laid down that the cross-examination of each witness should be made subservient to the general conduct of the case. Consult *Powell on Evidence*.

Cross-remainders, reciprocal contingencies of succession, which may be implied in a will but must always be expressed in a deed, and should be expressly limited in a will.

The broad rule is, that wherever realty is

devised to several persons in tail as tenants-in-common, and it appears to be the testator's intention that no part should go over until the failure of the issue of all the tenants-in-common, they take cross-remainders in tail amongst themselves. The effect of the limitation is that on the death of any of the class of beneficiaries entitled to cross remainders in tail, then upon failure of his or her issue, his or her share and any share which he or she or such issue may have taken by accrual will be divided equally among the others of the class. See *Theobald on Wills*.

Crossed Cheques. It is very usual for the drawer of a cheque to write across it, between two parallel lines, the name of the payee's banker, in which case the banker on whom the cheque is drawn should only pay to that banker; in other cases, as when the drawer is unaware of the payee's banker, it is usual for him to write merely the words 'and Co.,' leaving it to the payee to add the name of his banker if the payee so intends, or if the parallel lines are left in blank except for the words 'and Co.' the cheque can only be paid by the Bank on whom it is drawn to or through a Bank. This serves as some security in case the cheque is lost, since it can only be paid through a banker, and moreover postpones in some measure the payment until the clearing hours in the afternoon. See Bills of Exchange Act, 1882 (45 & 46 Vict. c. 50), ss. 76-80; and Bills of Exchange (Crossed Cheques) Act, 1906 (6 Edw. 7, c. 17) passed in consequence of *Capital and Counties Bank* v. *Gordon*, 1903, A. C. 240), by s. 1 of which a banker receives payment of a crossed cheque within the meaning of s. 82 of the Act of 1882 for a customer, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof, though he incurs no liability to the true owner if the customer had no title. As to the effect of adding the words 'a/c Payee,' see *House Property Co.* v. *L. C. & W. Bank*, (1915) 31 T. L. R. 479. See also Bills of Exchange Act (1882) Amendment Act, 1932 (22 & 23 Geo. 5, c. 44); *Slingsby* v. *Westminster Bank Ltd.*, 1931, 1 K. B. 122, affirmed *sub nom. Lloyds Bank Ltd.* v. *Savory & Co.*, 1933, A. C. 201; see also 'NOT NEGOTIABLE.'

Crown [fr. *couronne*, Fr.; *corona*, Lat.], an ornamental badge of regal power worn on the head by sovereign princes. The word is frequently used when speaking of the sovereign himself, or the rights, duties, and prerogatives belonging to him.

The Act of Supremacy (1 Eliz. c. 1), 'restoring to the Crown the Ancient Jurisdiction over the State Ecclesiastical and Spiritual and abolishing all Foreign Power repugnant to the same,' after repealing 1 & 2 P. & M. c. 8, reviving the Foreign Citations Act, the Act of Appeals, Abolition of Annates Act, the Act of Submission, the Confirmation of Bishops Act, the Archiepiscopal Licenses Act (23 Hen. 8, cc. 9, 20; 24 Hen. 8, c. 12; 25 Hen. 8, cc. 19-21; 26 Hen. 8, c. 14; 28 Hen. 8, c. 16), and also repealing 1 & 2 P. & M. c. 6 (see HERESY), enacted that—

> Such jurisdictions, privileges, superiorities and pre-eminences spiritual and ecclesiastical as by any spiritual or ecclesiastical power or authority hath heretofore been or may lawfully be exercised or used for the visitation of the ecclesiastical state and persons and for reformation, order, and correction of the same and of all manner of errors, heresies, schisms, abuses, offences, contempts and enormities shall for ever by authority of this present Parliament be united and annexed to the imperial crown of this realm.

By the Interpretation Act (see that title), s. 30, 'in this Act and in every other Act, *whether passed before or after the commencement of this Act*, references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being.' It is added, 'this Act shall be binding on the Crown,' the rule of construction being that the Crown is not bound by a statute (see per Lindley, L.J., in *Wheaton* v. *Maple & Co.*, 1893, 3 Ch. at p. 64) unless expressly named therein—as, e.g., in the Arbitration Act, 1889, by s. 23; the Bankruptcy Act, 1914, by s. 151; the Workmen's Compensation Act, 1906, by s. 9; and the Patents, etc., Act, 1907, by s. 29. See also KING. As to the law and practice of civil proceedings by and against the Crown, see *Robertson on the Crown*. Servants of the Crown are not liable to be sued in their official capacity for torts; see *Roper* v. *Public Works Commissioners*, 1915, 1 K. B. 45, and cases there referred to; PREROGATIVE.

Crown Agent, the solicitor to the Department of the Lord Advocate. His office is called the 'Crown Office.'

Crown Agents for the Colonies act as the business and financial agents in the United Kingdom for the Colonies other than the Dominions, and are appointed by the Secretary of State for the Colonies.

Crown Cases reserved. Questions of law at criminal trials (except in the case of

demurrers and writs of error) might be referred for decision to the 'Court for the Consideration of Crown Cases reserved,' sitting under the authority of the Crown Cases Act, 1848 (11 & 12 Vict. c. 78), provided the judge who tried the prisoner consented to state a case, though if he refused no Court had power to compel him to do so.

The jurisdiction given by the Act of 1848 is now transferred to the Court of Criminal Appeal by virtue of s. 20 of the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23), which section also preserves to some extent the procedure under the Crown Cases Act. The judgment of such Court is final and without appeal, unless a certificate of the Attorney-General is obtained under s. 1 (6) of the Criminal Appeal Act, 1907. The Judicature Act, 1925, s. 31 (1) (*a*) has a saving for appeal under the Act of 1907. See *R.* v. *Ball*, 1911, A. C. 47 ; and CRIMINAL APPEAL ACT, 1907.

Crown Debts. It is a prerogative of the Crown to claim priority for its debts before all other creditors, and to recover them by a summary process called an extent. See 33 Hen. 8, c. 39.

Every person having money belonging to the Crown is a Crown-debtor. When upon inquisition a person is found to be a Crown-debtor by simple contract, the debt immediately becomes a specialty ; but a person giving to the Crown a bond on condition is not a bond-debtor before the condition is broken.

Section 28 (1) of the Bankruptcy Act, 1914, provides that an order of discharge shall not release a bankrupt from his Crown debts.

It is provided by the Land Charges Act, 1900 (63 & 64 Vict. c. 26), replaced by the Land Charges Act, 1925, ss. 6 and 7, and see also the Law of Property Act, 1925, that Crown debts shall not affect lands until writ or order for the purpose of enforcing the judgment has been issued and registered. See *Chitty's Statutes*, tit. '*Land*,' and titles EXTENT ; PREFERENTIAL PAYMENTS.

Crown, Demise of. See DEMISE.

Crown Lands. The demesne lands of the Crown, which it is now usual for the sovereign to surrender at the commencement of his reign for its whole duration, in consideration of the Civil List settled upon him. Crown lands have been distributed and are managed respectively by the Commissioners of Crown Lands (incorporated by Crown Lands Act, 1927 (17 & 18 Geo. 5, c. 23), the Commissioners of Works ; the Board of Trade ; the Forestry Commissioners ; the Treasury. The revenues go to the Consolidated Fund, and they are managed under a series of Crown Lands Acts, from the Crown Lands Act, 1829 (c. 50), to the Crown Lands Act, 1927 (17 & 18 Geo. 5, c. 23). See *Chitty's Statutes*, tit. '*Crown*.'

Crown Office, a department originally belonging to the Court of King's Bench. The Act (6 & 7 Vict. c. 20) abolished the clerks in this Court and the monopoly of their practice, throwing it open to all persons admitted or admissible to practise as attorneys of the then Court of Queen's Bench ; it also abolished several ancient offices and many burthensome fees, and made the office subject to the direct control of the Lord Chief Justice. Judicature Act, 1925, ss. 104 *et seq.* replaces the Supreme Court of Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), which amalgamated the Crown Office with the Central Office of the Supreme Court, and transferred to such Central Office the 'King's Coroner and Attorney' and the 'Master of the Crown Office.'. See R. S. C. 1883, Ord. LXI., and *Short and Mellor's Crown Office Practice*.

Crown Office Act, 1877 (40 & 41 Vict. c. 41), provides for the authentication, etc., of documents issued from the office of the Crown in Chancery.

Crown Office Rules, 1906, a large body of Rules, 269 in number, with Forms and Tables of Fees, issued by the Rules Committee of the Supreme Court, superseding the 308 Rules of 1886 as from October 24th, 1906, and regulating the whole practice and procedure of the Crown Side of the King's Bench Division of the High Court in Certiorari, Criminal Information, Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and other matters.

Crown Paper. A list of proceedings pending on the Crown side of the King's Bench Division of the High Court.

Crown Private Estates Acts, 1800 to 1872. These Acts excluded the Crown's private estates from restrictions in enactments, and also gave the Sovereign general powers of disposition. See also Osborne Estate Act, 1902 (2 Edw. 7, c. 37), which transferred Osborne House to the Commissioners of Crown Lands.

Crown Side of the King's Bench Division of the High Court, that side of the Division on which the litigious business of the Crown Office (see CROWN OFFICE) is conducted before the same judges of the Division as those by whom actions between subject and

subject are tried, but by a separate staff of officers.

Crown Solicitor. In Ireland there were officers called Crown solicitors attached to each circuit, whose duty it was to get up every case for the Crown in criminal prosecutions. They were paid by salaries. In Scotland the still better plan exists of a Crown prosecutor (called the Procurator-Fiscal, and being a subordinate of the Lord-Advocate) in every county, who prepares every criminal prosecution. As to England, see PUBLIC PROSECUTOR.

Crown Suits are regulated by the Crown Suits Act, 1865 (28 & 29 Vict. c. 105), and suits against the Crown by the Petition of Right Act, 1860 (23 & 24 Vict. c. 34). See *Chitty's Statutes*, tit. '*Crown*'; *Robertson on the Crown.*

Croy, marsh land.—*Blount.*

Croyses, *cruce signati*, so called because they wore the sign of the cross upon their garments.—*Bract.* l. 5, pt. 2, c. ii. The term was used to signify crusaders.

Cruelty. Such conduct on the part of a husband or wife (see *Forth* v. *Forth*, (1867) 36 L. J. P. & M. 122) as entitles the other party to a judicial separation by reason of danger to life or health. The communication of venereal disease is such conduct (*Browning* v. *Browning*, 1911, P. 161). See Judicature Act, 1925, s. 185, replacing Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 16, and the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), by which a Court of Summary Jurisdiction may order that a wife whose husband has been convicted of an aggravated assault upon her, or has been guilty of persistent cruelty to her, can leave and live apart from him, and shall be no longer bound to cohabit with him. Consult *Browne and Watts on Divorce*; and see HUSBAND AND WIFE, and ANIMALS.

Since 1923 cruelty is no longer a necessary element in a divorce petition by a woman; see Judicature Act, 1925, s. 176, which displaces the Matrimonial Causes Act, 1923 (13 & 14 Geo. 5, c. 19), s. 1.

Cruelty to Animals. See ANIMALS.

Cruelty to Children. See tit. CHILDREN, sub-heading '*Cruelty.*'

Crustrum, a purple garment mixed with many colours.—*Dugd. Mon.* tom. 1, p. 210.

Cry de pais, or **Cri de pais,** hue and cry.

Cryer, an officer of a court, whose duty it is to make a proclamation. See CRIER.

Crypta [Ital., fr. κρύπτω, Gk., to hide, being first used by the early Christians for the performance of religious services in safety], a chapel or oratory underground, or under a church or cathedral.—*Du Cange.*

Cshatriya, Kshatriya, Chetterie, Khetery, a man of second or military caste.—*Indian.*

Cucking-stool. A chair on which females in ancient times for certain offences, as for being 'common scolds,' were fastened and ducked in a pond.—*Steph. Com.*, bk. vi. ch. xii.

Cude, a chrysom or face-cloth for a child baptized.—*Jac. Law Dict.*

Cui ante divortium (to whom before divorce). A writ for a woman divorced from her husband to recover her lands and tenements which she had in fee simple or in tail, or for life, from him to whom her husband alienated them during the marriage, when she could not gainsay it.—*Reg. Brev.* 233. Abolished by 3 & 4 Wm. 4, c. 27, s. 36.

Cui bono? To whose advantage?

Cui in vita (to whom in life). A writ of entry for a widow against him to whom her husband aliened her lands or tenements in his lifetime; which must contain in it, that during his life she could not withstand it.—*Reg. Brev.* 232; *Fitz. N. B.* 193. Abolished by 3 & 4 Wm. 4, c. 27, s. 36.

Cuilibet in arte suâ perito est credendum. *Co. Litt.* 125.—(Every one who is skilled in his own art is to be believed.) See EXPERTS.

Cujus est dare ejus est disponere. *Wing. Max.* 53.—(Whose it is to give, his it is to dispose of.) See *Broom's Leg. Max.*

Cujus est solum ejus est usque ad cœlum et ad inferos, or more succinctly, **Cujus est solum ejus est altum,** *Co. Litt.* 4.—(Whose is the soil, his it is even to heaven and to the middle of the earth.) Therefore a man whose land is overhung by his neighbour's tree may cut down the overhanging boughs (*Lemmon* v. *Webb*, 1895, A. C. 1); and a man who parts with his land, but wishes to retain the minerals beneath it, must expressly reserve them, unless he sell to a railway company, which by s. 77 of the Railways Clauses Consolidation Act, 1845, does not take mines unless the conveyance of the land expressly grants them. As to action for trespass and other torts by aircraft, see the Air Navigation Act, 1920 (10 & 11 Geo. 5, c. 80), s. 9.

Culagium, the laying up of a ship in a dock for repair.—*Jac. Law Dict.*

Culpa, an act of neglect, causing damage, but not implying an intent to injure, of which the Roman jurists recognized two: (1) *Culpa lata, culpa latior, magna culpa*, gross neglect, treated very much like fraud; *culpa magna dolus est, dolo proxima.* (2) *Culpa,*

without any epithet, or *omnis culpa, culpa levis, levior;* or *levissima,* slight neglect.—*Cum. Civ. Law,* 279; *Sand. Just.*

Culpa lata dolo æquiparatur.—(Gross negligence is held equivalent to intentional wrong.) In cases of fraud, a grossly negligent omission to ascertain whether a statement is true or not, i.e., an untrue statement made with a reckless disregard of its truth or the reverse is evidence of fraud. See *Derry* v. *Peek,* (1889) 14 A. C. 337, and FRAUD.

Culprit. The prisoner at the Bar awaiting his trial after a plea of not guilty. 'Its first recorded use is in the trial of the Earl of Pembroke for murder in 1678. Its original force was formerly to join issue with the defendant's plea of Not guilty and to demand trial and judgment.'—*Oxf. Dict.,* art. '*Culprit,*' where see discussion of the disputed derivations of the word. It is thus derived by Donaldson. The clerk asks the prisoner, 'Are you guilty or not guilty?' Prisoner, 'Not guilty.' Clerk, '*Qu'il paroit* [may it prove so]; how will you be tried?' Prisoner, 'By God and my country.' These words, being hurried over, came to sound, 'Culprit, how will you be tried?' Blackstone's derivation is entirely different; see 4 *Bl. Com.* 339.

Cultura, a parcel of arable land.—*Blount.*

Culvertage [fr. *culus* and *verto,* Lat., to turn tail), base slavery, the confiscation of an estate.—*Mat. Par.* 1212.

Culward and **Culverd,** a coward.

Cum grano salis (with a grain of salt), with allowance for exaggeration.

Cum privilegio, the expression of the monopoly of Oxford, Cambridge, and the Royal Printers to publish the Bible.

Cum testamento annexo [Lat.] (with the will annexed). See ADMINISTRATOR.

Cumulative Legacies, legacies so called to distinguish them from legacies which are merely repeated. In the construction of testamentary instruments, the question often arises, whether where a testator has twice bequeathed a legacy to the same person, the legatee is entitled to both, or only one of them; in other words, whether the second legacy must be considered as a mere repetition of the first, or as cumulative, i.e., additional. In determining this question, the intention of the testator, if it appears on the face of the instrument, prevails; but if it does not so appear, the following rules of construction have been laid down:—

(I.) If the same specific thing be bequeathed twice to a legatee, whether by the same instrument or not, he is entitled to one legacy only.

(II.) If the legacies be not of a specific thing, but of quantity, e.g., a sum of money—

(1) If they are bequeathed by the same instrument, and are of equal amount, the second legacy is not cumulative, but the legatee is entitled to one legacy only.

(2) If they are bequeathed by the same instrument, but are of unequal amount, the second legacy is cumulative.

(3) If they are bequeathed by different instruments, whether they are equal or unequal in amount, the second legacy is cumulative. Consult *Roper on Legacies; Theobald on Wills.*

Cumulative Remedy, a second mode of procedure in addition to one already available: opposed to alternative remedy.

Cuna cervisæ, a tub of ale.—*Domesday.*

Cuneus, a mint or place to coin money; from this word coin is derived.

Cuntey-Cuntey, a kind of trial, as appears from *Bracton,* lib. 4, tract 3, c. 18, and tract 4, c. 2, where it seems to mean one by the ordinary jury.

Curagulus, one who takes care of a thing.

Curate [fr. *curator,* Lat.], is a term properly applied to one who has the cure of souls, namely, the incumbent of a parish. The incumbent may have to assist him an 'assistant' or 'stipendiary' curate, often called 'curate' simply. A curate in this sense is an officiating temporary minister, regularly employed by the spiritual rector or vicar either to serve in his absence or as his assistant. All curates serve under a licence from the bishop of the diocese, revocable at his discretion, with an appeal against the revocation of the licence to the archbishop only (Pluralities Act, 1838 (1 & 2 Vict. c. 106), s. 98; *Poole* v. *Bishop of London,* (1861) 7 Jur. N. S. 347); and the law, on the other hand, has made several provisions for their proper maintenance.—Pluralities Act, 1838, ss. 75-103; Pluralities Act, 1884 (48 & 49 Vict. c. 54), ss. 8, 10. See PERPETUAL CURATE.

Curator, a protector of property. His duty was to see that the person under his care did not waste his goods—*Civil Law, Sand. Just.* As to an interim curator for a convict's property, see Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 21, and see ADMINISTRATOR. This Act is not affected by the Law of Property Act, 1925, see s. 7 (3), *ibid.*

Curator bonis, a person appointed by the Court of Session to manage and preserve

property until the owner, e.g., an infant, is in a position to act for himself.—*Bell's Dict.*

Curatores viarum, surveyors of the highways.

Curfeu, Curfew [fr. *couvrir*, to cover, and *feu*, Fr., fire], a bell which rang at eight o'clock in the evening, in the time of William the Conqueror, whereupon everyone was obliged by law to cover over his fire and put out his light. The law was abolished by Henry I. in 1100. It was called, in the Law Latin in the Middle Ages, *ignitegium* or *pyritegium*.

Curia, a court of justice. Also the class from which, in the Roman provincial towns, the magistrates were eligible.

Curia advisari vult (the court desires to consider), a deliberation which a court of judicature sometimes takes, where there is any point of difficulty, before they give judgment in a cause. Abbreviated in our reports thus : *cur. adv. vult*, or *C. A. V.*

Curia claudenda, an obsolete writ to compel another to make a fence or wall, which he was bound to make between his land and the plaintiff's.—*Reg. Brev.* 155.

Curia cursus aquæ, a court held by the lord of the manor of Gravesend for the better management of barges and boats plying on the River Thames between Gravesend and Windsor, and also at Gravesend Bridge, etc.—2 Geo. 2, c. 26.

Curia domini, the lord's house, hall, or court, where all the tenants meet at the time of keeping courts.—*Cowel.*

Curia palatii, the Palace Court. It was abolished by 12 & 13 Vict. c. 101.

Curia penticiarum, a court held by the sheriff of Chester in a place there called the *Pendice* or *Pentice* ; probably it was so called from being originally held under a penthouse or open shed covered with boards.—*Blount.*

Curia Regis. See AULA REGIS.

Curiality, matters pertainining to a court. —*Advice to Buckingham ;* see *Bacon's Life and Letters*, by *Spedding*, vol. vi. p. 52.

Curiæ Christianitatis, courts of Christianity ; ecclesiastical courts.

Curnock, a measure containing four bushels, or half a quarter.

Currency, coin ; bank notes, or other paper money issued by authority, and which are continually passing as and for coin. See the Coinage Act, 1870 (33 & 34 Vict. c. 18), repealing 56 Geo. 3, c. 68, and other enactments ; and COIN and TENDER.

Currency and Bank Notes Acts, 1914 and 1928. The 1914 Act and the Amendment Act, 1914 (4 & 5 Geo. 5, cc. 14, 72), were passed on the outbreak of the war with Germany, to authorize the issue of currency notes, and to make provision with respect to the note issue of banks. Under these Acts the Treasury issued currency notes for 1*l.*, and 10*s.* respectively, the notes being legal tender for a payment of any amount. The 1928 Act (18 & 19 Geo. 5, c. 13), repealed the 1914 Acts (except sub.-s. (5) of s. 1 and s. 5 of c. 14, enacting that currency notes are to be deemed banknotes, valuable securities and current coin for certain special purposes such as the Forgery Act, 1913, the Larceny Act, 1861, and other offences, and the Truck Acts. The 1928 Act transferred the currency note issue to the Bank of England and enacted that currency notes should be deemed to be banknotes in all enactments relating to banknotes. The Gold Standard Act, 1925 (15 & 16 Geo. 5, c. 29), s. 1 (2), declared that the Bank of England was not bound to pay in gold or other coin for banknotes, and by the Gold Standard Amendment Act, 1931 (21 & 22 Geo. 5, c. 46), the gold standard or statutory rate of exchange for gold was abandoned.

Curriculum, (1) the course of a year ; (2) the set of studies for a particular period appointed by a college or university.

Cursing. Profane swearing or cursing is punishable by fine. See SWEARING.

Cursitor Baron of the Exchequer, an officer whose business it was to pass the accounts of the sheriffs, etc. See *Manning's Exchequer Practice*, p. 322 and note. The office was abolished by 19 & 20 Vict. c. 86.

Cursitors [fr. *clerici de cursu*, Lat.], clerks of the Court of Chancery, who made out original writs, and were called clerks of course.—18 Edw. 3, st. 5. Their office was abolished by 5 & 6 Wm. 4, c. 82, ss. 10, 11, and 12, and their duties were transferred to the Petty Bag Office. See PETTY BAG OFFICE.

Cursones terræ, ridges of land.

Cursor, an inferior officer of the papal court.

Cursus curiæ est lex curiæ. 3 *Buls.* 53.—(The practice of the court is the law of the court.) See *Broom's Leg. Max.*

Curtain. See LAW OF PROPERTY ACT, 1925.

Curtesy of England [*jus curialitatis Angliæ*, Lat.], an estate which by favour of the law of England arises by act of law, and is that interest which a husband has for his life in his wife's fee-simple or fee-tail estates, general or special, after her death.

Tenancy by the curtesy has been abolished by the A. E. Act, 1925, s. 45, with regard to the inheritance of every person dying after 1925, but under s. 130, L. P. Act, 1925, curtesy will arise as an equitable interest in any property real or personal as an incident to an equitable interest in-tail and in default of a disentailing assurance or the exercise of the testamentary power conferred by that Act, see sub.-s. 4 *ibid.*, and see the 12th Schedule to the L. P. Act, 1922, in regard to enfranchised copyholds.

There are six circumstances necessary to the existence of this estate (which appears to be unaffected by the Married Women's Property Act, 1882) :—

(1) A canonical or legal marriage.

(2) Seisin of the wife; as to corporeal hereditaments, it must be a seisin in deed, either actual or virtual (*Co. Litt.* 29 *a*, n. 3; 8 *Rep.* 96 *a*), but as to incorporeal hereditaments, a seisin in law is sufficient, where a seisin in deed is impossible. See the judgment of Sir George Jessel in *Eager* v. *Furnivall*, (1881) 17 Ch. D. 115.

(3) The wife's estate must have been in possession and not in reversion expectant on a life estate or other freehold estate. 2 *Black. Comm.* 127.

(4) Birth of issue, alive and during the mother's existence (*Paine's case*, 8 *Rep.* 34). It is immaterial whether the issue live or die, or whether it be born before or after the wife's seisin. If a woman inheritable marries, has issue, her husband dies, and she takes another husband and has issue, which dies, and then the wife dies, the second husband shall be tenant by the curtesy, though the issue by the first husband be living.

(5) The issue must have been capable of inheriting as heir to the wife.

(6) Death of the wife. The husband's title to the curtesy is initiated at the birth of issue, and consummated at the death of his wife.

It is to be observed that by the custom of gavelkind, a husband may be tenant by the curtesy, without having had any issue by his wife. This curtesy is only of a moiety of the wife's lands, and ceases if the husband marry again.

By s. 20 (viii) S. L. Act, 1925, a tenant by the curtesy of full age and in possession has the powers of a tenant for life.

All persons capable of taking freehold estates may be tenants by the curtesy; but aliens cannot, except under the British Nationality and Status of Aliens Act, 1914, nor felons (*Co. Litt.* 30 *b*, n. 7), except under the Forfeiture Act, 1870 (33 & 34 Vict. c. 23). A condition to restrain the husband of a feme-donee in tail from curtesy is repugnant and void.—*Co. Litt.* 224 *a*.

An estate by the curtesy, in respect of the estate tail, or of any prior estate created by the settlement as well as a resulting use or trust to or for the settlor, is to be deemed a prior estate under the settlement within the contemplation of the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), s. 22, appointing a protector; the husband would therefore be the protector of the settlement. See *Bisset on Life Estates*, c. iii.

Some English writers (*Mirror*, c. i. s. 3) ascribe the law of curtesy to Henry I., but Nathaniel Bacon (*Government*, 4to, 1647, p. 105) calls it a law of counter-tenure to that of dower, and yet supposes it as ancient as the time of the Saxons, and that it was therefore rather restored by Henry I., than introduced by him. But there is no trace of this curtesy among the laws of the Saxons, nor among those we have of Henry I.—1 *Reeve*, 298; *Cham. on Est.*, c. iii., p. 92.

In Scotland, the liferent of a wife's heritable estate accorded *ex lege* to her surviving husband. There must have been a child of the marriage who would be (if he survived) the mother's heir.

Curteyn, the name of King Edward the Confessor's sword; it is said that the point of it was broken as an emblem of mercy.—*Mat. Par. in Hen.* 3.

Curtilage [fr. *cour*, Fr., court; and *leagh*, Sax., place], a courtyard, backside, or piece of ground lying near and belonging to a dwelling-house (see *Pilbrow* v. *Vestry of St. Leonard, Shoreditch*, 1895, 1 Q. B. 433); the limit of the premises in which housebreaking can be committed. See Larceny Act, 1916, s. 46 (2), by which no building, though within the curtilage, is to be deemed part of a dwelling-house to constitute burglary, unless there be a communication between such building and the dwelling-house.

Curtiles terræ, court lands.—*Spel. on Feuds*, c. 5.

Cussore, a term used in Hindustan for the discount or allowance made in the exchange of rupees, in contradistinction to *batta*, which is the sum deducted.

Custalorum, a ridiculous confusion of *custos rotulorum.—Shakespeare.*

Custantia, costs.

Custode admittendo, Custode amovendo, writs for the admitting and removing of guardians.

Custodia Legis. Custody of the law. See IN CUSTODIA LEGIS.

Custodiam Lease, a grant from the Crown under the Exchequer seal, by which the custody of lands, etc., seised in the king's hands, is demised or committed to some person as custodee or lessee thereof.

Custodian Trustee, a trustee appointed under the Public Trustee Act, 1906, s. 4, to have the custody as distinct from the management of the trust estate. The appointment may be made by the Court or the settlor or the donee of the power of appointing new trustees, but the only persons eligible are the Public Trustee, or some banking or insurance company or other body corporate entitled by the rules made under the Act to act as custodian trustee, e.g., Public Trustee (Custodian Trustee Rules, 1926 (S. R. & O. 1926, No. 1423/L. 37). See *Re Cherry's Trusts*, 1914, 1 Ch. 83, and TRUST CORPORATION.

Custodes libertatis Angliæ auctoritate Parliamenti, the style in which writs and all judicial processes were made out during the great rebellion from the execution of King Charles I. till Oliver Cromwell was declared Protector.—12 Car. 2, c. 3.

Custom [fr. *costume*, It.; *coustume, coutume*, Fr.; *costumbre*, Sp.; *consuetudo*, Lat.], 'Custom may be defined to be a law or right not written which being established by long use and consent of our ancestors has been and daily is put in practice' (*Les Termes de la Ley*). In *Lockwood* v. *Wood*, 6 Q. B. 50, Tindal C.J., at p. 64 says that it is 'in effect, the Common Law within that place to which it extends although contrary to the General Law of the realm.' If it be universal, it is Common Law; if particular, it is then properly custom. The requisites to make a particular custom good are these: (1) It must have been used so long that the memory of man runs not to the contrary; (2) it must have been continued and (3) peaceable; also (4) reasonable and (5) certain; (6) compulsory, and not left to the option of every person, whether he will use it or not; and (7) consistent with other customs, for one custom cannot be set up in opposition to another; see 1 *Bl. Com.* 76. Customs are of different kinds, as customs of merchants, customs of a particular parish (as to which see NETS) or manor, etc. If there be an invariable certain and general usage or custom of any particular trade or place, the law will imply that a party contracting upon a matter to which the same has reference intended to import such usage or custom into his contract. Consult *Aske's Custom and the Usages of Trade*. See CUSTOM OF THE COUNTRY; USAGE.

Custom-house, the house or office where commodities are entered for importation or exportation; where the duties, bounties, or drawbacks payable or receivable upon such importation or exportation are paid or received; and where ships are cleared out, etc. The principal British custom-house is in London, but there are custom-houses subordinate to it in all the considerable seaports.

Custom-house Agents were persons authorized by the Commissioners of Customs to act for parties at their option in the entry or clearance of ships, and the transaction of general business. They have been abolished for very many years.

Custom of the Country, in agriculture, that usage governing the relations of agricultural landlords and tenants which is considered to be incorporated in every farming lease or agreement unless it be expressly excluded therefrom. The most important kinds of custom are those by which the tenant on quitting his holding has a right to be compensated for his expenditure on those acts of husbandry of which he cannot obtain the benefit during the tenancy itself, as where the tenant goes out at Lady-Day, and is either paid in money for the seed and labour which he has expended upon the crop to be reaped in the autumn, or has a right to re-enter to till and gather his 'away-going crop.' See AWAY-GOING CROP.

In many parts of England, the custom of the country entitles the tenant to be paid for artificial manures, and in some few, pre-eminently in Lincolnshire, for drainage and buildings; but customs are most variable and difficult to ascertain, and from a comparison of returns procured in 1848 by a Select Committee of the House of Commons with those procured in 1875 by the Central Chamber of Agriculture, it appears that they are continually changing. As a matter of convenience, the compensation money is generally, almost universally, paid by the incoming to the outgoing tenant, but it is clear law (1) that the landlord himself is liable to the outgoing tenant (*Faviell* v. *Gaskoin*, (1852) 21 L. J. Ex. 85), and (2) that a custom for the outgoing tenant to look to the incoming tenant, to the exclusion of the landlord's liability, is bad.

The Agricultural Holdings Acts (see that

title) make provision for compensation to tenants for certain improvements, etc., and provide for arbitration as to claims. See *Woodf. L. & T.; Aggs on Agricultural Holdings; Willis Bund on Compensation.*

Custom of Merchants [*lex mercatoria*, Lat.]. See COMMERCE, and also CUSTOM.

Customary Court-baron, a court which should be kept within the manor for which it is held. It may be held anywhere within the manor, at the pleasure of the person holding it, unless some ancient custom require it to be held in a certain place.

The Court-baron was to be held from three weeks to three weeks, or, as some think, as often as the lord chose. And it should seem clear, that the lord may hold a customary court as frequently as he pleases, and compel the attendance of his tenants who hold by villein or base services. —2 *Wat. Cop.*, c. i. p. 9; and see *Elton* or *Scriven on Copyholds.*

It is to be observed that although there should be no freeholders of the manor, by which the Court-baron or freeholders' court is lost, yet still there may be a customary court; for as these two courts are distinct (though frequently held at the same time, the same roll serving to record the proceedings of both), the want of freeholders does not preclude the lord from holding a customary court for his copyholders.—1 *Cruise's Dig.*, tit. x., c. i. s. 19. See COURT-BARON.

Customary Freeholds have been converted into 'socage tenure' by the Law of Property Act, 1922, s. 189, see COPYHOLD. Owing to its historical interest the following note has been preserved unaltered from the previous edition of the Lexicon. "Also denominated, privileged copyholds, or copyholds of frank tenure; they were known in ancient times as estates in privileged villenage or villein socage, and are estates held by custom, but not at the lord's will, in which they differ from copyholds; yet the will of the lord in copyhold is reduced to a mere fiction. These lands are of such singular nature that, when they are compared with mere copyholds, they may be called freeholds, and when compared with absolute freeholds, they may be denominated copyholds. While the *freehold interest* or *estate* rests with the tenant, the *freehold tenure* is in the lord. (Mr. Serjeant Scriven dissents from this proposition in his work on *Copyholds*, vol. ii. pp. 572 *et seq.*) They are usually transferred by surrender into the hands of the lord and admittance of the new tenant. Their customs, incidents, and services are similar to those already noticed as relating to copyholds properly so called. See *Duke of Portland* v. *Hill*, (1866) L. R. 2 Eq. 765; *Eardley* v. *Granville*, (1876) 3 Ch. D. 826.

Mr. Cruise divides customary freeholds into two kinds: (1) those of which the freehold is in the lord, more properly called free copyholds; and (2) those of which the freehold is in the tenant, strictly called customary freeholds. The former pass by surrender and admittance; the latter require a conveyance from the grantor to the grantee, besides the admittance, or as the custom is in some manors, surrender and admittance, the latter ceremony being necessary only to mark the change of tenancy.—*Cruise's Dig.*, tit. x., c. i. s. 9."

Customs, duties charged upon commodities on their importation into, or exportation out of, a country. They seem to have existed in England before the Conquest, but the king's claim to them was first established by grant of Parliament in the reign of Edward I. These duties were at first, principally laid on wool, woolfels (sheepskins) and leather when exported. There were also extraordinary duties paid by aliens both on export and import, which were denominated *parva custuma*, to distinguish them from the former, or *magna custuma*. The duties of tonnage and poundage, of which mention is so frequently made in English history, were customs duties; the first being made on wine by the tun, and the latter being *ad valorem* duty of so much a pound on other merchandise. When these duties were granted to the Crown they were denominated *subsidies*, and as the duty of poundage had continued for a lengthened period at the rate of 1*s.* a pound, or five per cent., a subsidy came, in the language of the customs, to denote an *ad valorem* duty of five per cent. The *new subsidy* granted in the reign of William III. was an addition of five per cent. to the duties on most imported commodities. The various customs duties were collected for the first time in a book of rates published in the reign of Charles II., a new book of rates being again published in the reign of George I. But exclusive of the duties entered in these two books, many more had been imposed at different times; so that the accumulation of the duties, and the complicated regulations to which they gave rise, were productive of the greatest embarrassment. The Customs Consolidation Act (27 Geo. 3, c. 13), introduced by Mr. Pitt in 1787, did much to remedy these among

other inconveniences. The method adopted was to abolish the existing duties on all articles, and to substitute in their stead one single duty on each article, equivalent to the aggregate of the various duties by which it had previously been loaded. The resolutions on which the Act was founded amounted to about 3000. A more simple and uniform system was at the same time introduced into the business of the custom-house. These alterations were productive of the very best effects, and several similar consolidations have since been effected, particularly in 1853, by 16 & 17 Vict. c. 107 ; and lastly, in 1876, by the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), the Customs Tariff Act, 1876 (39 & 40 Vict. c. 35), consolidating the duties in the same year. The ' Customs and Inland Revenue Acts ' and ' Finance Acts ' of subsequent years will be found to contain divers small amendments. The Import Duties Act, 1932 (22 & 23 Geo. 5, c. 8), gives effect to the changed fiscal policy ; it imposed a 10 per cent. *ad valorem* duty on imports ; constituted an Advisory Committee to make recommendations as to additional duties ; and the Treasury may, under Finance Act, 1932 (22 & 23 Geo. 5, c. 25), s. 7, give effect to such recommendations. See as to imports from the Dominions, the Ottawa Agreements Act, 1932 (22 & 23 Geo. 5, c. 537), and the Irish Free State (Special Duties) Act, 1932 (22 & 23 Geo. 5, c. 30). See *Chitty's Statutes*, tit. ' *Customs*.'

Custos brevium (the keeper of the writs), a principal clerk belonging to the Courts of King's Bench and Common Pleas, whose office it was to keep the writs returnable into those courts. Abolished by 1 Wm. 4, c. 5.

Custos placitorum coronæ (the keeper of the pleas of the Crown). The *custos rotulorum*.—*Bract.* lib. 2, c. 5.

Custos rotulorum (the keeper of the rolls or records of the county). A principal justice of the peace within the county, by whom the clerk of the peace is appointed.—*Harding* v. *Pollock*, (1829) 6 Bing. 25 ; 37 Hen. 8, c. 1. By s. 5 of the Local Government (Clerks) Act, 1931 (21 & 22 Geo. 5, c. 45), the clerk of the peace, subject to the powers of the *custos rotulorum*, or the county council, as the case may require, shall have charge of and be responsible for the records and documents of a county in England.

Custos spiritualium, he that exercises the spiritual jurisdiction of a diocese, during the vacancy of any see, which, by the canon law, belongs to the dean and chapter, but at present, in England, to the archbishop of the province by prescription.—*Encyc. Londin.*

Custos temporalium, the person to whom a vacant see or abbey was given by the king, as supreme lord. His office was, as steward of the goods and profits, to give an account to the escheator, who did the like to the Exchequer.—*Encyc. Londin.*

Custuma antiqua sive magna, the old export duties on wool, sheepskins or woolfels, and leather ; see CUSTOMS.

Custuma parva et nova, the alien's duty on imported and exported commodities ; see CUSTOMS.

Cutcherry, corrupted from *Kachari*, a court, a hall, an office, the place where any public business is transacted.—*Indian.*

Cuthred, a knowing or skilful counsellor.

Cutpurse, one who steals by the method of cutting purses ; a common practice when men wore their purses at their girdles, as was once the custom.—See 8 Eliz. c. 4.

Cutter of the Tallies, an officer in the Exchequer to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, etc. See TALLY.

Cutwal, Katwal, the chief officer of police or superintendent of markers in a large town or city in India.

Cycle [fr. κύκγος, Gk.], a measure of time, a space in which the same revolutions begin again ; a periodical space of time. See BICYCLE.

Cygnets belong equally to the owners of the cock and hen.—7 *Rep.* 17.

Cyne-bot, or **Cyne-gild,** the portion belonging to the nation of the mulct for slaying the king, the other portion of ' wer ' being due to his family.—*Blount.*

Cyning [fr. *cyn*, Celtic], a king ; a son or child of the people. It is manifestly a patronymic, like *Æscing*, son of Æsc ; *Uffing*, son of Uffa ; *Ælling*, son of Ælle ; *Cerdicing*, son of Cerdic ; *Iding*, son of Ida ; *Cryding*, son of Cryda ; *Ætheling*, son of the Æthel, or noble. See *Anc. Inst. Eng.*

Cy-près (near to it). The principle of this doctrine of construction is, that where a testator has two objects, one primary or general and the other secondary or particular, which are incompatible, the particular must be sacrificed in order that effect may be given to the general object, *as near as may be* to the testator's intention, according to law. Thus, where a testator has devised lands in a manner transgressing the rules of perpetuity and the Court can by giving the estates tail to the devisees, or any of them carry the property in the precise course marked out by

the testator, supposing the estates left to themselves, it will do so, see *Monypenny* v. *Dering*, 16 M. & W. 418. The doctrine did not apply to personalty nor to a mixed fund. See *Re Harwood, Coleman* v. *Innes*, 1936, Ch. 285.

It is also applied to charitable bequests, and was formerly pushed to a most extravagant length. But this sensible distinction now prevails, that the court will not decree the execution of a charitable trust in a manner different from that intended, except so far as it is seen that the intention cannot be literally executed. In that case another mode will be adopted consistent with the general intention, so as to execute it, though not in mode, yet in substance. If the mode should become by subsequent circumstances impossible, the general rule is not to be defeated, if it can in any other way be obtained. Where there are no objects remaining to take the benefit of a charitable corporation, the court will dispose of its revenues by a new scheme upon the principles of the original charities.

There is also a modification of the strictness of the Common Law as to conditions precedent in regard to personal legacies, which is at once rational and convenient, and tends to carry into effect the intention of the testator. It is, that where a literal compliance with the condition becomes impossible from unavoidable circumstances, and without any fault of the party, it is sufficient that it is complied with as nearly as it practically can be, i.e., *cy-près*. This modification is derived from the Civil Law, and stands upon the presumption that the donor could not have intended to require impossibilities, but only a substantial compliance with his directions, as far as they should admit of being fairly carried into execution. It is upon this ground that Courts of Equity constantly hold, in cases of personal legacies, that a substantial compliance with the condition satisfies it, although not literally fulfilled. Thus, if a legacy upon a condition precedent require the consent of three persons to a marriage, and one or more of them die, the consent of the survivor or survivors would be deemed a sufficient compliance with the condition. And *a fortiori*, this doctrine would be applied to conditions subsequent.—*Sugd. Powers*, 549; 1 *Story's Eq. Jur.* 235, and vol. ii. 386, 390.

Funds cannot be applied *cy-près* unless it is shown to be impossible to carry out the testator's intention (*Re Weir Hospital*, 1910, 2 Ch. 124). See generally, *Theobald on Wills*.

Cyrce, a church.

Cyrichryce, a breaking into a church.

Cyrographum, an Anglo-Saxon charter, this word being written in capital letters at the top or bottom of the charter and cut through by a knife.—*Co. Litt.* 229.

D.

Dagus, or **Dais** [fr. *dais* or *daiz*, Fr., a canopy or cloth of state], the raised floor at the upper end of a hall.

Dairy.—By the Public Health Acts Amendment Act, 1907, s. 13—

> The expression 'dairy' includes any farm, farmhouse, cowshed, milk store, milk shop, or other place from which milk is supplied or in which milk is kept for the purposes of sale within (unless otherwise expressed) the district of the local authority:
>
> The expression 'dairyman' includes any cowkeeper, purveyor of milk, or occupier of a dairy within (unless otherwise expressed) the district of the local authority:

By the same Act dairymen must furnish (s. 53) a list of their sources of supply, and notify (s. 54) when any infectious disease exists among their servants.

As to the power of the Ministers of Health and Agriculture and Fisheries to make orders for the registration of dairymen and regulations for carrying on their trade, see the Milk and Dairies (Consolidation) Act, 1915, and the Milk and Dairies (Amendment) Act, 1922, as amended by the Milk Act, 1934, amending and consolidating the general law on the subject of dairies and the milk trade. See also Sale of Food (Weights and Measures) Act, 1926 (16 & 17 Geo. 5, c. 63) and the Milk Act, 1934 (24 & 25 Geo. 5, c. 51), as extended by 26 Geo. 5 & 1 Edw. 8, c. 9, providing for exchequer payments in aid of a minimum price to producers, and Milk Marketing Boards under the Agricultural Marketing Act, 1931, for improvements in the quality and advertisement of Milk; and see CREAM.

Daker, or **Diker,** ten hides.—*Blount.*

Dalus, Dallus, Dalla, a certain measure of land; such narrow slips of pasture as are left between the ploughed furrows in arable land. See *Jac. Law Dict.*

Dam [fr. *dam*, Dan.; *dammer*, Icel.], a boundary or confinement; a mole.

Damage. Any loss, whether actionable as an injury or not. See DAMNUM ABSQUE INJURIA.

Damage, Malicious. Punishable by the Malicious Damage Act, 1861 (*Chitty's Statutes*, tit. '*Criminal Law*'), arson, and

injuries to mines, cattle, works of art, ponds, railway carriages, and bridges being punishable specially. As to injuries to real or personal property not specially provided for, see s. 51 of the Act and the Criminal Justice Administration Act, 1914, s. 14, and the Fourth Schedule thereto.

Damage-Cleer [fr. *damna clericorum*, Lat.], a fee assessed of the tenth part in the Common Pleas, and the twentieth part in the King's Bench and Exchequer, out of all damages exceeding five marks recovered in those courts, in actions upon the case, covenant, trespass, etc., wherein the damages were uncertain; which the plaintiff was obliged to pay to the prothonotary or the officer of the court wherein he recovered, before he could have execution for the damages. This was originally a gratuity, given to the prothonotaries and their clerks, for drawing special writs and pleadings; but it was taken away by 17 Car. 2, c. 6.

Damage feasant or **falsant** (doing damage). If a stranger's beasts (including domestic fowls) are found on another person's land without his leave or license, and without the fault of the possessor of the close (which may happen from his not repairing his fences), and there doing damage by feeding, or otherwise, to the grass, corn, wood, etc., the person damaged may distrain and impound them, as well by night as in the day, lest the beasts escape before taken; but they cannot be sold for the damage done; nor is there any privilege from the distress. The distress may be made of things inanimate: see *Ambergate, etc., Ry. Co.* v. *Midland Ry. Co.*, (1853) 23 L. J. Q. B. 17, where a locomotive engine was distrained damage feasant. By the Pound-Breach Act, 1843 (6 & 7 Vict. c. 30), any person releasing, or attempting to release, cattle lawfully seized by way of such distress from the pound is, on conviction before two justices of the peace, liable to a penalty not exceeding 5*l.*; and by the Protection of Animals Act, 1911 (1 & 2 Geo. 5, c. 27), s. 7, persons impounding cattle are bound, under a penalty of 5*l.*, to supply them with food and water. See *Bullen on Distress*; *Addison*, or *Clerk and Lindsell on Torts*; and *Woodfall, L. & T.*

Damages. The compensation as fixed by the jury, or judge if the case be tried without a jury, payable to a successful plaintiff.

Courts of Equity long laboured under the infirmity of not being able to award damages by way of compensation for a fraud, or for the non-performance of a contract relating to the sale and purchase of realty. This was amended by the Chancery Amendment Act, 1858 (21 & 22 Vict. c. 27), 'Cairns's Act,' which provided that in all cases in which the Court of Chancery had jurisdiction to entertain an application for an injunction against a breach of agreement, or against the commission of a wrongful act, or for the specific performance of any agreement, the same court might award damages to the party injured, either in addition to or in substitution for such injunction or specific performance.

This Act, in substance re-enacted by s. 24 of the Judicature Act, 1873, is expressly revealed by the Statute Law Revision and Civil Procedure Act, 1883. See now Judicature Act, 1925, s. 36.

The Judicature Acts allow matters to be set up by a defendant by way of counterclaim, which must formerly have been the subject of a separate action; and, therefore, a defendant may in effect recover damages. See R. S. C., Ord. XXI., r. 17, and COUNTER-CLAIM.

Damages fall under two heads: (1) *General damage*, i.e., such damage as the law will presume to flow from that which forms the subject-matter of the action; and (2) *Special damage*, i.e., such other damage as can be recovered only if it is specially alleged and specifically proved. When an action cannot be sustained unless there is special damage, the subject-matter is described as not being actionable *per se*.

Damages are either liquidated or unliquidated. Whenever the amount to which the plaintiff is entitled can be ascertained by calculation or fixed by any scale or other positive data, it is said to be 'liquidated' or made clear. But when the amount to be recovered depends on all the circumstances of the case and on the conduct of the parties, and is fixed by opinion or by an estimate, the damages are said to be 'unliquidated'; see *Odgers on the Common Law*.

Damages, too, may be further classified as—

(1) Contemptuous Damages, e.g., a farthing verdict in an action for libel, usually indicating that in the opinion of the jury the action ought never to have been brought.

(2) Nominal Damages, e.g., 40*s.* where no actual damage has been proved, and usually indicating that though the action was a proper one to bring, its object was not so much the recovering of damages as the establishing a right; see *Nicholls* v. *Ely Beet Sugar Factory*, 1936, 1 Ch. 343.

(3) Substantial Damages, i.e., the fair and

adequate compensation which reasonable men would award in respect of the matters which formed the basis of the action.

(4) Vindictive, Retributory, or Exemplary Damages, i.e., damages in excess of what would have been adequate compensation, and usually awarded by a jury to mark their sense of a defendant's conduct; e.g., the character of a libel, or the mode in which the subject-matter of the action arose, e.g., time and place of an assault or trespass, or the peculiar nature of the wrong or the distress of mind produced in the plaintiff, e.g., actions of seduction, false imprisonment, breach of promise of marriage.

See *Hadley* v. *Baxendale*, (1854) 32 L. J. Ex. 179; *Smith's Leading Cases*, vol. ii and the notes thereto; and *The Argentino*, 14 App. Cas. 519; 13 P. D. 191; and s. 51, Sale of Goods Act, 1893.

Damages that are remote and contingent cannot be recovered, see *Sapwell* v. *Bass*, 1910, 2 K. B. 486; and as to the measure of damages for prospective loss in the case of personal injury, see *Johnston* v. *G. W. Ry.*, 1904, 2 K. B. 250, and Law Reform (etc.) Act, 1934, s. 1 (c).

Damages for the vendor's breach of contract for sale of land are subject to the rule that if the breach consists only of a defect in title and provided that the vendor acted *bonâ fide* and with reasonable grounds of belief in his title, the damages will not include loss of profit or of the benefit of the contract; see *Bain* v. *Fothergill*, L. R. 7 H. L. 158.

See also DOUBLE DAMAGES; INTEREST; MEASURE OF DAMAGES; and ACTIO PERSONALIS; and consult *Mayne on Damages*.

Damages ultra, additional damages claimed by a plaintiff not satisfied with those paid into court by the defendant.

Dame [fr. *dame*, Fr.; *dama*, Sp.], the legal designation of the wife of a knight or baronet.

Damnification, that which causes damage or loss.

Damnify, to endamage, to injure, to cause loss to any person.

Damnosa hæreditas, a disadvantageous or unprofitable inheritance.

Damnum absque injuriâ (a loss without a wrongful act). This is not actionable. *Damnum sine injuriâ esse potest.*—Lofft, 112. Thus, if I have a mill, and a neighbour builds another mill upon his own land, *per quod* the profit of my mill is diminished, yet no action lies against him, for every one may lawfully erect a mill upon his own ground; though if I have a mill by prescription on my own land, and another erects a new mill, which draws away some portion of the stream from mine, so as to diminish its former power, an action of trespass on the case will lie against him; and if I build a house on the edge of my lands, my neighbour may at any time within twenty years block out my light by any erection he pleases, so long as he does not trespass, though his doing so after the twenty years would be actionable by virtue of the Prescription Act. See PRESCRIPTION and UBI JUS, IBI REMEDIUM.

Damnum fatale, fatal damage, for which bailees are not liable. Among fatal damages were included by the civilians losses by shipwreck, by lightning or other casualty, by superior force, and by robbery, but not by theft.—*Story on Bailments*, 471.

Damsel [fr. *demoiselle*, Fr.], a young single gentlewoman.

Dan, anciently the better sort of men in this kingdom had the title of *Dan;* as the Spaniards *Don*, from the Latin *Dominus.*—*Jac. Law Dict.*

Dancing. See MUSIC AND DANCING LICENSES.

Danegelt, Danegeld, or **Danegold** [fr. *danegeldum, dane* and *gelt*, tribute], a tribute of 1*s.*, and afterwards of 2*s.*, upon every hide of land through the realm, levied by the Anglo-Saxons for maintaining forces sufficient to clear the British seas of Danish pirates, who greatly annoyed our coasts. It continued a tax until the time of Stephen, and was one of the rights of the Crown.—*Anc. Ints. Eng.*

Dane-lage, the Danish Law, which was principally maintained in the Midland counties and the eastern coast (the parts most exposed to the visits of that piratical people) while the Danes had sway in this country.—1 *Bl. Com.* 65.

Dangeria, a money payment made by forest-tenants, that they might have liberty to plough and sow in time of pannage or mast feeding.—*Manw. For. Laws.*

Dangerous Drugs. See DRUGS, DANGEROUS; POISON.

Dangerous Goods, Act as to the carriage and deposit of, 29 & 30 Vict. c. 39, repealed by the Explosives Act, 1875. See EXPLOSIVE SUBSTANCES; *Bamfield* v. *Goole Transport Co.*, 1910, 2 K. B. 94; and *Dominion Natural Gas Co.* v. *Collins*, 1909, A. C. 640. As to the sale of dangerous goods, see *Clarke* v. *Army & Navy Co-operative Soc.*, 1903, 1 K. B. 155.

Dangerous Machinery.—By s. 1 (d) of the Factory and Workshop Act, 1901, 1 Edw. 7, c. 22, *Chitty's Statutes*, tit. '*Factories*' :—

All dangerous parts of the machinery and every part of the mill gearing must either be securely fenced, or be in such position, or of such construction as to be equally safe to every person employed or working in the factory as it would be if it were securely fenced.

Non-compliance with this statutory duty will be *primâ facie* evidence of negligence on the part of the employer (*Groves* v. *Lord Wimborne*, 1898, 2 Q. B. 402).

As to dangerous machinery in and about mines, see Coal Mines Act, 1911, ss. 55, 108. See *Todrick* v. *Halliday*, 1928, S. L. T. 539.

Dangerous Performance. See CHILDREN.

Dangerous Place. Section 30 of the Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), provides as follows :—

30. With respect to the repairing or enclosing of dangerous places the following provisions shall have effect (namely) :—

(1) If in any situation fronting, adjoining, or abutting on any street or public footpath, any building, wall, fence, steps, structure or other thing, or any well, excavation, reservoir, pond, stream, dam or bank is, for want of sufficient repair, protection, or enclosure, dangerous to the persons lawfully using the street or footpath, the local authority may, by notice in writing served upon the owner, require him, within the period specified in the notice and hereinafter in this section referred to as the 'prescribed period,' to repair, remove, protect, or enclose the same so as to prevent any danger therefrom :

(2) If, after service of the notice on the owner, he shall neglect to comply with the requirements thereof within the prescribed period, the local authority may cause such works as they think proper to be done for effecting such repair, removal, protection, or enclosure, and the expenses thereof shall be payable by the owner, and may be recovered summarily as a civil debt.

Dangerous Property is held at the owner's peril, see *Rylands* v. *Fletcher*, (1866) L. R. 1 Ex. 265, and (1868), L. R. 3 H. L. 330, even though the owner may not know that the nature of the property is dangerous, *Belvedere Fish, etc. Co.* v. *Rainham Chemical Works*, 1920, 2 K. B. 487 ; 1921, 2 A. C. 465.

Dangerous Structure. By s. 75 of the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), which is incorporated (see s. 160) in the Public Health Act, 1875 (38 & 39 Vict. c. 55), any building deemed by the surveyor to be in a ruinous or dangerous state must be pulled down, repaired, or otherwise made secure. This provision is not confined to buildings, etc., adjacent to a highway ; see *L.C.C.* v. *Herring*, 1894, 2 Q. B. 522, a case decided under the Metropolitan Building Act, 1855 (18 & 19 Vict. c. 122). See also the London Building Act, 1930 (c. clviii.), ss. 128 *et seq*, and Public Health Act, 1936, s. 58, enabling a local authority to apply to a Court of Summary Jurisdiction for an order to the owner to repair or demolish the structure, and upon failure by the owner the local authority may do the work and shore it up or fence it off ; see also Housing Act, 1936.

Dar, keeper, holder. This word is often joined with another to denote the holder of a particular employment or office, as *Chobdar*, staff-holder ; *Zemindar*, landholder. This compound word with *i*, *ee*, *y*, added to it, denotes the office, as Zemindar-*ee*.—*Indian.*

Dardus, a dart.

Dare, to transfer property. When this transfer is made in order to discharge a debt, it is *datio solvendi animo* ; when to receive an equivalent, to create an obligation, it is *datio contrahendi animo* ; lastly, when made *donandi animo*, from mere liberality, it is a gift, *dono datio*.—*Civil Law.*

Dare ad remanentiam, to give away in fee, or for ever.

Darogah, the chief native officer at a police, custom, or excise station.—*Indian.*

Darraign [fr. *derationo*, Med. Lat. ; *desrener*, Fr.], to clear a legal account, to answer an accusation, to settle a controversy.

Darrein, a corruption of the Fr. *dernier*, the last. See PUIS DARREIN CONTINUANCE.

Darrein presentment, assize of, lay only where a man had an advowson by descent from his ancestors ; it was abolished by the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27), s. 36.

Data, grounds whereon to proceed ; facts from which to draw a conclusion.

Date [fr. *datum*, Lat.], that part of a deed, writing, or letter which expresses the day of the month and year in which it was made. Dates began to be inserted in deeds in the reigns of Edward II. and Edward III. A deed, however, is good, although it mentions no date, or has a false or impossible date, provided the real date of its delivery can be proved.

By R. S. C., Order XIX., r. 4, dates in pleadings are to be expressed in figures, not words, and by Ord. II., r. 8, a writ bears date on the day of issue.

Dative or **Datif,** that which may be given or disposed of at will or pleasure.

Datum, a first principle, a thing given.

Daum, Dam, a copper coin, the 40th part of a rupee.—*Indian.*

Day [fr. *dies*, Lat. ; *tag*, Germ.], in its largest sense the time of a whole apparent

revolution of the sun round the earth, but, in its popular acceptation, that part of the twenty-four hours when it is light, or the space of time between the rising and the setting of the sun. By the Roman Calendar the day commenced at midnight; and most European nations reckon in the same manner.

In the space of a day all the twenty-four hours are usually reckoned. Therefore, in general, if I am bound to pay money on any certain day, I discharge the obligation if I pay it before twelve o'clock at night; after which the following day commences.

If anything is to be done within a certain time, *of*, *from*, or *after* the doing or occurrence of something else, the day on which the first act or occurrence takes place is to be excluded from the computation (*Williams* v. *Burgess*, (1840) 12 A. & E. 635). In certain legislative and justiciary acts, e.g., the proceedings of the House of Lords as recorded in the Journals of the House, Latin names of the days of the week are still used; they are as follows: *Dies Solis*, *D. Lunæ*, *D. Martis*, *D. Mercurii*, *D. Jovis*, *D. Veneris*, *D. Saturni*. See Interpretation Act, 1889, s. 36; and, further, HOLIDAY; FRACTION OF A DAY.

Day in banc, was the return day of writs.

Day-book, a tradesman's journal; a book in which all the transactions of the day are set down.

Dayeria, a diary.

Day-rule, or **Day-writ,** a permission to a prisoner to go out of prison, for the purpose of transacting his business, as to hear a case in which he is concerned at the assizes, etc. Abolished by 5 & 6 Vict. c. 22, s. 12.

Day-were of Land [fr. *diurnalis*, *diuturna*, Lat.], as much arable land as would be ploughed up in one day's work.

Daysman, an arbitrator, an elected judge.

Days of Grace. Time of indulgence granted to an acceptor for the payment of his bill of exchange. It was originally a gratuitous favour (hence the name), but custom has rendered it a legal right.

The number of these days varies according to the ancient custom or express law prevailing in each particular country. In the United Kingdom, by the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 14, 'where a bill' (i.e., a bill of exchange or promissory note) 'is not payable on demand, the day on which it falls due is determined as follows:—Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace,' with a proviso that where the last day of grace falls on Sunday, Christmas Day, or Good Friday, or a public fast or thanksgiving day, the bill is payable on the preceding business day, or on the succeeding business day if the last day of grace is a bank holiday (other than Christmas Day or Good Friday), or if the last day of grace is a Sunday and the second a bank holiday. For a table showing the number of days allowed in other countries, see *Byles on Bills*.

The law of the place where the bill is payable governs the allowance or non-allowance of the days of grace.

The fourteen to twenty-one days for which insurance companies usually extend a fire or life policy after its expiration, in the expectation that it will be renewed is frequently referred to as days of grace for payment of the premium.

Deacon [fr. *diacre*, Fr.; *diacono*, It., Span., and Port.; *diaconus*, Lat.; διακονος, Gk.] (1) A minister or servant of the church, whose office is to assist the priest in divine service, and the distribution of the sacrament, etc. He may now perform any of the divine offices which a priest may, except only pronouncing the absolution and consecrating the Sacrament of the Lord's Supper. By the Clergy Ordination Act, 1804 (44 Geo. 3, c. 43), it is provided (conformably to Canon 34 of the Canons of 1603) that none shall be ordained deacon under twenty-three years, nor priest under twenty-four years of age; though as to deacons the Archbishop of Canterbury has the privilege of admitting them (by faculty or dispensation) at an earlier age. See, further, under the title CLERGY; and see *Phill. Eccl. Law*.

(2) A lay office among dissenters.

Dead Bodies. See CORPSE.

Dead Freight, the unsupplied part of a cargo, or the freight payable by a merchant where he has not shipped a full cargo for the part not shipped.

Dead Man's Part, the remainder of an intestate's movables, besides that which of right belonged to his wife and children. This was formerly made use of in masses for the soul of the deceased; subsequently, the administrators applied it to their own use and benefit, until the 1 Jac. 2, c. 17, subjected it to distribution among the next of kin. In Scotland the 'dead's part' of a man's personalty is that part of which he is entitled to dispose by will. See REASONABLE PARTS.

Dead Pledge [*mortuum vadium*], a mortgage of lands or goods.

Dead Rent. A rent payable on a mining lease in addition to a royalty, so called because it is payable whether the mine is being worked or not.

Deaf and Dumb. A man that is born deaf, dumb, and blind is looked upon by the law as in the same state with an idiot, he being supposed incapable of any understanding. Nevertheless, a deaf and dumb person, i.e., a 'mute by the visitation of God,' may be tried for felony if the prisoner can read or write and be made to understand by means of signs or symbols (1 *Leach, C. L.* 102). As to when he is a competent witness, see *Tayl. on Evid.* s. 1248; *John Ruston's case* (1786), Leach, Cr. Ca. 408.

There is, in general, no separate affliction of dumbness, apart from deafness, of which dumbness is the necessary result.

Education.—As to the education of afflicted children, provision is made for instruction suitable to the condition of the child by the Education Act, 1921 (11 & 12 Geo. 5, c. 51), ss. 61–67.

Defforested, or **Disafforested,** discharged from being a forest, or freed and exempted from the forest-laws.—17 Car. 1, c. 16.

De ambitu, of obtaining a place by bribery.

Dean [fr. *decanus*, Lat.; δέκα, Gk., ten], an ecclesiastical governor or dignitary, so called as he is supposed to have originally presided over ten canons or prebendaries at the least. In cathedrals of the *old* foundation in England, the dean is the principal of the four chief dignitaries, exercising a general supervision over the other members of the capitular body, with special reference to the cure of souls. In cathedrals of the *new* foundation, the duties of the deans are defined by the statutes of each chapter.

Considered in respect of the differences of office, deans are of six kinds:—(1) *Deans of Chapters*, who are either of cathedral or collegiate churches. (2) *Deans of Peculiars*, who have sometimes both jurisdiction and cure of souls, and sometimes jurisdiction only. (3) *Rural Deans*, deputies of the bishop, planted all round his diocese, the better to inspect the conduct of the parochial clergy, to inquire into and report dilapidations, and to examine the candidates for confirmation; and armed, in minuter matters, with an inferior degree of judicial and coercive authority. (4) *Deans in the Colleges of our Universities*, who are officers appointed to superintend the behaviour of the members, and to enforce discipline. (5) *Honorary Deans*, as the Dean of the Chapel Royal, St. James's. (6) *Deans of Provinces* or *Deans of Bishops*. Thus the Bishop of London is Dean of the Province of Canterbury, and to him, as such, the archbishop sends his mandate for summoning the bishops of his province when a convocation is to be assembled.

Another division, arising from the nature of their office, is into deans of *spiritual* promotions and deans of *lay* promotions. Of the former kind are deans of peculiars, with cure of souls, deans of the royal chapels and of chapters, and rural deans; of the latter kind are deans of peculiars without cure of souls, who therefore may be, and frequently are, persons not in holy orders.

Their appointments are either *elective*, as deans of chapters of the old foundation, though the Crown has, in fact, the real patronage; or *donative*, as those deans of chapters of the new foundation, who are appointed by the royal letters-patent. The Ecclesiastical Commissioners Act, 1840 (3 & 4 Vict. c. 113), provides that the old deaneries (except in Wales) shall thenceforth be in the direct patronage of the Sovereign, who may, on the vacancy thereof, appoint by letters-patent a spiritual person to be dean; and that no person shall hereafter be capable of receiving the appointment of dean, archdeacon, or canon, until he shall have been six complete years in priest's orders, and that the dean shall reside for at least eight months in the year.

By the Archdeaconries and Rural Deaneries Act, 1874 (37 & 38 Vict. c. 63), provision is made for the re-arrangement of the boundaries of archdeaconries and rural deaneries, and by the Deans and Canons Resignation Act, 1872 (35 & 36 Vict. c. 8), for the resignation of Deans. See also Cathedrals (Houses of Residence) Measure, 1936 (No. 4).

Dean of the Arches, the lay judge of the Court of Arches. See ARCHES and PUBLIC WORSHIP REGULATION ACT.

Dean of Faculty. The head of the Faculty of Advocates (*q.v.*).

Dean, Forest of. An ancient royal forest in the county of Gloucester. As to the mines therein, see 1 & 2 Vict. c. 43, and 24 & 25 Vict. c. 40. See *Nicholls' Forest of Dean*.

De arbitratione facto, Writ of, issued when an action was brought for a cause already settled by arbitration.

Dearle *v.* Hall. The rule which takes its name from this case, reported 1823, 3 Russ. 1, originated with the bankruptcy rule

conferring the priority of assignments of choses in action according to the date of notice to the debtor by the assignment (*Ryall* v. *Rowles*, 1 Ves. Sess. 348). Before 1926 the rule was that the priority of equitable assignments of debts and other choses in action was determined by priority in date of notice to the trustees or other owners of the legal interest in the property assigned (see *Ward* v. *Duncombe*, 1893, A. C. 369). The rule did not extend to equitable interests in land except to proceeds of land held on trust for sale, see *Lloyd's Bank* v. *Pearson*, 1901, 1 Ch. 685, and QUI PRIOR EST TEMPORE POTIOR EST JURE. Section 137 of the Law of Property Act, 1925, has extended the rule to dealings with equitable interests in land, capital money (see s. 205 (1) (xxvi.) of the Act), and securities representing capital money effected after 1925. To effect priority among competing assignees the notice must be in writing and given to the trustees (if any) of the property, or failing any trustees, to the estate owner; failing all these the purchaser may require notice to be endorsed on the instrument, if any, creating the trust or under which the interest is acquired, e.g., probate or letters of administration. The trustees (if any) are obliged to give information to persons equitably interested in the property. This duty is not, apparently, absolute (see *Low* v. *Bouverie*, 1891, 3 Ch. 82). Under s. 137 the estate owner or fund holder becomes a trustee for the assignee after notice. Section 138, *ibid.*, provides for the appointment of an independent trust corporation who can act as registrar of notices. See NOTICE; and as to priority of some equitable interests in registered land, REGISTRATION OF TITLE (*Minor Interests Index*).

Death. As to the registration of a death, see Births and Deaths Registration Act, 1926 (16 & 17 Geo. 5, c. 48), 37 & 38 Vict. c. 88, 6 & 7 Wm. 4, c. 86, and 7 Wm. 4 & 1 Vict. c. 22. As to an action brought for damages arising from death by accident, neglect, etc., see the Fatal Accidents Acts, 1846 (9 & 10 Vict. c. 93) (Lord Campbell's Act) to 1908, as amended by Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), s. 2 (*q.v.*). As to the effect of death after the commencement of an action, see Law Reform (Miscellaneous Provisions) Act, 1934. Apart from these statutes, at Common Law no civil claim for damages can be brought for the death of a human being (*Baker* v. *Bolton*, (1808) 1 Camp. 493; *The Amerika*, 1914, P. 167). See BIRTHS, DEATHS AND MARRIAGES; ACTIO PERSONALIS; LAW REFORM; and Public Health Act, 1936 (*deaths from infectious diseases*). As to punishment of death, see CAPITAL PUNISHMENT.

Death Duties. These are (1) the *Estate* Duty, which, by the Finance Act, 1894 (57 & 58 Vict. c. 30), superseded the Probate or Administration Duty leviable under the Stamp Act, 1815, and the Account Duty leviable under the Customs and Inland Revenue Act, 1881; (2) the *Succession* Duty leviable under the Succession Duty Act, 1853; and (3) the *Legacy* Duty leviable under the Stamp Act, 1815:—duties leviable on the passing of property by the death of a person to his successors; (4) *Settlement Estate* Duty was abolished in respect of all deaths after 11th May, 1914, Finance Act, 1914, s. 14. It consisted of 1 per cent., increased to 2 per cent. by the Finance (1909–10) Act, 1910, in addition to other duties on settled property. It was not payable on property settled before August 1st, 1894, and certain allowances are accorded by the Finance Act of 1914. It is still payable in respect of deaths on or before May 11th, 1914. The Act of 1894 was amended by the Finance Acts, 1896, 1900, and 1907, and in subsequent years. Consult *Hanson* or *Dymond on Death Duties*. There is nothing illegal or immoral in making dispositions of property in order to escape death duties (per Lord Atkinson in *A.-G.* v. *Richmond and Gordon* (*Duke*), 1909, A. C. at p. 475). See also ESTATE DUTY; SUCCESSION DUTY; LEGACY DUTY; SETTLEMENT ESTATE DUTY.

Deathbed or **Dying Declarations** are constantly admitted in evidence. The principle of this exception to the general rule is founded partly on the awful situation of the dying person, which is considered to be as powerful over his conscience as the obligation of an oath, and partly on a supposed absence of interest in a person on the verge of the next world, which dispenses with the necessity of cross-examination. But before such declarations can be admitted in evidence against a prisoner, it must be satisfactorily proved that the deceased, at the time of making them, was conscious of his danger, and had given up all hope of recovery (*R.* v. *Perry*, 1909, 2 K. B. 697), and this may be collected from the nature and circumstances of the case, although the declarant did not express such an apprehension. It is not essential that the party should apprehend immediate dissolution; it

is sufficient if he apprehend it to be impending. See *Taylor on Evid.*, 12th ed., ss. 714 *et seq.* The Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), ss. 6, 7, makes provision for taking the depositions of persons dangerously ill, and making the same evidence after death, and for prisoners being present at the taking of such depositions.

The party implicated, however, may produce evidence of the state of mind of the deceased and his behaviour or otherwise that he was not likely to be oppressed by the thought of death, and for a rejection on a trial for murder or a declaration of the dying victim in the presence of her speechless murderer (who was convicted and executed), see *R.* v. *Bedingfield*, (1879) 14 Cox, C. C. 341. See DECLARATION OF DECEASED PERSON.

Death Bed, Scots Law of. By this law an heir in Scotland was entitled to keep his heritage as against a disposition of it by his predecessor. But the law is repealed by 34 & 35 Vict. c. 81, the Act 'to abolish Reductions ex capite Lecti in Scotland.' See REDUCTION EX CAPITE LECTI.

Deathsman, executioner, hangman.

De bene esse. To take or do anything *de bene esse* is to accept or allow it as well done for the present; but when it comes to be more fully examined or tried, to stand or fall according to the merit of the thing in its own nature (*Jac. Law Dict.*). In modern times the term is chiefly used in reference to an examination, out of court and before trial, of witnesses who are old, dangerously ill, or about to leave the country, on the terms that if the witnesses continue ill or absent, their evidence be read at the trial, but if they recover or return, the evidence be taken in the usual manner. Now by R. S. C. 1883, Ord. XXXVII., r. 5, the Court may, in any cause or matter where it shall appear necessary for the purposes of justice (see *Bidder* v. *Bridges*, (1884) 26 Ch. D. 1), make any order for the examination upon oath before the Court or any officer of the Court, or any other person, and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court may direct.

See also forms of orders in App. K. of R. S. C. 1883, Nos. 35 to 37.

Debenture [fr. *debeo*, Lat., to owe] may be defined generally as a charge in writing (not necessarily sealed, see *British India, etc., Co.* v. *Commissioners of Inland Revenue*, (1881) 7 Q. B. D. 165) of certain property with the repayment at a time fixed of money lent by person therein named at a given interest, but the term is a very elastic one. The word 'debenture' is of ancient origin and appears to have been in use five centuries ago (*Palmer's Company Precedents*, Pt. III., p. 1); and a document which, though it mentions no security and is only a promise to pay, is properly described as a debenture, and as a marketable security will require to be stamped as such (*Speyer* v. *Inland Revenue Commissioners*, 1907, 1 K. B. 246). By the Companies Act, 1929, s. 380, a debenture is defined as including debenture stock, bonds or other securities of a company whether constituting a charge on the assets of the company or not. The charge created by debentures as a rule is fixed on the company's property or by way of floating charge. If fixed, the remedies upon default are those available to mortgagees and those stipulated for and endorsed on the debenture or provided by the trust deed. See also FLOATING CHARGE. This form of security is frequently resorted to by public companies to raise money for the prosecution of their undertakings. Registration of a company's debentures (under the term 'mortgage or bond') is required by the Companies Clauses Consolidation Act, 1845, in the case of a company incorporated by special Act, and by the Companies Act, 1929, s. 88, see *infra*, in the case of a company incorporated under the general powers of that Act, but not by the Bills of Sale Acts (*Re Standard Manufacturing Co.*, 1891, 1 Ch. 627), and 'debentures' of an incorporated company are expressly exempted from the Bills of Sale Act, 1882, by s. 17 of that Act. Under the Companies Act, 1929, ss. 79–81, every mortgage or charge created by a company registered in England for securing debentures, or on uncalled capital, or such as would require a bill of sale, on land wherever situate, on the company's book debts, or as a floating charge, or on calls made but not paid; on a ship; on goodwill or patent or trade mark (see the full list in s. 79) will be void as against the liquidator and any creditor of the company unless the charge is registered with the Registrar of Joint Stock Companies in manner prescribed by the Act, within 21 days from the date of execution of the charge. The avoidance will be without prejudice to the company's obligation to repay the money secured by the charge and that money will become immediately repayable. Under s. 81 the

company must also register charges existing on property when acquired by it. Registers of charges are to be kept by the registrar and the company respectively. The register and copies of the instruments registered are open to the inspection of members, creditors and the public (s. 81). It should be observed that a purchaser or chargee of registered lands, of which a company is registered as proprietor or chargee, is not affected by notice of any incumbrance registered with the Registrar of Joint Stock Companies unless the incumbrance is registered or otherwise protected under the Land Registration Act, 1925. See s. 60 of that Act, but double registration under the Land Charges Act, 1925, is not necessary. Section 10 (5) provides that registration of a land charge for securing money which has been registered under the (now) 81st section of the Companies Act, 1929, shall have effect as if the land charge had been registered under the Land Charges Act, 1925.

The certificate of registration (s. 82 (2)) is conclusive that the statutory requirements for registration have been complied with (*Lester* v. *Yolland, Husson and Burkett*, 1908, 1 Ch. 152). As to the re-issue of redeemed debentures, see Companies Act, 1925, s. 75.

The terminability and fixity in amount of debentures, being inconvenient to lenders, have led to their being superseded in many cases by debenture stock, which is frequently irredeemable, and usually transferable in any amounts except fractions of a pound.

Debentures may be made payable to bearer, see BEARER, and *Edelstein* v. *Schuler & Co.*, 1902, 2 K. B. 144.

'Perpetual debentures' also are sometimes issued, and these are specially protected by s. 74 of the Companies Act, 1929.

The issue of debenture stock in the case of companies incorporated by Act of Parliament is regulated either by their special Acts, or by the Companies Clauses Act, 1863 (26 & 27 Vict. c. 118), which provides that the same shall be a prior charge, and the interest a primary charge, and contains provisions for the enforcement of payment of arrears by the appointment of a receiver.

As to the issue of redeemable debenture stock by a 'statutory company,' see Statutory Companies (Redeemable Stock) Act, 1915 (5 & 6 Geo. 5, c. 44).

Also a term used at the Custom House for a kind of certificate, signed by the officers of the Customs, which entitles a merchant exporting goods to the receipt of a bounty or drawback.

As to Debentures by County Authorities, see Local Loans Act, 1875 (38 & 39 Vict. c. 83).—Consult *Lindley on Company Law*; *Buckley on Companies*; *Palmer's Company Precedents*, Pt. III.; *Stiebel on Companies*.

Debet et detinet. (He oweth and detaineth.) An action was in the *debet et detinet* when he who made a contract, or lent money to another, or he to whom a bond was made, sued for personal redress. But if it were brought by or against an executor for a debt due to or from the testator, this, not being his own debt, was sued for in the *detinet* only.

Debet et solet. If a person sued to recover any right, whereof his ancestor was disseised by the tenant of his ancestor, then he used the word *debet* alone in his writ, because his ancestor only was disseised, and the estate discontinued; but if he sued for anything then first denied him, he used *debet et solet*, by reason that his ancestor before him and he himself usually enjoyed the thing sued for, until the present refusal of the tenant.—*Reg. Brev.* 140; *Fitz. N. B.* 98.

Debit, the left-hand page of a ledger, to which all items are carried that are charged to an account.

Debitum et contractus sunt nullius loci, 7 *Rep.* 3—(Debt and contract are of no place).—See *Mostyn* v. *Fabrigas*, (1775) 1 Cowp. 161; 1 Sm. L. C.

De bonis non, of the goods of a deceased person not [administered]. A grant *de bonis non administratis*, or more shortly *de bonis non*, is made where an executor dies intestate or an administrator dies, and in either case without having fully administered. See ADMINISTRATION.

De bonis propriis, of a person's own goods.

De bonis testatoris, of a testator's goods. As to the effect of a judgment *de bonis testatoris* against an executor, see *Re Marvin*, 1905, 2 Ch. 490, and the authorities there referred to.

De bono et malo, Writs. It was anciently the course to issue special writs of gaol delivery for each particular prisoner which were called writs *de bono et malo*; but these being found inconvenient or oppressive, a general commission for all the prisoners has long been established in their stead.—4 *Steph. Com.*, 7th ed. 315.

Debt [fr. *debitum*, Lat.], a sum of money due from one person to another. An action of debt lay where a person claimed the

recovery of a liquidated or certain sum of money affirmed to be due to him; and it was generally founded on some contract alleged to have taken place between the parties, or on some matter of fact from which the law would imply a contract between them. This was debt in the *debet*, which was the principal and only common form. There is another species mentioned in the books, called debt in the *detinet*, which lay for the specific recovery of goods, under a contract to deliver them. An action of debt as a technical term is now obsolete. See PLEADINGS. The order of the payment of debts and expenses out of legal assets in an ordinary administration action in the Chancery Division of the High Court is as follows:—

1st. Funeral expenses, which in the case of an insolvent estate must be strictly reasonable and necessary only, the executor or administrator being personally liable for any excessive expenditure.

What is a strictly reasonable and necessary sum varies with the circumstances of each particular estate, and the price of the requisite articles at the particular place.

2nd. Testamentary expenses about the probate of the will, or the letters of administration in intestacy; debts due from the estate after death, such as rates and taxes, and warehousing charges for protecting furniture, etc.

3rd. The costs of necessary legal proceedings, including an administration action.

If the estate is insolvent, after providing for funeral, testamentary and administration expenses, the estate is to be administered (whether by personal representatives or by the Court, *Re Cockell*, 1932, A. C. 365) according to the rules which may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt, A. E. Act, 1925, s. 34 (1), Part I. of the First Sched. of that Act, and see ss. 30 and 33 of the Bankruptcy Act, 1914, and s. 36, *ibid.*, as to deferred debts. An entailed interest if disposed of by will becomes assets for the payment of debts (Law of Property Act, 1925, s. 176), but not if the entailed estate has not been so disposed of.

Prior to the Administration of Estates Act, 1869 (32 & 33 Vict. c. 46) (popularly known as 'Hinde Palmer's Act'), special contract debts, as by bonds, covenants, and other instruments under seal, took priority over debts by simple contract; but this Act abolished that distinction as to priority.

As to attachment of debts, see that title.

Debts are assignable at law, if the assignment is absolute and in writing, where express written notice of the assignment is given to the debtor, trustee, or other person from whom the assignor would have been entitled to claim such a debt (Law of Property Act, 1925, s. 136, and ASSIGNMENT). See also Administration of Estates Act, 1925, s. 34, which expressly recognizes the right of retainer of a personal representative within the limits therein set out.

Debtee-Executor. See RETAINER OF DEBTS.

Debtor, he that owes something to another. As to the meaning of 'debtor' in the Bankruptcy Act, 1914, see s. 1, sub-s. 2, of the Act. See CREDITOR and BANKRUPT.

Debtor-Executor. At law, if a testator appoints his debtor executor, the debt is released. In equity, however, the executor is accountable for the amount of his debt, as assets of the testator. See *Freakley* v. *Fox*, 9 B. & C. 134; *Re Hyslop*, 1894, 3 Ch. 522; and see *Wms. on Executors*, 12th ed., p. 858.

Debtor's Summons. See JUDGMENT-DEBTOR SUMMONS.

Debtors Act, 1869 (32 & 33 Vict. c. 62).—This Act abolishes imprisonment for debt except in case of default of payment of penalties, default by trustees or solicitors, and certain other cases (see s. 4), and provides for committal of debtors in default of payment of judgment debts which the debtor can but will not pay, and in certain other cases (s. 5): see COMMITMENT. It also provides for the punishment of fraudulent debtors. The Debtors Act, 1878 (41 & 42 Vict. c. 54), gives a judicial discretion in the case of a defaulting trustee or solicitor. See *Chitty's Statutes*, tit. '*Debt*'; IMPRISONMENT, and as to Northern Ireland, see 35 & 36 Vict. c. 57.

De cætero, henceforth.

Decanal, pertaining to a deanery.

Decanus, a dean.

Deceased Wife's Sister or **Deceased Brother's Widow.** See MARRIAGE (*prohibited degrees*).

Deceit [fr. *deceptio*, Lat.], fraud, cheat, craft, or collusion used to deceive and defraud another. In an action of deceit the plaintiff must prove that the defendant has made a false statement, knowing that it was false or without any belief in its truth or without caring whether it was true or not, and intending that the plaintiff should rely upon it and that the statement was relied upon by the plaintiff and caused damage; non-

disclosure may be fraudulent, see *Suppressio veri, suggestio falsi*,' and *Cackett* v. *Keswick*, 1902, 2 Ch. 456, and *Christine Ville Rubber Estates*, (1911) 28 T. L. R. 38, and CONCEALMENT (*Smith* v. *Chadwick*, (1884) 9 A. C. 187, and *Derry* v. *Peek*, (1889) 14 App. Cas. 337). Under the Companies Act, 1929, s. 37, a special action for deceit will lie at the instance of any subscriber for shares or debentures who has subscribed for these on the faith of a prospectus inviting him to subscribe against any director, or person named or referred to as a director in the prospectus and any promoter of the company, or person authorizing the issue of the prospectus if there is any untrue statement in the prospectus or in any report or memorandum set out in the prospectus or by reference incorporated therein or issued therewith. The onus is on the defendant to clear himself by any of the defences provided for in the section (see DIRECTORS). In these cases there is a statutory right of contribution, see s. 37 (3), from which (apparently) guilty promoters have been excluded. See also Law Reform (Misc. Pr.) Act, 1935, s. 6. The injured shareholder may also sue the company for rescission. See *Frankenburg* v. *Great Horseless Carriage Co.*, 1900, 1 Q. B. 504, and see also Sched. XI. of the Act of 1929 and MISREPRESENTATION ; FRAUD.

There was formerly a writ of deceit, which was an action brought in the Common Pleas to reverse a judgment obtained in any real action, by fraud or collusion between the parties to the prejudice of the right of a third person. It was abolished by the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27), s. 36.

Decem tales (ten such). If, when a trial at bar (see BAR, TRIAL AT) is called on, a sufficient number of jurors do not attend, the trial must be adjourned, and a *decem* or *octo tales*, according to the number deficient, awarded, as at Common Law ; for the County Juries Act, 1825 (6 Geo. 4, c. 50), s. 37, which allows the *tales de circumstantibus*, is expressly confined to trials at *Nisi Prius* and the assizes.—1 *Chit. Arch. Pract.*

Decennary, a town or tithing, consisting originally of ten families of freeholders. Ten tithings composed a hundred.—1 *Bl. Com.* 114.

Decies tantum, a writ which lay against a juror, who had taken money of either party for giving his verdict, to recover *ten times* the sum taken.—38 Edw. 3, c. 12, repealed by 6 Geo. 4, c. 50, s. 62.

Decimæ, tenths or tithes. See TITHES.

Decimation, signifies tithing, or paying a tenth part. The punishing every tenth soldier by lot for mutiny or other failure of duty was termed *decimatio legionis* by the Romans.

Deciners, Decenniers, or **Dozíners,** such as were wont to have the oversight of the Friburghs or views of frankpledge for the maintenance of the King's peace. The limit and compass of their jurisdiction was called *decenna*, because it commonly consisted of ten households ; as every person, bound for himself and his neighbours to keep the peace, was styled *decennier*.—*Bract.* l. 3, t. 2, c. xv.

Decision, a judgment.

Decisive Oath [*sacramentum decisionis*, Lat.], in the Civil Law, where one of the parties to a suit, not being able to prove his charge, offered to refer the decision of the cause to the oath of his adversary ; which the adversary was bound to accept, or tender the same proposal back again, otherwise the whole was taken as confessed by him.—*Cod.* 4, 1, 12.

Deck Cargo. By s. 10 of the Merchant Shipping Act, 1906 (6 Edw. 7, c. 48), ' deck cargo ' means any cargo carried either in any uncovered space on deck or in any covered space not included in the cubical contents forming the ship's registered tonnage. The Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 Geo. 5, c. 9), s. 61, gives the Board of Trade power to make regulations, known as ' timber cargo regulations,' as to the carrying of timber in any uncovered space on deck.

Declarant, a person who makes a declaration.

Declaration, a proclamation or affirmation, open expression or publication.

A statement on the plaintiff's part of his cause of action, following after service of the writ of summons ; abolished in 1875 by the Judicature Acts, which substituted a statement of claim. See STATEMENT OF CLAIM.

Declaration in lieu of Oath. By the Statutory Declarations Act, 1835 (5 & 6 Wm. 4, c. 62), any justice of the peace, notary public, or other officer authorized to administer an oath, is empowered to take voluntary declarations in the form specified in the Act ; and any person wilfully making such declaration false in any material particular is guilty of a misdemeanour. The form given by the Act of 1835 is as follows :—

I, A. B., do solemnly and sincerely declare that and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act, 1835.

Declaration of Deceased Person. These declarations are frequently admissible as evidence, e.g., (1) if made in the ordinary discharge of business or duty; (2) if made against interest; (3) on questions of pedigree, if made before the commencement of litigation; (4) if accompanying an act the proof of which is relevant. See DEATHBED DECLARATIONS.

Declaration of Insolvency, a declaration by any person of inability to pay his debts which, when filed in the Bankruptcy Court, amounts to an 'act of bankruptcy.'—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 1, sub-s. 1 (f).

Declaration of London, 1909. A suggested International agreement to settle doubts concerning *inter alia* the application of the doctrines of contrabrand, neutral destination and continuous voyage. A list of three classes of goods was made: (1) *absolute contrabrand* or munitions of war; (2) *conditionally contrabrand*, or foodstuffs, forage, money, railway materials, fuel, lubricants, barbed wire and optical instruments; (3) *not contrabrand*, or raw textile materials, rubber, hides, metallic ores, earths. Eleven countries signed the convention. With a prescience justified by the developments of science and the uncontrollable nature of a desperate war, the House of Lords refused to ratify it. In practice the declaration was followed by Great Britain and other belligerents with increasing alterations until it was formally, and finally abandoned by this country in April, 1916. A modified list of articles absolutely or conditionally contraband was issued shortly after. See *Hall* or *Lawrence on International Law.*

Declaration of Paris, a state paper agreed upon at the conclusion of the Crimean War, by the representatives of Great Britain, France, Austria, Russia, Sardinia, and Turkey (February 26, 1856), in which the following agreements on maritime law were come to:—

Privateering is abolished.

The neutral flag covers enemy's goods save contraband of war.

Neutral goods save contraband of war are not liable to capture under enemy's flag. Blockades to be binding must be real. (See also LETTERS OF MARQUE and PAPER BLOCKADES.)

Declaration of Title. Obtainable by action in a case where an invasion of title is apprehended, and the party threatened wishes to proceed under a title validated by judicial decision. See R. S. C. Ord. XXV., r. 5.

Declaration of Trust. To prevent the inconvenience which arose from parol declarations and secret transfers of uses, s. 53 of the Law of Property Act, 1925, reproducing and amending the Statute of Frauds (29 Car. 2, c. 3), ss. 7, 8 and 9, requires that a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust, or by his will, and (1) a disposition of an equitable interest or trust, subsisting at the time of the disposition, must be in writing signed by the person disposing of the same or by his agent thereunto lawfully authorized in writing or by will; (2) this section does not affect the creation of resulting, implied or constructive trusts.

It appears that this statute does not extend to the declaration or creation of trusts of mere personalty. But in practice, a parol declaration should never be relied on, for the intention to declare a trust should be irrevocably expressed. There is no form or particular set of words, or mode of expression, prescribed for the purpose of raising a trust. Intention will create a trust, provided the object of the gift, and the gift itself, can be correctly ascertained.—1 *Sand. Uses*, 344.

Declaration of Uses must be in writing.—29 Car. 2, c. 3, s. 7. See now DECLARATION OF TRUST.

Declaration of War. The formal announcement by one nation of an intention to treat another nation as an enemy and to commence hostilities, agreed to be necessary by the Hague Convention, 1907. In modern times the future belligerents, generally, are in a state of war before any declaration of war is made. Before this Convention was signed, in the war between Russia and Japan, the Japanese ambassador, on the 6th February, 1904, notified to Russia the rupture of negotiations and the cessation of diplomatic relations, hostile operations were commenced by Japan on the 8th February, and formal declarations of war were not made until the 10th of February by Japan, and 11th February by Russia. The British Declaration of War on Germany was made on the 4th August, 1914, after an ultimatum.

The force of a declaration of war is equal to that of an Act of Parliament prohibiting intercourse with the enemy except by the king's license. As an act of State done by

virtue of the prerogative it carries with it all the force of law (*Esposito* v. *Bowden*, (1857) 7 E. & B. 781).

Declarator, an action whereby it is sought to have some right of property, or of status, or other right judicially ascertained and declared.—*Bell's Scots Law Dict.*

Declarator of Property, when the complainer, narrating his right to lands, desires he should be declared sole proprietor, and all others discharged to molest him in any way.—*Ibid.*

Declarator of Trust is resorted to against a trustee who holds property upon titles *ex facie* for his own benefit.—*Ibid.*

Declaratory Actions, those wherein the right of the pursuer is craved to be declared; but nothing claimed to be done by the defender.—*Ibid.*

Declaratory Decree, a binding declaration of right in equity without consequential relief, which might be made under the Chancery Procedure Act, 1852 (15 & 16 Vict. c. 86), ss. 50, 51; but this Act was very narrowly construed. The powers of the Court have since been greatly extended by Ord. XXV., r. 5, and actions can now be brought merely to declare rights (*Ellis* v. *Duke of Bedford*, 1899, 1 Ch. p. 515), though the jurisdiction is exercised with great caution.

Declaratory Statutes, those which declare what the Common Law is and ever has been, as the Bill of Rights, 1 W. & M. sess. 2, c. 2.

Declinatory Plea, a plea of sanctuary, also pleading of benefit of clergy before trial or conviction. Abolished by 6 & 7 Geo. 4, c. 28, s. 6.

Decoctor, a bankrupt.

Decoity, corrupted from *Dakaiti*, gang-robbery.—*Indian.*

Decollation, the act of beheading.

De consuetudinibus se servitiis, a real writ to recover rent in arrear. Abolished by the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27).

De contumace capiendo. A writ issued out of the Court of Chancery for the commitment of a person pronounced by an Ecclesiastical Court to be contumacious and guilty of contempt. See EXCOMMUNICATION.

De corpore comitatus (from the body of the county).

Decoy [probably fr. *kooy*, Dut., a cage], a place made for catching wild water-fowl. As to the rights of an owner of such a place, see *Carrington* v. *Taylor*, (1809) 11 East, 571; 11 Mod. 74, though the decision in this case is overruled by *Allen* v. *Flood*, 1898, A. C. 1.

Decree [fr. *decretum*, Lat.], an edict, a law. The term was also used for the judgment of a Court of Equity. But by the Judicature Acts, 1873 and 1875, the expression judgment, which was formerly used only in Courts of Common Law, is adopted in reference to the decisions of all Divisions of the Supreme Court, and (Judicature Act, 1925, s. 225, replacing Act of 1873, s. 100) includes decree. See JUDGMENT, and consult *Seton on Decrees*. In Scotland the judgment of a Court disposing of a case (accent on first syllable).

Decree nisi. By the Judicature Act, 1925, s. 183 (1) every decree for a divorce or for nullity of marriage shall, in the first instance, be a decree *nisi* not to be made absolute until after the expiration of six months from the pronouncing thereof, unless the Court by general or special order from time to time fixes a shorter time.

(2) After the pronouncing of the decree *nisi* and before the decree is made absolute, any person may, in the prescribed manner, show cause why the decree should not be made absolute by reason of the decree having been obtained by collusion or by reason of material not having been brought before the Court, and in any such case the Court may make the decree absolute, reverse the decree *nisi*, require further inquiry or otherwise deal with the case as the Court thinks fit. Only in special circumstances will the period be shortened. See *Osburne* v. *Osburne*, (1926) 70 Sol. Jo. 388. See *Browne on Divorce*; *Chitty's Statutes*, tit. '*Matrimonial Causes*.'

Decreet arbitral, the award of an arbitrator.—*Scots Law.*

Decreet cognitionis causâ, when a creditor brings his action against the heir of his debtor in order to constitute the debt against him and attach the lands, and the heir appears and renounces the succession, the Court then pronounces a decree *cognitionis causâ*.—*Bell's Scots Law Dict.*

Decreet of Exoneration, discharging trustees, executors, factors, tutors, and others.—*Ibid.*

Decreet of Locality, dividing and proportioning among the heritors a stipend modified to a minister.—*Ibid.*

Decreet of Modification, that which modifies a stipend to a minister, but does not divide or apportion it among the heritors.—*Ibid.*

Decreet of Valuation of Teinds, a sentence of the Court of Session (who are now in the place of the Commissioners for the Valuation

of Teinds) determining the extent and value of teinds.—*Ibid.*

Decreta, judicial sentences given by the emperor as supreme judge.—*Roman Law.*

Decretal Order, a Chancery order in the nature of a decree. See DECREE.

Decretals, a volume of the canon law, forming the second part, so called as containing the decrees of sundry popes; or a digest of the canons of all the councils that pertained to one matter under one head.

Decuriare, to bring into order.

Dedbana, an actual homicide or manslaughter.

Dedi et concessi (I have given and granted), the operative words in grants, etc. The word 'give' or the word 'grant' in a deed, executed after the 1st October, 1845, does not imply any covenant in law in respect of any tenements or hereditaments, except so far as the word 'give' or the word 'grant' may, by force of any Act of Parliament, imply a covenant.—Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 4, reproduced by the Law of Property Act, 1925, s. 59. Under the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), s. 132, and in conveyances to the Governors of Queen Anne's Bounty, the covenants for title are implied in the word 'grant.'

Dedicate, to make a private way public by acts evincing an intention to do so.

Dedication-day [*festum dedicationis*, Lat.], the feast of dedication of churches, or rather the feast-day of the saint and patron of a church, which was celebrated not only by the inhabitants of a place, but by those of all the neighbouring villages who usually came thither, and such assemblies were allowed as lawful. It was usual for the people to feast and to drink on those days.—*Cowel.*

De die in diem (from day to day).

Dedimus potestatem (we have given the power), a writ or commission to one or more private persons for the speeding of some act appertaining to a judge or a court. It is granted most commonly upon a suggestion that the party who is to do something before a judge, or in a court, is so weak that he cannot travel.

On renewing the commission of the peace there cometh a writ of *dedimus potestatem* out of Chancery, directed to some ancient justice, to take the oath of him which is newly inserted.

Formerly the judges would not suffer litigants to appoint attorneys in any action or suit without this writ; but it has since been provided by statute that the plaintiff or defendant may appoint attorneys without such process.—*Jac. Law Dict.*

Dedition, the act of yielding up anything; surrender.

De donis, Statute. See DONIS CONDITIONALIBUS, STATUTE DE.

Deed [fr. *dœd*, Sax.; *dêd*, *gadêd*, Goth.; *daed*, Dut.], a formal document on paper or parchment duly signed, sealed, and delivered. It is either an indenture (*factum inter partes*) needing an actual indentation (Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 5), reproduced by the Law of Property Act, 1925, s. 56 (2), made between two or more persons in different interests, or a deed-poll (*charta de unâ parte*) made by a single person or by two or more persons having similar interests. By the Law of Property Act, 1925, s. 57, a deed may be described according to the nature of the transaction, e.g., 'this lease,' 'this mortgage,' etc., or as a 'deed' and not habitually by the word 'indenture.'

The requisites of a deed are these:—

(1) Sufficient parties and a proper subject of assurance.

(2) It must be written, engrossed, printed, or lithographed, or partly written or engrossed, and partly printed or lithographed in any character or in any language, on paper, vellum, or parchment, since these materials best unite the two qualities of durability and difficulty of concealing alteration or erasure.

(3) The language employed should be sufficient in point of law, intelligible without punctuation, and clear without the aid of stops or parentheses.

Usage has arranged the text of a conveyance *inter partes* in a formal and well-understood sequence; and although it is not absolutely necessary that a deed should be drawn in accordance with the generally received formulary, provided it exhibit the intention of the parties, yet it is not advisable to deviate from it unless in a matter of urgent necessity. A properly prepared deed, then, is arranged in the following parts:—

(*a*) Commencement or *exordium*, date and parties.

The commencement sets forth its style or character. The date follows in indentures and contracts, but is generally placed in the last or peroration-clause in a deed-poll. In any case, even if there be no date, or an impossible date, the deed takes effect from its actual delivery, of which extrinsic evidence is admissible. The parties are

described by their several names, their rank, profession or calling, and their places of abode, except in the case of a peer. The assumption of any additional name should be stated so as to preserve identity on the face of the title. A mistake will not vitiate the instrument if the party can be identified by extraneous evidence.—*Nihil facit error nominis cum de corpore constat.*

Every person who conveys any estate or interest, or enters into a covenant, or is to be bound by the deed, should be made a party to it.

Parties are classified in parts according to their several interests. Persons having joint-interests except in a deed of partition should be of the same part, but those having distinct though undivided interests should be of several successive parts. Those who are to transfer any interest or relinquish any right should come first, and amongst them, those having legal estates before those having equitable only, and the larger interests should precede the lesser. Then consenting parties and covenantors. After these, those who take any estate or interest, and, amongst these, trustees follow real owners. Lastly, those who are inserted to fix them with notice of the deed, as creditors, legatees, trustees, and executors.

When a person acts in two or more capacities, he should be named in distinct parts, according to such several capacities.

Husband and wife are generally of the same part except in separation deeds.

The Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 5, enacts that under an indenture executed after the 1st October, 1845, an immediate estate or interest in any tenements or hereditaments, and the benefit of a condition or covenant respecting any tenements or hereditaments, may be taken, although the taker thereof be not named a party to the indenture. This has been extended by the Law of Property Act, 1925, s. 56, to any estate, interest in land or other property and the benefit of any condition or covenant respecting land or other property. The better opinion is that the section relates to covenants only which run with the land or property. See COVENANT.

Before this statute, however, a person not named in an indenture could and still can take a remainder, or a use, or the benefit of a trust, or any authority by a letter of attorney, or if he executes the deed, undertake any liability therein expressed to be undertaken by him.—*Halsbury, L. of Eng.* '*Deeds.*' Under a deed-poll any person sufficiently designated may maintain an action under the deed for breach of any obligation or assurance therein expressed in his favour. A party named in a deed is bound by it if he accepts any benefit thereby assured to him even if he does not execute the deed. See *Halsbury, loc. cit.*

(*b*) *Recitals.* These are either narratives of past facts, or a statement of the purpose of the deed. They are not a necessary part of an assurance, yet they frequently become material as an aid to collect the intention of the parties to the instrument, and a key to its construction. Thus a recital may restrain the effects of general phraseology in the operative part of a deed, and although it is not evidence as against strangers, yet it may be conclusive as to the facts which it sets forth between the parties to it and those claiming under them.

(*c*) *Testatum,** witnessing or operative clause, comprehending :—

1. The consideration and its receipt. When a deed contains more than one *testatum*, the whole consideration should generally be stated in the first, unless it can be apportioned amongst the different *testata*.
2. The name of the grantor.
3. The operative words of transfer.
4. The name of the grantee, with appropriate words of limitation (if any). See s. 56 of Law of Property Act, 1925.

(*d*) *The Parcels*, i.e., the description of the property affected, with any savings or exceptions.

(*e*) *General Words* were inserted with sweeping clauses prior to the Conveyancing Act, 1881, under which a conveyance, in the 'general words,' enumerated all the particulars intended to pass to the grantee. Section 6 of that Act reproduced by s. 62 of the Law of Property Act, 1925, enacts that a conveyance of land shall operate to convey all 'buildings, erections, fixtures, commons,' etc., etc., and so dispenses with the enumeration of such particulars in the conveyance itself; and s. 63, reproduced by the Law of Property Act, 1925, s. 63, in like manner dispenses with the 'estate clause' or clause conveying all the estate right, etc., of the conveying parties.

All the parts which have been enumerated are as a whole technically denominated 'the premises' (*præmissa*) or the matters which precede. The premises should name all the parties, as well active as passive, i.e., both grantors and grantees, and set forth with

* In Scotland the 'testing clause' is the attestation; see *infra*.

certainty the thing granted, with any exceptions or reservations. This word has also a popular sense, meaning the property granted by the deed.

(*f*) *Habendum*, limiting and defining the interest.

This part is a non-essential formality, expressing the extent of the grantee's interest in the thing granted. The grantee should be named, and he would take although not mentioned in the former part of the deed. While nothing can be limited in the *habendum* which has not been given in the premises, yet it may abridge, qualify, or enlarge the premises, but where they are repugnant, the premises will operate in preference to the *habendum*.

There is not any *habendum* in an appointment under a power or (before 1926) in a covenant to stand seised, or a simple declaration of uses, because such deeds themselves fulfil that office by limiting the estate to be created.

(*g*) *Tenendum*. This is usually joined with the *habendum*, but it is unnecessary, since the tenure is never expressed, except upon a sub-grant or lease reserving rent.

In annuity deeds and money assignments, the phrase 'To have, hold, receive, and take' is the common form of *habendum*.

(*h*) *Declaration of Uses* in deeds executed before 1926 operating by virtue of the Statute of Uses (27 Hen. 8, c. 10). A person may take an estate under this declaration, although not a party to the deed.

(*i*) *Declaration of Trusts*, when necessary.

(*j*) *Declaration against Dower* in purchase-deeds succeeded the limitation of the estate. This declaration, however, is now never inserted.

(*k*) *Reddendum* in leases, which reserves something to the grantor out of the estate transferred, such as rent.

The phrase 'yielding and paying' in a lease by indenture executed by the lessee will imply after entry a covenant to pay rent in the absence of one expressed (*Platt on Covenants*, pp. 50 *et seq.*) It is generally advisable, except in leases pursuant to statute, to reserve the rent at large, not specifying to whom made, since the rent will be annexed to the reversion and belong to the person for the time being entitled to the latter.

(*l*) *Conditions*, conditional limitations, provisos for cesser of interests, clauses of restraint, and for redemption, and special agreements, are generally next inserted, when stipulated for between the parties.

(*m*) *Powers*; e.g., a power to lease.

(*n*) *Covenants*. See COVENANT.

(*o*) The *testimonium*. In Scotland called the 'testing clause,' connecting the contents of the deed with the signatures and seals. See *infra*.

All these several parts, thus arranged, make up a formally prepared deed.

(5) The deed being engrossed, the next step is its *execution*, which consists of three acts, viz.:—

(*a*) *Signing*. This was not necessary before 1926 in cases where the Statute of Frauds (see FRAUDS, STATUTE OF) did not apply. Whether signing was necessary where that statute applied, or whether mere sealing was sufficient, is an open question. See *Chitty on Contracts*, 15th ed. at pp. 89, 90, citing *Cooch* v. *Goodman*, (1842) 2 Q. B. 580, and other authorities. A deed executed after 1925 must be signed (Law of Property Act, 1925, s. 73).

(*b*) *Sealing*, which is a Norman usage, and makes the assurance a specialty. It is, however, but a simple formality, but see CORPORATION, and Law of Property Act, 1925, s. 74. There should be a distinct seal for every signature.

(*c*) *Delivery*, which complete the efficacy of the deed, and whence it takes effect, if, as we have already seen, there be a false, or impossible, or no date. See DELIVERY OF A DEED, *post*.

(6) The deed must be read before execution if any of the parties request it, otherwise it will be void, so far as the requester is concerned; and a false reading will avoid it so far as it was misread (1 *Touch.* p. 56). Seeing that the draft of a deed is usually submitted to the legal advisers of the several parties, to be approved of by them on their client's behalf, the request of reading seldom occurs. In strict practice, the engrossment is examined with the draft by the solicitors of the parties before an appointment for its execution is fixed.

(7) The *attestation* is not essential, unless it be required by a particular statute, or by the express terms of a power. See POWER. In practice, however, every deed is attested, in order to render it more easy of proof. It was expressly enacted by the repealed Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), s. 26, that it would not be necessary to prove by the attesting witness any instrument to the validity of which 'attestation is not requisite.'

A deed may be delivered as an escrow upon some condition precedent to its taking

effect, but in that case it should not be delivered to the other party or parties under the deed, though it may be delivered to an agent or solicitor acting for all parties in the matter of delivery.

(8) The *receipt-clause* acknowledging the payment of the consideration-money, if any, signed by the recipient, formerly always endorsed on the deed, is now rendered unnecessary by s. 54 of the Conveyancing Act, 1881, reproduced by s. 67 of the Law of Property Act, 1925, which provides that a receipt in the body of the deed shall be a sufficient discharge without any further receipt being endorsed on the deed.

(9) *Extrinsic formalities.*

Generally speaking, in localities where registration of titles is compulsory in regard to conveyances of land, including leases of land situate there and in regard to land charges which are required to be registered under the Land Charges Act, 1925, a deed may become ineffectual to vest the legal estate in the grantee or lessee or to give a full legal title *in rem* against the world, unless the title or charge is registered. Before 1926 extrinsic formalities were necessary in some cases of transfer and other assurances such as enrolment in Chancery of grants by the Crown, bargains and sales of freeholds, pursuant to 27 Hen. 8, c. 16, or under the Land Tax Acts, gifts of land to charities under the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 4 (9), and disentailing assurances according to 3 & 4 Wm. 4, c. 74.

(10) The *stamp* does not strengthen the efficacy of a deed, but is required to render it admissible in evidence. A deed may be stamped before or after execution. See STAMPS.

Though a deed may be good in point of form, as apparently possessing the external and internal circumstances necessary to its validity, yet it may be rendered invalid from many causes, which may be thus classified:—

(I.) Those making it void *ab initio*, when it can never take effect; as

(*a*) Where it is wanting in any of the essentials such as want or capacity, or knowledge of the contents, or intention of the deed, or under a common mistake of fact as to the existence or state of the subject-matter, it is then absolutely null against all persons.

(*b*) Where a party has made it under threat, for then it is void as to him.

(II.) Those making it voidable, not being void from the beginning; as

(*a*) By dissent of parties, for instance the repudiation of an infant's deed after majority.

(*b*) By dissent of strangers, as the grantee of a deed-poll or an indenture not executed by him, disclaiming the estate thereby given to him, or a husband repudiating his wife's purchase.

(III.) Those making it void by something *ex post facto*; as

(*a*) By an extra-judicial act, as a razure or interlineation, or breaking off the seal, with the assent of the parties, or delivering up the deed to be cancelled. The act of a spoliator will not avoid a deed. To prevent any after-dispute, any alteration or interlineation made in a deed before execution should be particularized in the attestation clause. If a freehold estate have already passed by the deed, its cancellation will not divest such estate so as to revest it in the original owner; there must be a re-transfer to this effect.

(*b*) By a judicial act, as where by a decision of a court a deed is declared void by reason of fraud, or an illegal consideration, or that it attempts to derogate a prior and superior right.

The rectification or setting aside or cancellation of deeds or other written instruments, formerly part of the jurisdiction of the High Court of Chancery, is continued in the Chancery Division of the High Court of Justice by the Judicature Act, 1873, s. 34. See now the J. Act, 1925, s. 55.

As to supplemental deeds, now very commonly used to save recitals, see Conveyancing Act, 1881, s. 53, and s. 58 of the Law of Property Act, 1925; and s. 74 *ibid.* for execution of instruments by corporations, and for a number of provisions as to the construction and effect of deeds generally, see the same Acts. Consult *Key* or *Elphinstone, Prec.*

Deed of Arrangement. See ARRANGEMENTS BETWEEN DEBTORS AND CREDITORS.

Deed of Covenant. Covenants are frequently entered into by a separate deed for the indemnity of a purchaser or mortgagee, or for some other special purpose. A covenant with a penalty is sometimes taken for the payment of a debt, instead of a bond with a condition, but the legal remedy is the same in either case.

Deed-poll, a single deed in the form of a manifesto or declaration to all the world of the grantor's act and intention. If there be no recital it usually speaks in the first person, but where recitals are introduced it speaks in the third person. See DEED.

Deemsters [fr. *dema*, Sax., a judge or umpire]. Judges in the Isle of Man and in Jersey, who, without process or any charge to the parties, decide all controversies in those islands; they are chosen from among the parties themselves.—*Cam. Brit.*; and 4 *Inst.* 284. See DEMPSTER.

Deer. As to the right of property in deer, see *Davis* v. *Powell*, (1739) 7 Mod. 249. Deer in a park do not belong to the class of things *quæ usu consumuntur* (*Paine* v. *Warwick* (*Countess*), 1914, 2 K. B. 486). The Larceny Act, 1861, contains many provisions as to killing and stealing deer, and otherwise for their protection (ss. 12–16); see *Threlkeld* v. *Smith*, 1901, 2 K. B. 531. See also Larceny Act, 1916, and as to compensation for damage by deer, see GAME.

Deer-fald, a park or fold for deer.

Deer-hayes, engines or great nets made of cord to catch deer.—19 Hen. 7, c. 11. Repealed.

Deer Hedge, the hedge enclosing a deer park.

Deer-leap, or **Deer's-leap.** The term apparently means two things: (1) generally, a strip running outside the paling of an ancient park, its breadth being the supposed distance a deer could leap; (2) a right enjoyed by the owner of a park which adjoins a forest or chase to maintain a high bank from which the deer out of the forest or chase could leap down into his park and be unable to get back again—in fact, a species of deer-trap. See *Notes and Queries*, *Sec. Series*, vol. iii., p. 195; *Third Series*, vol. xii., p. 186. Hence it is sometimes identified with freeboard, which see.

De essendo quietum de tolonio, a writ which lay for those who were by privilege free from the payment of toll, on their being molested therein.—*Fitz. N. B.* 226.

De expensis civium et burgensium, an obsolete writ addressed to the sheriff to levy the expenses of every citizen and burgess of parliament.—4 *Inst.* 46; 23 Hen. 6, c. 14.

De expensis militum, a similar writ to the last, to levy the expenses of the knights of the shire for attendance in parliament. *Ibid.*

De facto, in fact, opposed to *de jure*, of right.

The Act 11 Hen. 7, c. 1 (declared by some great writers to be only declaratory of the Common Law), was passed for the protection of all subjects who assist and obey a king *de facto*. It was pleaded to no purpose on the trial of Sir Harry Vane, the judges actually holding that Charles II. had been king *de facto* as well as *de jure* from the moment of his father's death (*Hall. Const. Hist.* ch. xi.).

Defamation, general term for words spoken (slander) or written (libel) to the prejudice of a person's character, in such wise as to support an action by such person against the speaker or writer. The ecclesiastical courts had formerly a concurrent jurisdiction in such an action, but such jurisdiction was abolished in 1855 by 18 & 19 Vict. c. 41. See LIBEL; SLANDER. Consult *Odgers on Libel and Slander*.

Default, omission of that which a man ought to do; neglect.

When a defendant neglects to take certain steps in an action, which are required by the rules of Court, the Court may thereupon give judgment against him by default. The defendant allows judgment by default either intentionally or through mistake or neglect; intentionally, where he has no merits, or where he does so according to a previous agreement with the plaintiff; through mistake, when he delivers a pleading so defective that it is treated as a nullity; and through neglect, when perhaps he has no merits, but omits to appear, plead, etc., within the time limited by the rules of the Court for that purpose. This is an implied confession of the action. See the titles JUDGMENT, APPEARANCE, and PLEADING.

Default Summons, a procedure in the county courts for the summary recovery of a debt or liquidated demand. These summonses are of two kinds: (i.) Ordinary Default Summonses; and (ii.) Special Default Summonses. (i.) An *Ordinary Default Summons* is only applicable to liquidated demands between 2*l.* and 10*l.*, and is not available against a working-class defendant, except in the case of a trade debt, where the claim exceeds 5*l.* The plaintiff can sign judgment after eight days from service if the defendant has failed to give notice of defence stating the facts upon which he relies. (ii.) A *Special Default Summons* is only applicable to liquidated demands over 10*l.*, and cannot be issued against a working-class defendant, except for a trade debt incurred by him. The plaintiff can sign judgment as in (i.) unless the defendant has filed an affidavit of defence within eight days. A special default summons corresponds to the Order XIV. procedure of the High Court.

See County Court Rules, 1903–1935, Order VII., rr. 29B *et seq.*

Defaulter, one who makes default.

Defeasible [fr. *défaire*, Fr., to make void], that which may be annulled or abrogated.

Defeazance (defeasance) [fr. *defaire*, Fr., to undo], a collateral deed accompanying another, providing that upon the performance of certain matters an estate or interest created by such other deed shall be defeated and determined.

A defeazance should recite the deed to be defeated and its date, and must be made between the same parties as are interested in the recited deed or their representatives, and with the same formalities as the deed which created the estate to be defeated; it must be of a thing defeasible, and all the conditions must be strictly performed before the defeazance can be consummated.

So long as it was the law that a condition in a lease not to alien without license was determined by the first license granted (*Dumpor's case*, (1603) 1 *Sm. L. C.*), a defeazance was frequently adopted in order to revive the condition, and so virtually to limit the license to the particular assignment, but the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), replaced by the Law of Property Act, 1925, s. 143, provides that where any license to do any act which without such license would create a forfeiture, or give a right to re-enter, under a condition in a lease, shall be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, etc.

Defective. See IDIOT.

Defectum, challenge *propter*. See CHALLENGE.

Defectus sanguinis, failure of issue.

Defence [fr. *defensio*, Lat.], popularly a justification, protection, or guard; in law, a denial by the defendant of the truth or validity of the plaintiff's complaint.

In *Civil* matters, a defence (which is always in writing or printed) is either (1) by statement of defence, which may be a denial of the plaintiff's right, or may be an allegation of a set-off or counterclaim by the defendant which will cover wholly or in part the claim of the plaintiff; or (2) by a statement of defence raising a point of law, so as to show that the facts alleged by the plaintiff do not disclose any cause of action to which effect can be given by the Court; see R. S. C., Ord. XXV., substituted for the old 'demurrer.' See STATEMENT OF DEFENCE; DEMURRER.

In certain cases, e.g., where the plaintiff's claim is for a liquidated sum only, he may specially indorse his writ, and in such case leave must be obtained to defend (R. S. C. 1883, Ord. III., r. 6; Ord. XIV.).

In *Criminal* matters (which is always by word of mouth) when a person charged is arraigned before the Court, and asked by the Clerk, after stating the charge, 'How say you, are you guilty or not guilty?' he either confesses the charge by saying 'Guilty,' or words equivalent thereto, stands mute, does not answer directly, or pleads to the jurisdiction, or demurs, or pleads specially in bar, or generally, that he is not guilty.

The defence of one's self, and of such as stand in the relations of husband and wife, parent and child, master and servant, is a right which belongs to every person. If a man, or one standing in any of these relations to him, be forcibly attacked in his person or property, it is lawful for him to repel force by force: and the breach of the peace which happens is chargeable upon him only who began the affray. Self-defence, therefore, is justly called the primary law of nature, and it is not, neither can it be, in fact, taken away by the law of society. In the English law it is held an excuse for breaches of the peace, nay even for homicide itself; but care must be taken that the resistance does not exceed the bounds of mere defence and prevention; for then the defender would himself become an aggressor. —3 *Bl. Com.* 3.

Defence Acts. These Acts, 1842 (5 & 6 Vict. c. 94), 1860 (23 & 24 Vict. c. 112), 1864 (27 & 28 Vict. c. 89), and 1873 (36 & 37 Vict. c. 72), allow compulsory purchases by government of land required for defence of the country, as for erection of fortifications, etc., and see next title.

Defence of the Realm Acts, 1914 (4 & 5 Geo. 5, cc. 29, 63), Acts passed to confer on His Majesty in Council power to make regulations during the war with Germany for the defence of the realm. The power was of a very extensive nature. They were consolidated and amended by the Defence of the Realm Consolidation Act, 1914 (5 Geo. 5, c. 8), the earlier Acts being repealed, and further amended by the Defence of the Realm (Amendment) Acts, 1915 (5 Geo. 5, cc. 34, 37), and (5 & 6 Geo. 5, c. 42). These Acts ceased to be of effect on 31st August, 1921, the date fixed by Order in Council as the termination of the war. The Defence of the Realm (Acquisition of Land) Acts, 1916 and 1920, provided for the occupation of land taken by the Government in connection with the war for two years (extended to five)

after the termination of the war. See *A.-G.* v. *De Keyser's Royal Hotel, Ltd.*, 1920, A. C. 508.

Defend, to forbid or deny.

Defendant [*Deft.* abbrev.], the person sued in an action, or indicted for a misdemeanour.

Defendemus (we will defend), a word used in grants and donations, which binds the donor and his heirs to defend the donee, if anyone go about to lay any incumbrance on the thing given other than what is contained in the deed of donation.—*Bract*, l. 2, c. xvi.

Defender, Scots term for defendant.

Defender of the Faith [*fidei defensor*, Lat.], a title of the Sovereign of England, as *Catholic* is of the King of Spain, and *Most Christian* was of the King of France. It is still stamped (F. D. or Fid. Def.) on British coins. These titles were originally given by the Pope; and that of *Defensor Fidei* was first conferred in 1521 by Leo. X. on Henry VIII. (but personally only), as a reward for writing against Martin Luther. In 1538 Pope Paul III., on King Henry's suppressing the monasteries, in the *Bulla citatoria regis Angliæ* 'delivered over Henry's soul to the devil, and his dominions to the first invader,' without, however, expressly withdrawing the title; but by 35 Hen. 8, c. 3, the title was expressly given by parliament, and has continued to be used by all succeeding Sovereigns of this country to this day, notwithstanding the repeal of 35 Hen. 8, c. 3, by 1 & 2 Ph. & M. c. 8, s. 4 (or 20), and the continuation of that repeal by 1 Eliz. c. 1, s. 4 (or 13). See *Introduction to the* 1901 *Continuation of Chitty's Statutes*, at p. xx.

Defendere se per corpus suum, to offer duel or combat as a legal trial and appeal. Abolished by 59 Geo. 3, s. 46. See BATTEL.

Defendere unicâ manu, to wage law; a denial of an accusation upon oath.

Defeneration [fr. *de*, of, and *fœnero*, Lat., to lend upon usury], the act of lending money on usury.

Defensa, a park fenced in for deer.

Defensiva, a lord or earl of the marches, who were the wardens or defenders of their country.—*Cowel.*

Defensive allegation, the mode of propounding facts relied upon as a defence by a defendant in the spiritual courts. He is entitled to the plaintiff's answer upon oath, and may thence proceed to proofs as well as his antagonist.—3 *Steph. Com.*

Defenso. That part of any open field or place that was allotted for corn or hay, and upon which there was no common or feeding, was anciently said to be *in defenso;* so of any meadow ground that was laid in for hay only. The same term was applied to a wood where part was enclosed or fenced, to secure the growth of the underwood from the injury of cattle.—*Dugd. Mon.* tom. 3, p. 305.

Defensum, fenced ground.

Deferred Life Annuities, annuities for the life of the purchaser, but not commencing until a date subsequent to the date of buying them, so that if the purchaser die before that date the purchase money is lost.

Deferred Stock. Stock in a company is frequently divided into 'preferred,' the holders of which are entitled to a fixed dividend payable out of the net earnings of the whole stock, and 'deferred,' the holders of which are entitled to all the residue of the net earnings, after such fixed dividend has been paid to the holders of the 'preferred,' according to the classification in the memorandum or articles. See also Companies Act, 1929, s. 50, in regard to companies limited by shares or limited by guarantee. See as to railway companies the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 13, which limits the power to create such stock to cases where a 3 per cent. dividend has been paid for one year, and puts a fixed maximum dividend on the 'preferred' at the rate of 6 per cent.

De fide et officio judicis non recipitur quæstio; sed de scientiâ, sive error sit juris aut facti. *Bacon.*—(A question cannot be admitted as to the good faith and honesty of a judge; but it may as to his knowledge, whether he be mistaken as to the law or the fact.) And see *Broom's Leg. Max.*

It is an ancient rule that a judge of record is not liable to an action for anything done by him in his judicial character, even for slander; see *Scott* v. *Stansfield*, (1868) L. R. 3 Ex. 220. And see JUDGE.

Definitive Sentence, the final judgment of a spiritual court, in opposition to provisional or interlocutory judgment.

Deforcement, the holding of lands or tenements to which another person has a right; so that this includes as well an abatement, an intrusion, or a disseisin, as any other species of wrong by which he that has a right to a freehold is kept out of possession. It is such a detainer of the freehold from him having the right of property, but not the possession under that right, as falls within none of the injuries of abatement, intrusion, disseisin, or discontinuance.—3 *Steph. Com.*

Deforceor, or **Deforcor,** he that overcomes and casts out by force.—*Blount.*

Deforciant, the person against whom the fictitious action of fine was brought. Abolished by 3 & 4 Wm. 4, c. 74.

Deforciare, to withhold property from the right owner.

Deforciatio, a distress ; a holding of goods for satisfaction of a debt.—*Paroch. Antiq.* 239.

De frangentibus prisonam, Statute of, 1 Edw. 2, st. 2, which enacts that no person shall have judgment of life or member for breaking prison, unless committed for some capital offence.

Defraudation, privation by fraud.

Degradation, a deprivation of dignity ; dismission from office. An ecclesiastical censure, whereby a clergyman is divested of his holy orders. There are two sorts by the canon law ; one, *summary,* by word only ; the other, *solemn,* by stripping the party degraded of those ornaments and rights which are the ensigns of his degree. Degradation is otherwise called deposition, but the canonists have distinguished between these two terms, deeming the former as the greater punishment of the two. There is likewise a degradation of a lord or knight at Common Law and also by Act of Parliament. —13 Car. 2, c. 16.

Degradations, a term for waste in the French law.

Degree [fr. *degré,* Fr. ; *degrat,* O. Fr. ; *gradus,* Lat.], a step ; the difference in relative importance of the same species, also to denote priorities in family relationships ; the state of a person, as to be a barrister-at-law, or to be a Bachelor or Master of Arts of a University ; in criminal law, an accused person is a principal in the first degree (i.e., the actual perpetrator of the crime) or in the second degree (i.e., one who merely aids and abets).

Dehors [Fr.], foreign to, outside, out of the point or document in question.

De idiotâ inquirendo, a Common Law writ to inquire whether a man be an idiot or not. Obsolete.—*Fitz. N. B.* 232 ; but see De Lunatico Inquirendo.

Dei judicium, the old Saxon trial by ordeal, so called because it was thought to be an appeal to God for the justice of a cause, and it was believed that the decision was according to the will and pleasure of Divine Providence. See Ordeal.

De incremento (of increase).

De injuriâ suâ propriâ absque tali causâ (of his own wrong, without any such cause as alleged), more compendiously called the traverse *de injuriâ,* a species of traverse by replication in pleading, now obsolete, which varied from the common form, and which, though confined to particular actions, and to a particular stage of the pleadings, was of frequent occurrence. It always tendered issue ; but, on the other hand, differed (like many of the general issues) from the common form of a traverse, by denying in general and summary terms, and not in the words of the allegation traversed.

This species of traverse occurred in the replication in actions of trespass, trespass on the case (including a species of assumpsit), and in the plea in bar in replevin, but was not used in any other stages of the pleadings.—See *Steph. on Plead.*

All the advantages of this replication were obtained in every case by joining issue, as provided by the C. L. P. Act, 1852, s. 79, now replaced by R. S. C. 1883, Ord. XIX., r. 18.

Deis, or **Dais.** See Dagus.

Dejuration [fr. *dejuro,* Lat.], a taking of a solemn oath.

De jure [Lat.] (by right), opposed to *de facto.* The most striking instance of the recognition by our law of the distinction between things *de jure* and *de facto* is found in the statute-book, which entitles the first Act of Parliament passed in the reign of Charles the Second as of the *twelfth* year of his reign, the previous years having been spent by him in exile, and the affairs of the kingdom having been conducted by the Protector. See De Facto.

De jure judices de facto juratores respondent. (The judges answer to the law, the jury to the fact.) A fundamental rule of the Common Law, upon which the whole system of pleading was built. ' It is of the greatest consequence,' said Lord Hardwicke, ' to the law of England, and also to the subject, that the power of the judge and jury be kept distinct ; that the judge determine the law, and the jury the fact ; if ever they come to be confounded, it will prove the confusion and destruction of the law of England.' A judge sitting without a jury, as in the old Court of Chancery, decides all questions of fact as well as of law.

Delamere, Forest of. See 19 & 20 Vict. c. 13, and 18 & 19 Vict. c. 16.

De la plus belle, Dower, where a wife was endowed with the fairest part of her husband's estate. Being a consequence of the tenure by knight's service, it was vir-

tually abolished by the statute 12 Car. 2, c. 24, which converted those tenures into socage.

Delator [Lat.], an accuser, an informer, a sycophant.

Delatura, an accusation, also the reward of an informer.

Del credere [a phrase borrowed from the Italians, equivalent to our word guaranty or warranty, or the Scots term warrandice], an agreement by which a factor, when he sells goods on credit for an additional commission (called a *del creder* commission), guarantees the solvency of the purchaser and his performance of the contract. Such a factor is called a *del credere* agent; as to his position, see *Thomas Gabriel & Sons* v. *Churchill & Sim*, 1914, 3. K. B. 1272. He is a mere surety, liable only to his principal in case the purchaser makes default; and the agreement need not be in writing, as it is not within s. 4 of the Statute of Frauds (*Sutton & Co.* v. *Grey*, 1894, 1 Q. B. 285).—*Story on Agency; Smith's Merc. Law.*

Delectus personæ (the choice of a person). It is an established principle of the Common Law that, as a partnership can commence only by the voluntary contract of the parties, so, when it is once formed, no third person can be afterwards introduced into the firm without the concurrence of all the partners who compose the original firm. It is not sufficient to constitute the new relation that one or more of the firm shall have assented to his introduction; for the dissent of a single partner will exclude him, since it would, in effect, otherwise amount to a right of one or more of the partners to change the nature, and terms, and obligations of the original contract, and to take away the *delectus personæ*, which is essential to the constitution of a partnership. So stubborn, indeed, is this rule, that even the executors and other personal representatives of a partner do not, in that capacity, succeed to the state and condition of that partner. The Roman Law is directed to the same purpose. It even pressed the rule to a still further extent, and held that a positive stipulation between the partners at the commencement of the partnership, that the heir or personal representative of a partner should succeed him in the partnership, was inoperative and incapable of being enforced. The Common Law, however, treats such a stipulation as valid and obligatory. This also, according to Pothier, was the doctrine of the old French Law; and the modern code of France has expressly adopted it, in opposition to the Roman Law. Such also is the law of Scotland.—*Story on Partnership*, 6.

Delegata potestas non potest delegari. 2 *Inst.* 597.—(A delegated power cannot be delegated.) See DELEGATUS, and DEPUTY.

Delegates, the High Court of, formerly the court of appeal from the Ecclesiastical and Admiralty Court. Abolished, upon the Judicial Committee of the Privy Council being constituted the court of appeal in such cases, in 1832, by 2 & 3 Wm. 4, c. 92.

Delegation, a sending away; a putting into commission; the assignment of a debt to another; the entrusting another with a power to act in the place of those who depute him.

Delegatus non potest delegare. (A delegate cannot delegate.)

The person to whom an office or a duty is delegated cannot lawfully devolve the duty upon another, unless he be expressly authorized so to do. See *Huth* v. *Clarke*, (1890) 25 Q. B. D. 391. It is a cardinal rule in the law of trusts that a trustee cannot delegate his office or discretions for the exercise of which he was appointed trustee as distinguished from acts and discretions done or exercised in an executive or ministerial capacity for him where delegation was justified or necessary, see *Speight* v. *Gaunt*, (1883) 9 A. C. 1; wide powers of delegation have been conferred on trustees by the Trustee Act, 1925, s. 23, and Law of Property Act, 1925, s. 29; Administration of Estates Act, 1925, s. 39, and see the Execution of Trusts (War Facilities) Acts, 1914 and 1915, and TRUSTEES.

Delictum, challenge *propter*. See CHALLENGE.

Deliverance, second, writ of. The judgment of *non pros.* in replevin at Common Law is, that the defendant shall have a return of the goods replevied, and his costs. The plaintiff, however, is not prevented by this judgment from proceeding, for he may sue out the judicial writ of second deliverance, in execution of which the sheriff must again take the goods from the defendant and deliver them to the plaintiff, or the writ will operate in the sheriff's hand as a *supersedeas* of the writ *de retorno habendo*, if the latter writ has not as yet been executed. The proceedings upon this writ are the same as in ordinary cases of replevin, and if the defendant have judgment either upon verdict, demurrer, or of *non pros.*, it is for a return irreplevisable, and he shall have a writ *de retorno habendo*, which being executed, the plaintiff cannot have any further

writ of deliverance.—2 *Chit. Arch. Prac.* See REPLEVIN.

Delivery of a Deed, a requisite to a good deed.

The delivery may be effected either by acts or by words, i.e., by doing something and saying nothing, as merely handing it to the grantee or his agent; or by saying something and doing nothing, as 'I deliver this writing as my act and deed,' or language of a similar import; or by doing and saying something. See *Shep. Touch.* p. 57.

Delivery is of two kinds:—

(*a*) *Absolute*, when the execution perfects the deed, and nothing is left to be done; or

(*b*) *Conditional*, which is the handing of the writing to some third person to be delivered by him as the act and deed of the grantor, when certain specified conditions shall be performed. Until the conditions are performed the instrument is called an escrow, scrowl, or writing. See ESCROW.

A deed takes effect only from delivery; for if the date be false or impossible, the delivery ascertains the time of it.—2 *Bl. Com.* 307.

Deeds take precedence according to the time of their delivery, but their effect may vary according to time of registration, notice to trustees or others. See DEED; LAND REGISTRATION; SETTLED LAND; NOTICE; LAND CHARGES.

Delivery of Possession. This is obtained in an action by writ of possession (see POSSESSION, WRIT OF), and in the case of small tenements by a justice's order (see DESERTED PREMISES).

Delivery Order, a writing directed to the bailee of goods mentioned in the order requesting him to deliver over the goods to the person named in the order. Such an order is a 'document of title' within the Factors Act, 1889 (52 & 53 Vict. c. 45), s. 1 (4), and the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 62 (1). See *Chitty's Statutes*, tits. '*Factors*' and '*Goods*.' As to the effect on innocent parties of a delivery order which is fraudulent, see *Union Credit Bank* v. *Mersey Docks*, 1899, 2 Q. B. 205; *Farquharson Bros.* v. *King*, 1902, A. C. 325.

Delivery, Writ of. See EXECUTION.

De lunatico inquirendo, writ, a process formerly issued to inquire into the condition of a person's mind. Those judges (see Jud. Act, 1873, s. 17; Jud. Act, 1875, s. 7) to whom, by special authority from the sovereign, the custody of idiots and lunatics is entrusted may, upon petition or information, grant a commission in the nature of a writ *de lunatico inquirendo* (which is analogous to the obsolete *de idiotâ inquirendo*), to inquire into the party's state of mind. If the party be found *non compos*, the care of his person, with a suitable allowance for his maintenance, is usually committed to one of his relations or friends, then called his committee.

The proceedings are by way of petition to the Judge in Lunacy under s. 90 of the Lunacy Act, 1890, who either may direct an inquisition with or without a jury, or that an issue be tried before a judge of the High Court or refer the matter to the Master in Lunacy with a view to the appointment of a receiver. Applications for inquisitions are seldom made now, a simpler form of proceeding being available now under the Lunacy Acts, 1890–1922, and the Mental Treatment Act, 1930, and Rules thereunder (S. R. & O. 1930, No. 1083), but inquisitions are required when it becomes necessary to appoint a committee of the person or to prevent a marriage or exodus from the jurisdiction or in regard to procedure in places beyond the jurisdiction of the Court. For the practice, consult *Mills and Poyser's Lunacy Practice*. See UNSOUND MIND.

Delt, a quarry or mine.—31 Eliz. c. 7.

Dem. E.g., *Doe dem. Smith*, Doe, on the demise of Smith. See EJECTMENT.

Demand [fr. *demando*, fr. *mando*, Lat., *manudare*, to hand-give; *mander*, Fr., to send for], a claim, a challenging, the asking of anything with authority, a calling upon a person for anything due. It is either *in deed*, written or verbal, as a demand for rent, or an application for payment of a debt; or *in law*, as an entry on land, distraining for rent, bringing an action. See DETINUE; LIMITATIONS.

Demandant, he who is actor or plaintiff in a real action, because he demands lands.—*Co. Litt.* 127.

Demandress, a female demandant.

Demease, death.

De medietate linguæ (of a moiety of tongue), **Jury.** At Common Law an alien was entitled to be tried by a jury of which one-half consisted of aliens, and the County Juries Act, 1825 (6 Geo. 4, c. 50), s. 47, enacted that, on the prayer of any alien indicted for felony or misdemeanour, the sheriff should return for one-half of the jury a competent number of aliens, if so many there were in the town or place where the trial was had; and if not, then so many aliens as should be found in the same town or place, if any. An alien is now triable in the same manner as if he were a natural-

born British subject; see the British Nationality and Status of Aliens Act, 1914, s. 18, in substitution for the Naturalization Act, 1870. See ALIEN.

Demeine, Demain, or **Demesne** [fr. *demaine*, Fr.], that part of the lands of a manor which the lord has not granted out in tenancy, but which is reserved for his own use and occupation.

De melioribus damnis, judgment. Where the jury, by mistake, severed the damages between several defendants in an action of trespass, the plaintiff might cure the defect by taking judgment *de melioribus damnis* against one, and entering a *nolle prosequi* as to the others.—1 *Chit. Arch. Prac.*, 12th ed.

Demesnial, pertaining to a demesne.

Demidietas, a half or moiety.

De minimis non curat lex. *Cro. Eliz.* 353.—(The law cares not about very trifling matters.) Therefore the courts will not, as a rule, take notice of the fraction of a day (see that title); or grant a new trial on the ground of a verdict being against evidence, if the damages were less than 20*l.*—See *Broom's Max.*

Demi-official, partly official or authorized.

Demise, a grant; it is applied to an estate either in fee or for term of life or years, but most commonly to the latter; it is used in writs for any estate.—2 *Inst.* 483.

The operative word 'demise' in a lease implies a covenant on the part of the lessor for the lessee's quiet enjoyment during the term (*Hart* v. *Windsor*, (1843) 12 M. & W. 85; *Markham* v. *Paget*, 1908, 1 Ch. 697); but an express covenant for quiet enjoyment excludes any implied one (*Line* v. *Stephenson*, (1838) 4 Bing. N. C. 678).

Of the Crown. The death of the sovereign, *demissio regis vel coronæ*, an expression which signifies merely a transfer of property; for when we say the demise of the Crown, we mean only that in consequence of the disunion of the sovereign's natural body from his body politic, the kingdom is transferred or demised to his successor, and so the royal dignity remains perpetual.—*Plowd.* 177. See Succession to the Crown Act, 1707 (6 Anne, c. 41) (c. 7 as commonly printed), s. 8, as to continuance for six months of Privy Councillors, Lord Chancellor, and others; Demise of the Crown Act, 1837 (7 Wm. 4 & 1 Vict. c. 31), as to continuance of military commissions; Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 51, as to continuance of parliament on demise of the Crown; and lastly, the Demise of the Crown Act, 1901 (1 Edw. 7, c. 5), by which 'the holding of any office under the Crown, whether within or without His Majesty's dominions, shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown,' the Act taking effect 'as from the last demise of the Crown,' but containing no express repeals of prior Acts *in pari materiâ* impliedly repealed.

Demise and **Redemise,** mutual leases of the same land, or something out of it. It was properly used upon the grant of a rent-charge, etc.

Demi-vill, a town consisting of five freemen or frank-pledges.—*Spelman.*

Demonstrative Legacy. A legacy of quantity is ordinarily a general legacy; but there are legacies of quantity in the nature of specific legacies, as of so much money, with reference to a particular fund for payment. This kind of legacy is called by the civilians a demonstrative legacy, and it is so far general, and differs so much in effect from one properly specific, that if the fund be called in or fail, the legatee will not be deprived of his legacy, but be permitted to receive it out of the general assets; yet the legacy is so far specific that it will not be liable to abate with general legacies upon a deficiency of assets.—Consult *Roper on Legacies*; *Theobald on Wills.*

Dempster, the Chief Judge of a Tinwald Court in the Isle of Man. See Scott's *Peveril of the Peak*, ch. v. See DEEMSTERS.

In Scotland in former times the word Dempster or Doomster of Court was the designation of an official person whose duty it was to recite the sentence after it had been pronounced by the Court, and recorded by the clerk; on which occasion the Dempster legalized it by the words of form, 'And this I pronounce for doom.' For a length of years the office was held *in commendam* with that of the executioner; it has long been abolished. See Scott's *Heart of Midlothian*, ch. xxiii.

Demurrage, a term used in commercial navigation, signifying an allowance made to the owners of a ship by the freighter, for detaining her in port longer than the period agreed upon for her sailing. It is usually stipulated in charter-parties and bills of lading, that a certain number of days, called running or working or lay days, shall be allowed for receiving or discharging the cargo, and that the freighter may detain the vessel for a further specified time, or as long as he pleases, on payment of so much *per diem* for such overtime. When the contract

of affreightment expressly stipulates that so many days shall be allowed for discharging or receiving the cargo, and so many more for overtime or demurrage days, such limitation is interpreted as an express stipulation on the part of the freighter that the vessel shall in no event be detained longer; if detained the charterer, is liable for damages for breach of contract for which the rate of demurrage is generally the measure. This holds even in cases where the delay is not occasioned by any fault on the freighter's part, but is inevitable. If, for example, a ship be detained, owing to the crowded state of the port for a longer time than is allowed by the contract, demurrage is due; and it is no defence to an action for demurrage that it arose from port regulations, or even from the unlawful acts of the custom-house officers. Demurrage is not, however, claimable for a delay occasioned by the hostile detention of the ship, or the hostile occupation of the intended port; nor is it claimable for any delay wilfully occasioned by the master, or owners, or crew of the vessel. The claim for demurrage ceases as soon as the ship is cleared out and ready for sailing, though she should be detained by adverse winds or tempestuous weather.

Demurrer [fr. *demoror*, Lat.; or *demorrer*, Fr., to wait or stay], a pleading which admits the facts as stated in the pleading of the opponent, and referring the law arising thereon to the judgment of the Court, waits until by such judgment the Court decides whether he is bound to answer. 'The office of a demurrer is simply to state that the plaintiff has not made a sufficient case to entitle him to relief in equity.' *Wood* v. *Midgley*, (1854) 5 De G. M. & G. 44, per Turner, L.J.

In civil matters this mode of pleading is abolished by R. S. C. 1883, Ord. XXV., r. 1, but subsequent rules of the same Order allow points of law raised on the pleading of any party to be disposed of before trial by order of the Court or a judge, and pleadings to be struck out if they disclose no reasonable cause of action.

In criminal prosecutions a demurrer may be resorted to, when the fact as alleged is allowed to be true, but the defendant takes exception in point of law to the sufficiency of the indictment or information on the face of it, as if he insist that the fact as stated is no felony, treason, or whatever the crime is alleged to be. It is seldom resorted to.

Demy-sangue, half-blood.

Den, a valley.—*Blount.*

Den and Stroud, a liberty for ships or vessels to run or come ashore.—*Pla. tem. Edw.* 1. *Cowel.*

Dena terræ, a hollow place between two hills; a little portion of woody ground; a coppice.

Denariate, as much land as is worth one penny *per annum.*

Denarii, a general term for any sort of *pecunia numerata*, or ready money.—*Paroch. Antiq.* 320.

Denarii de caritate, customary oblations made to a cathedral church at Pentecost.

Denarii S. Petri (commonly called Peter's Pence), an annual payment on St. Peter's feast of a penny from every family to the pope, while the Roman Catholic religion was established. Abolished by 25 Hen. 8, c. 21.

Denarius, the chief silver coin among the Romans, worth 8*d.*; it was the seventh part of a Roman ounce; also an English penny. The denarius was first coined five years before the first Punic war, 269 B.C. In later times a copper coin was called denarius.—*Smith's Dict. Antiq.*

Denarius Dei, God's penny, or earnest given and received by parties to contracts, etc., paid in former times to the church or poor.

Denarius tertius comitatus, a third part or penny of the fines and other profits of the county court, which was paid to the earl of the county, the other two parts being reserved to the Crown.—*Paroch. Antiq.* 418.

Denbara or **Denber** [fr. *den*, Sax., a vale, and *berg*, a barrow or hog], a pen for hogs; a swine-court.

Denelage [*Dane*], the laws which the Danes enacted whilst they had the dominion in England.

Denial. See TRAVERSE.

Denization, the act of enfranchising or making free. See next title.

Denizen [fr. *donaison*, *donison*, O. Fr., a gift], an alien born who has obtained, *ex donatione regis*, letters-patent to make him (either permanently or for a time) an English subject. The granting of such letters-patent is a branch of the Royal Prerogative, and is subject to no restrictions whatever. The denizen might hold lands by purchase or devise, which an alien might not, but could not take by inheritance before the Naturalization Act, 1870; for his parent, through whom he must claim, being an alien, had no heritable blood and therefore could convey none to his son. No denizen can be of the Privy Council, or either House

of Parliament, or have any office of trust civil or military.

By the British Nationality and Status of Aliens Act, 1914, s. 52, nothing in the Act contained affects the grant of letters of denization by His Majesty in the exercise of his prerogative. See further ALIEN and NATURALIZATION.

Denman's (Lord) Act (amending the law of evidence (6 & 7 Vict. c. 85 (the Evidence Act, 1843)) provides that no person offered as a witness shall be excluded by reason of incapacity from crime or interest from giving evidence.

Denman's (Mr.) Act, 28 & 29 Vict. c. 18 (the Criminal Procedure Act, 1865), allowing counsel to sum up the evidence where the prisoner is defended by counsel, proof to be given of contradictory statements of adverse witness, and of previous conviction of witness, and comparison to be made of disputed handwriting. The Act, which adapted to criminal trials parts of the Common Law Procedure Act, 1854, applies to civil proceedings in all courts, and the adapted parts of the Act of 1854 have been repealed in the course of Statute Law Revision.

De nocumento Amovendo. A writ for an order in abatement of nuisance issuable out of the Crown Office upon or after conviction of the defendant upon indictment. *Hals. L. of E.*, title HIGHWAYS, ETC., referring to *Short and Mellor, Pr. of the Crown Office*, 2nd ed., p. 560.

De non apparentibus et non existentibus eadem est ratio. 5 *Rep.* 6.—(As to things not apparent, and those not existing, the rule is the same.) The maxim applies where a party seeks to rely on writings not produced in court, which have, on account of such non-production, to be treated as non-existent (*Broom's Max.*), unless they can be proved by secondary evidence.

De non residentia clerici regis, an ancient writ where a parson was employed in the royal service, etc., to excuse and discharge him of non-residence. 2 *Inst.* 264.

De novo (afresh ; anew).

Denshiring of land (otherwise called *burn-beating*), a method of improving land by casting parings of earth, turf, and stubble into heaps, which when dried are burned into ashes for a compost.—*Jac. Law Dict.*

Dentist. The Medical Act, 1858 (21 & 22 Vict. c. 90), s. 48, enabled Her Majesty, by charter, to grant to the Royal College of Surgeons of England power to institute examinations, etc., for dentists, and the Dentists Act, 1878 (41 & 42 Vict. c. 33), provides for the registration of dentists. The Dentists Act, 1921 (11 & 12 Geo. 5, c. 21), provides that no person, unless registered under the Act of 1878, shall practise or hold himself out, whether directly or by implication, as practising or as being prepared to practise dentistry under a penalty not exceeding 100*l.* Certain persons are, however, allowed to make extractions where no registered person is available. The Act establishes a Dental Board, who may admit, in addition to those admissible under s. 6 of the principal Act, any person of good character over 23 years of age on 28th July, 1921, who (1) had for any five years since July, 1914, been practising dentistry in the United Kingdom, or, if a chemist, was in full practice immediately before 28th July, 1921 ; (2) if on 28th July, 1921, he had practised in the United Kingdom, passes a prescribed examination before 28th July, 1923 ; (3) was a member of the Incorporated Dental Society before 28th July, 1921 ; (4) if a dental mechanic for five years since July, 1914, passes a prescribed examination before 28th July, 1923. An amending Act (13 & 14 Geo. 5, c. 36) requires the Dental Board to admit certain other persons who served during the late war in His Majesty's forces. The Acts of 1921 and 1923 will tend to insure that all those practising dentistry are trained and subject to professional discipline. See also Regulations of the Dental Board of the United Kingdom, S. R. & O. 1923, No. 1615 (as amended, further amended by S. R. & O. 1930, No. 577 ; 1933, No. 16 ; 1934, No. 18, 1412). See also the Medical and Dentists Acts Amendment Act, 1927 (17 & 18 Geo. 5, c. 39), which gives effect to certain agreements between Great Britain, the Irish Free State and Northern Ireland as to registration and control of medical practitioners and dentists.

Denumeration, the act of present payment.—*Scots term.*

Deodand [fr. *deo dandum*, Lat.], a personal chattel which had been the immediate occasion of the death of any reasonable creature ; it was forfeited to the Crown to be applied to pious uses and distributed in alms by the high almoner ; but the right to deodands had been for the most part granted out to the lords of manors or other liberties to the perversion of the original design. The law made the following extraordinary distinction, that no deodand was due where an infant under the age of discretion was killed

by a fall from a cart or horse or the like, not being in motion, whereas if an adult person fell thence and was killed, the thing was certainly forfeited. In all indictments for homicide, the instrument of death and the value were presented and found by the grand jury (as that the blow was given by a certain bludgeon, value 9*d.*), that the Crown or the grantee might claim the deodand ; for it was no deodand unless it was presented as such by a jury of twelve men. Deodands were abolished by 9 & 10 Vict. c. 62. See *Jac. Law Dict.; Williams on Rights of Common*, pp. 3, 293.

De odio et atiâ, an obsolete writ which commanded the sheriff to inquire whether a prisoner charged with murder was committed on general cause of suspicion, or merely *propter odium et atiam*, for hatred and ill-will, with a view, if the latter were found to be the case, of afterwards issuing another writ to admit him to bail.—1 *Reeves*, 252.

De onerando pro ratâ portionis, an ancient writ, where a person was distrained for rent which ought to be paid by others proportionably with him. *Fitz. N. B.* 234 ; *New Nat. Br.* 586.

Departure [fr. *decessus*, Lat.], in pleading, when a party deserts the ground that he took in his last antecedent pleading and resorts to another.

The rule against departure was necessary to prevent the retardation of the issue.

By R. S. C. 1883, Ord. XIX., r. 16, it is ordered that ' no pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.'

Depeculation, a robbing of the prince or commonwealth ; an embezzling of the public treasure.

Dependant and **Dependent.** Under s. 4 of the Workmen's Compensation Act, 1925 :—

(1) The dependants of a workman entitled to claim compensation under this Act where the injury results in death are such of the members of the workman's family as were wholly or in part dependent upon the earnings of the workman at the time of his death, or would but for the incapacity due to the accident have been so dependent, and where the workman, being the parent or grandparent of an illegitimate child, leaves such a child so dependent upon his earnings, or, being an illegitimate child, leaves a parent or grandparent so dependent upon his earnings, shall include such an illegitimate child and parent or grandparent respectively.

(2) A person shall not be deemed to be a partial dependant of another person unless he was dependent partially on contributions from that other person for the provision of the ordinary necessaries of life suitable for persons in his class and position.

(3) ' Member of a family ' means wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister.

A posthumous illegitimate child can be a dependant (*Orrell Colliery* v. *Schofield*, 1909, A. C. 433. The illegitimate child of a daughter of the workman may be a dependant within the Act (*Pritchard* v. *Bettisfield Colliery Ltd.*, 1925, 2 K. B. 284). A brother or sister under the age of fifteen may be a child dependent upon the workman's earnings within s. 8 of the Act (*Faulkner* v. *Owners of Ship Sutton*, 1927, 1 K. B. 207 and *Sholts Iron Co. Ltd.* v. *Curran*, 1929, A. C. 409).

Under s. 2, sub-s. (1) ' when a dependant dies before a claim under this Act is made, or if a claim has been made, before an agreement or award has been arrived at or made, the legal personal representative of the dependant shall have no right to the payment of compensation.'

If several members of a family who contribute to the maintenance of the household are killed, the family is partly dependent on the earnings of each (*Hodgson* v. *West Stanley Colliery Co.*, 1910, A. C. 229).

Dependency. A region which is subject to British jurisdiction for all practical purposes although no formal annexation has taken place, e.g., Protectorates. Of these, Cyprus has been formally annexed by S. R. & O. 1914, No. 1629. Egypt was declared independent in February, 1922. See Foreign Jurisdiction Acts, 1890–1913, also *Halsbury, L. of E.*, tit. ' *Dependencies, etc.*'

Deponent [fr. *depono*, Lat., to lay down], a person who makes an affidavit ; a witness ; one who gives his testimony in a court of justice. The person who made an affidavit used formerly to speak of himself throughout the affidavit as the deponent: ' this deponent saith,' etc. ; but according to the modern practice all affidavits must be made in the first person. See title DEPOSITION.

Depopulatio agrorum, destroying and ravaging a country.—3 *Inst.* 204.

Deportation, transportation ; exile into a remote part of the kingdom, with prohibition to change the place of residence. The Penal Servitude Acts, 1853 (16 & 17 Vict. c. 99), and 1857 (20 & 21 Vict. c. 3), substituted terms of penal servitude for transportation sentences for less than fourteen years, and the latter Act abolished transportation entirely. See TRANSPORTATION. Exile, an abjuration,

which is a deportation for ever into a foreign land, was anciently with us a civil death. Compare the power of making an expulsion order or deportation order under Order of the Secretary of State, under the Aliens Restriction Acts, 1914 (4 & 5 Geo. 5, c. 12), and 1919 (9 & 10 Geo. 5, c. 92). See ALIEN, and *Re Goldfarb*, (1936) 52 T. L. R. 254.

Depose, to lay down ; to lodge ; to degrade from a throne or high station ; to affirm in a deposition.

Deposit, money paid to a person as an earnest or security for the performance of some contract, especially a contract for the sale of real estate. Also a naked bailment of goods to be kept for the bailor without recompense, and to be returned when the bailor shall require it. The appellation and the definition are both derived from the civil law. *Depositum est quod custodiendum alicui datum est.* It is, in the civil law, divisible into two kinds : (1) *necessary*, made upon some sudden emergency, and from some pressing necessity ; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity, when property is confided to any person whom the depositor may meet without proper opportunity for reflection or choice, and thence it is called *miserabile depositum ;* (2) *voluntary*, which arises from the mere consent and agreement of the parties. The Common Law has made no such division. There is another class of deposits, called *involuntary*, which may be without the assent or even knowledge of the depositor ; as lumber, etc., left upon another's land by the subsidence of a flood.

The civilians again divide deposits into *simple deposits*, made by one or more persons having a common interest, and *sequestrations*, made by one or more persons, each of whom has a different and adverse interest in controversy touching it ; and these last are of two sorts, *conventional*, or such as are made by the mere agreement of the parties, without any judicial act ; and *judicial*, or such as are made by order of a court in the course of some proceeding.

There is another class of deposits called *irregular*, as when a person, having a sum of money which he does not think safe in his own hands, confides it to another, who is to return to him, not the same money, but a like sum when he shall demand it. There is also a *quasi* deposit, as where a person comes lawfully to the possession of another person's property by finding it ; and a *special* deposit of money or bills in a bank, where the specific money, the very silver or gold coin, or bills deposited, are to be restored and not an equivalent.—*Story on Bailments*, ch. ii.

A bank deposit is a mere debt.

In the case of contracts for the sale of land a deposit is regarded, not only as a part payment of the purchase money, but also as a guarantee that the contract shall be completed by the purchaser, and may be forfeited if he make default (*Howe* v. *Smith*, (1884) 27 Ch. D. 89 ; *Hall* v. *Burnall*, 1911, 2 Ch. 551). See Law of Property Act, 1925, ss. 45 and 49. By s. 49 (2), where the Court refuses to grant specific performance of a contract or in any action for the return of a deposit the Court may, if it thinks fit, order the repayment of any deposit, see also Sale of Goods Act, 1893, s. 5.

A deposit of title-deeds as a security for the repayment of a borrowed sum of money constitutes an equitable mortgage which does not require registration to establish its validity or priority of effect, see LAND CHARGES ; NOTICE ; RESCISSION ; STAKEHOLDER.

Deposit Account, an account of sums lodged with a bank and acknowledged to be so lodged by a ' deposit receipt ' given by the banker to the depositor, not to be drawn upon by cheques, and usually not to be withdrawn except after a fixed notice, but bearing interest either at some fixed rate, or very often at 1 per cent. less than the Bank of England rate, and therefore at a rate varying from time to time. The depositor is only a creditor of the bank for the amount of deposit and interest (if any). See BANK.

As to the power of an incorporated building society to receive money on deposit, see Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 15 ; Building Societies Act, 1894 (57 & 58 Vict. c. 47), ss. 14 and 15.

Deposit of Wills of living persons at the Principal Probate Registry, Somerset House. See WILLS.

Depositary, one with whom anything is lodged in trust, as ' depository ' is the place where it is put. The obligation on the part of the depositary is, that he keep the thing with reasonable care, and, upon request, restore it to the depositor, or otherwise deliver it, according to the original trust.

Deposition : (1) Depriving of a dignity, etc. (2) The act of giving public testimony, technically, the evidence put down in writing by way of answer to questions. It is an incontrovertible rule at Common Law, that when the witness himself can be produced, his deposition may not be read, for it is not

the best evidence. But it may be read not only where it appears that the witness is actually dead, but in all cases where he is dead for all purposes of evidence: as where diligent search has been made for the witness and he cannot be found; where he resides in a place beyond the jurisdiction of the Court; or where he has become lunatic. See now, however, R. S. C. 1883, Ord. XXXVII., rr. 1, 5; and EVIDENCE; PERPETUATE TESTIMONY, BILLS TO.

As to deposition in criminal proceedings (in connection with which the term is most commonly used), see especially the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 17, and the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), ss. 6, 7. Under the first of these Acts, the evidence upon which a prisoner is committed for trial by justices of the peace is taken down, and may be read at the trial upon it being proved that the witness is dead or unable to travel, and that the prisoner or his counsel or solicitor had a full opportunity of cross-examining the witness. Under the second, the testimony of any person dangerously ill may be taken down by a justice of the peace at any time before trial, and read at the trial upon it being proved that the witness is dead or that he will never be able to travel or give evidence, and that there was a like opportunity of cross-examination.

As to the taking of depositions and caution to and statement of accused on proceedings before examining justices; and the reading of depositions at trial, see Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86), ss. 12, 13.

As to the depositions of children and young persons, see Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), ss. 38, 42, 43.

The written copy of the evidence of a witness in an action in the High Court taken before an examiner or other person under R. S. C. Ord. XXXVII., r. 5, is also called a deposition.

De prærogativa regis, the statute 17 Edw. 2, st. 1, which enacts, in affirmance of the Common Law, that the King shall have ward of the lands of natural fools, taking the profits without waste or destruction, and shall find them necessaries; and after the death of such idiots, he shall render the estate to the heirs. This was in order to prevent such idiots from aliening their lands, and their heirs from being disinherited.

The Act is not repealed by the consolidating Lunacy Act, 1890.

Deprivation, taking away from a clergyman his patronage, vicarage, or other spiritual promotion or dignity, either, first, by sentence declaratory in the proper Court for fit and sufficient causes; such as conviction of infamous crime; for heresy, gross immorality, and the like, or for farming or trading contrary to law, after two former convictions for the same offence; or, secondly, in pursuance of divers penal statutes, which declare the benefice void, for some nonfeasance or neglect, or else some malfeasance or crime, as for simony; for neglecting to read the liturgy and articles in the church, and to declare assent to the same within two months after induction; or for using any other form of prayer than the liturgy of the Church of England; or for continued neglect, after order of the bishop, followed by sequestration, to reside on the benefice; and see as to deprivation for immorality, etc., the Clergy Discipline Act, 1892 (55 & 56 Vict. c. 32), s. 6 (1) (b), and *Oxford (Bishop)* v. *Henly*, 1909, P. 319.

Deputy [fr. *depute*, Fr.], one who governs and acts instead of another, or who exercises an office, etc., in another man's right.

By the Sheriffs Act, 1887 (see SHERIFF), every sheriff is directed to appoint a sufficient deputy having an office within a mile of the Inner Temple Hall, for the receipt of writs, etc.

Judges of the Supreme Court cannot act by deputy; but County Court judges can under County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), ss. 11, 12, 15, in case of illness or unavoidable absence; and the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 166, enables recorders to appoint deputies in similar cases.

As to appointment of deputy to recorder, stipendiary magistrate, or clerk of the peace, in case of inability of recorder, etc., himself to appoint, see the Recorders, Stipendiary Magistrates, and Clerks of the Peace Act, 1906 (6 Edw. 7, c. 46). A deputy cannot make a deputy.—9 *Rep.* 49.

Deputy Lieutenant, the deputy of a lord lieutenant of a county. Each lord lieutenant has several deputies.

Deputy Steward, a steward of a manor may depute or authorize another to hold a court; and the acts done in a court so holden will be as legal as if the court had been holden by the chief steward in person. So an under-steward or deputy may authorize another as sub-deputy, *pro hac vice*, to hold a court for him; such limited authority not being inconsistent with the rule *delegatus non potest delegare*. By the Copyhold Act,

1894, s. 94, and the Law of Property Act, 1922, 'deputy steward' is included in the statutory meaning of 'steward.'

This deputy or under-steward may be appointed either in writing or by parol, although the appointment of the chief steward should not contain an express authority for that purpose.

De quibus sur disseisin, a writ of entry now abolished.

Der [fr. *dar*, Brit.], water.

Deraign, or **Dereyn** [fr. *derationare*, Lat.; *deraigner*, or *deranger*, Fr.], to confound, to displace, also to prove.—*Glanv.* i. 2, c. 6.—*Jac. Law Dict.*

De rationabili bonorum parte, a writ, anciently given to the wife and children of a man, to recover their 'reasonable parts' of his goods, which he could not bequeath away from them. See REASONABLE PARTS.

Derelict, a vessel forsaken at sea. As to public notice of its whereabouts, see Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 & 23 Geo. 5, c. 9), s. 24.

Derelict Canals. See Railway and Canal Traffic Act, 1888, s. 45.

Derelict Lands, those suddenly left by the sea, as when the sea shrinks back below the usual watermark. These belong to the king, but if the sea shrink back so slowly that the gain be by little and little, it shall go to the owner of the lands adjoining.—2 *Bl. Com.* 261; *Coulson and Forbes on the Law of Waters.*

Derivativa Potestas non potest esse major primitiva. Power derived cannot be greater than that from which it is derived.

Derivative Deed. A secondary deed of conveyance or settlement of property, which presupposes some other conveyance primary or precedent, and only serves to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. See COMPOUND SETTLEMENT.

Derivative Interests in Copyholds. See s. 142 and 12th Schedule to the L. P. Act, 1922.

Derivative Settlement, in Poor Law that settlement (see SETTLEMENT) which a poor person may acquire from his parent's settlement, if he has none of his own. The Poor Law Act, 1930 (20 Geo. 5, c. 17), s. 85, enacts:—

(1) Until a person acquires a settlement of his own or derives a settlement from a husband, that person—

(*a*) if a legitimate child, shall take and follow, up to the age of sixteen, the settlement of his father, or if and so long as his father has no settlement, the settlement which his mother had immediately before her marriage to his father, but if after the death of the father the mother acquires a settlement (not being a derivative settlement) shall take and follow, up to the age of sixteen, that settlement;

(*b*) if an illegitimate child, shall take and follow, up to the age of sixteen, the settlement of his mother;

and shall in either case retain that settlement which under the foregoing provisions of the section he had at the age of sixteen.

(2) Deals with the settlement of a married woman.

(3) If any person, whether legitimate or illegitimate, who has attained the age of sixteen, has not acquired a settlement nor derived one from a husband, and it cannot be shown what settlement has been derived from a parent without inquiring into the derivative settlement of that parent, that person shall be deemed to be settled in the county or county borough in which he was born.

See as to the previous law, 39 & 40 Vict. c. 61, and *Reigate Union* v. *Croydon Union*, (1889) 14 App. Cas. 465, and *Lexden and Winstree Union* v. *Windsor Union*, 1921, 2 K. B. 143.

Derogation, the act of weakening or restraining a former law or contract. It is an established rule that a man may not derogate from his own grant. See *Wheeldon* v. *Burrows*, (1879) 12 C. D. 31, and *Pearce* v. *Maryon-Wilson*, 1935, 1 Ch. 188 (*Building Scheme*), and EASEMENTS.

Derogatory clause, a clause in a legal document by which the right of subsequently altering or cancelling it is abrogated, and the validity of a later document, doing this, is made dependent on the correct repetition of the clause and its formal revocation. Obsolete.—*Oxf. Dict.* As to such a clause in a will, see *Swinburne*, Pt. VII., s. xiv. p. 977; *Jarman on Wills*, 6th ed. p. 28.

Descender, Writ of Formedon in, an abolished process.—*Fitz. N. B.* 21; 1 *Steph. Com.*

Descent, one of the two chief methods of acquiring an estate in lands before 1926. It is defined in the interpretation clause of the Inheritance Act, 1833 (3 & 4 Wm. 4, c. 106), as 'the title to inherit lands by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue.' —Consult *Watkins on Descents*; *Sugden's R. P. Stats.*, ch. iv. See INHERITANCE.

Descent Cast, the devolving of realty upon the heir on the death before 1926 of his ancestor intestate.

Deserted Premises. Landlords are enabled to recover possession of such premises by 11 Geo. 2, c. 19, s. 16; 57 Geo. 3, c. 52; and 3 & 4 Vict. c. 84, s. 13. See *Woodfall's Land and Ten.* And see EJECTMENT.

Desertion, (1) the criminal offence of abandoning the naval or military service without license. See ss. 12 *et seq.* of the Army Act, 1881, replacing similar sections of the annual Mutiny Acts, and *Reg.* v. *Cuming*, (1887) 19 Q. B. D. 13.

Also (2) an abandonment of a wife, a matrimonial offence, for which the remedy is under Judicature Act, 1925, s. 185, by which a sentence of judicial separation may be obtained either by the husband or wife on the ground of desertion, without cause, for two years and upwards; and see Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 21, as to orders for the protection of the property of wives deserted by their husbands; and the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), repealing and re-enacting the Married Women (Maintenance in Case of Desertion) Act, 1886, under which a deserted wife may obtain an order from justices of the peace that the husband pay her such weekly sum, not exceeding 2*l.*, as the justices consider to be in accordance with his means and hers.

Desertion for this purpose is regarded as a continuing act (*Piper* v. *Piper*, 1901, P. 198). As to whether the obtaining of an order under the Act of 1895 will prevent the two years' 'desertion without cause' from running and so prevent the wife from obtaining a judicial separation under the Act of 1857, see *Failes* v. *Failes*, 1906, P. 326. Desertion for two years will revive condoned adultery (*Houghton* v. *Houghton*, 1903, P. 150).

Adultery by a husband after some years' separation by mutual consent is not evidence of desertion, and a wife without cause refusing marital intercourse cannot allege 'desertion' by the husband 'without reasonable excuse' if in consequence he refuses to live with her (*Synge* v. *Synge*, 1901, P. 317).

In Scotland, malicious desertion by one spouse of the other for four years is a ground of divorce. It must be shown that there was wilful non-adherence; that it has been persisted in for four years; that it was without reasonable cause: and that the deserted spouse was throughout the four years desirous of co-habitation, and ready to renew it.

Designs. The registration of and rights in designs are governed by the Patents and Designs Act, 1907, as amended by the Patents and Designs Acts, 1919, 1928 and 1932 (cited as the Patents and Designs Acts, 1907 to 1932), and the Patent Rules, 1932 S. R. & O. 1932, No. 873.

'Design' means only the features of shape, configuration, pattern or ornament applied to any article by any industrial process or means, whether manual, mechanical, or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction, or which is in substance a mere mechanical device (s. 19, Act of 1919).

And s. 49 of the principal Act, as amended, provides as follows:—

49.—(1) The comptroller may, on the application made in the prescribed form and manner of any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design under this Part of this Act.

(2) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.

(3) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal to the Appeal Tribunal, and the Appeal Tribunal shall, after hearing the applicant and the comptroller, if so required, make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(4) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(5) A design when registered shall be registered as of the date of the application for registration.

Registration gives a copyright in the design for 5 years (s. 53), and for the nature of the protection afforded, see *Harper & Co.* v. *Wright & Co.*, 1896, 1 Ch. 140. The registration of a design can be cancelled if it is used for manufacture exclusively or mainly outside the United Kingdom (s. 58). As to protection in a foreign state, see s. 91.

Designatio personæ, the description of a person or a party to a deed or contract.

De similibus idem est judicium. 7 *Co.* 18. —(In like cases the judgment is the same.)

De son tort, executor, a stranger who takes upon himself to act as executor. See Executor de son Tort.

Desperate Debt, a hopeless debt; an irrecoverable obligation.

Despitus, a contemptible person.

Desponsation, the act of betrothing persons to each other.

Despot [fr. δεσπότης, Gk., a governor, a ruler], an absolute prince: one who governs with unlimited authority. Despot was a title of quality given to the princes of Wallachia, Servia, and some of the neighbouring countries.

Despotism, absolute power.

Desrenable [Fr.], unreasonable.

Destructive Insects. In order to prevent the introduction and spread of any insect, fungus, or other pest destructive to agricultural or horticultural crops, the Board of Agriculture and Fisheries may, by virtue of the Destructive Insects and Pests Act, 1907, make orders and exercise powers similar to those given by the Destructive Insects Act, 1877. The Forestry Act, 1919, transfers these powers to the Forestry Commissioners in so far as they relate to timber and forest trees. See COLORADO BEETLE.

Desuetude, disuse. In Scotland an Act is said to fall into desuetude if, being of ancient date, it has for long been disregarded in practice. The Courts will not then give effect to it. The doctrine probably only applies to Acts of the Scots Parliament.

Detachiare, to seize or to take into custody another person's goods, etc., by attachment or other process of law.

Detainer, forcible. See FORCIBLE ENTRY.

Detainer, unlawful. The wrongful keeping of a person's goods, although the original taking may have been lawful. As if I distrain another's cattle, *damage feasant*, and before they are impounded he tenders me sufficient amends; now, though the original taking was lawful, my subsequent detention of them, after tender of amends, is not lawful, and he shall have an action of replevin against me to recover them, in which he shall recover damages for the *detention*, and not for the *caption*, because the original taking was lawful.—3 *Steph. Com.*, and see DETINUE.

Detainer, writ of, one of the five forms of process prescribed by the 2 Wm. 4, c. 39, s. 1, for the commencement of a personal action against a person already in the prison of one of the courts. Superseded by 1 & 2 Vict. c. 110, ss. 1, 2.

A process lodged with the sheriff against a person in his custody was called a detainer; the officer, therefore, always searched the sheriff's office to see if there were any detainers lodged there against a person in his custody before he discharged him.

De tallagio non concedendo, or Statutû de Tallag', attributed in 2 *Inst.* 532 to the 34th year of Edward the First, by which as translated in the Revised Statutes :—

> No tallage or aid shall be [taken] or laid, or levied by us or our heirs in our realm without the good-will and assent of the archbishops, bishops, earls, barons, knights, burgesses and other [freemen of the land] or free commons of our realm.

Determinable Life Estates, estates for life, which may determine upon future contingencies before the life for which they are created expires. As if an estate be granted to a woman during her widowhood, or to a man until he is promoted to a benefice; in these and similar cases, whenever the contingency happens—when the widow marries, or when the grantee obtains the benefice—the respective estates are absolutely determined and gone. Yet, while they subsist, they are reckoned estates for life; because they may by possibility last for life, if the contingencies upon which they are to determine do not sooner happen.—2 *Bl. Com.* 121. See now ESTATE FOR LIFE, and Settled Land Act, 1925, s. 20 (1) (vi.).

Determinable Fee. A fee determinable by limitation or condition, S. L. Act, 1925, ss. 1 and 117 (1) (iv.), and see *Challis R. P.*, 3rd ed. By the First Sched., L. P. Act, 1925, such fees, if not capable of taking effect as legal estates under Part I. of that Act, have been converted into equitable interests. Certain estates in fee simple which by statute are liable to be divested, and fee simple vested in corporations are legal estates, see s. 7 (1) and (2), L. P. Act, 1925, and see BASE FEE.

Detinet (he detains), an action of debt, which lay for the specific recovery of goods, under a contract to deliver them.—1 *Reeves*, 159. No longer a technical expression.

Detinue, an action by a plaintiff who seeks to recover the goods *in specie*, or on failure thereof the value, and also damages for the detention. The grounds of the action are: (1) a property in the plaintiff, either absolute or special (at the time of action brought) in personal goods, which are capable of being ascertained; (2) a possession in the defendant by bailment, finding, etc.; (3) an unjust detention on the part of the defendant.

The form of action of detinue was abolished by the Judicature Acts, but an action brought for the return of a specific chattel is still called an action of detinue. The vexed question as to whether detinue is or was founded on tort or contract is now only of importance in relation to costs (*Bryant* v. *Herbert*, (1878) 3 C. P. D. 389); and in bankruptcy.

As to the actual recovery of a chattel detained, see R. S. C. 1883, Ord. XLVIII., taken from C. L. P. Act, 1852, s. 78, by which a writ of delivery may be issued ordering the sheriff to distrain upon the defendant's goods till he deliver the chattel; and as to specific delivery of goods sold, see Sale of Goods Act, 1893, s. 52, re-enacting the repealed s. 2 of the Mercantile Law Amendment Act, 1856.

An action of detinue must be brought within six years (Limitation Act, 1623 (21 Jac. 1, c. 16, s. 3)), but time will only begin to run from the date of the demand (*Miller* v. *Dell*, 1891, 1 Q. B. 468).

Detinuit (he detained).

Detractari, to be torn in pieces by horses. —*Fleta* l. 1, c. xxxvii.

Detunicari, to discover or lay open to the world.—*Matt. Westm.* 1240.

Deuterogamy [fr. δεύτερος, Gk., second, and γάμος, marriage], a second marriage.

Devadiatus, or **Divadiatus,** an offender without sureties or pledges.—*Cowel.*

Devastavit (he has wasted), a devastation or waste of the property of the deceased person by an executor or administrator by extravagance or misapplication of the assets, for which he is liable. 'A devastavit or waste in an executor or administrator is when he doth misemploy the estate of the deceased, and misdemean himself in the managing thereof, against the trust reposed in him': *Shep. Touch.* p. 485. An action founded on a devastavit will be barred after six years by the Statute of Limitations (*Lacons* v. *Wormall*, 1907, 2 K. B. 350; *Re Blow*, 1914, 1 Ch. 233), and s. 8 (3) of the Trustee Act, 1888 (51 & 52 Vict. c. 59).

Development Commissioners. Eight persons so named can be appointed by the king, who also nominates the chairman, under s. 3 of the Development and Road Improvement Funds Act, 1909 (9 Edw. 7, c. 47), as amended by the Act of 1910 (10 Edw. 7 and 1 Geo. 5, c. 7); 10 & 11 Geo. 5, c. 72; 13 & 14 Geo. 5, c. 21. The Commissioners are appointed for the purposes of recommendation to the Treasury in regard to advances which the Treasury is empowered to make out of a fund to be called the Development Fund created and provided for by the Act of 1909, for any of the following purposes :—

(*a*) Aiding and developing agricultural and rural industries by promoting scientific research, instruction and experiments in the science, methods and practice of agriculture (including the provision of farm institutes), the organization of co-operation, instruction in marketing produce, and the extension of the provision of small holdings; and by the adoption of any other means which appear calculated to develop agricultural and rural industries;

(*b*) Forestry (including (1) the conducting of inquiries, experiments, and research for the purpose of promoting forestry and the teaching of methods of afforestation; (2) the purchase and planting of land found after inquiry to be suitable for afforestation);

(*c*) The reclamation and drainage of land;

(*d*) The general improvement of rural transport (including the making of light railways, but not including the construction or improvement of roads);

(*e*) The construction and improvement of harbours;

(*f*) The construction and improvement of inland navigation;

(*g*) The development and improvement of fisheries;

and for any other purpose calculated to promote the economic development of the United Kingdom.

In regard to these purposes the powers of the Ministry of Agriculture relating to transport have been transferred to the Ministry of Transport by 9 & 10 Geo. 5, c. 50, s. 2, and relating to Forestry to the Forestry Commissioners by 9 & 10 Geo. 5, c. 58.

Section 6 contains a definition of 'agricultural and rural industries,' and the Commissioners can acquire (s. 5) land compulsorily in accordance with the Schedule to the Act.

Devenerunt, an obsolete writ, heretofore directed to the escheator on the death of the heir of the king's tenant, under age and in custody, commanding the escheator that, by the oaths of good and lawful men, he inquire what lands and tenements, by the death of the tenant, came to the king.—*Dyer*, 860.

De ventre inspiciendo, writ, an original process which issued out of Chancery on petition, for the security of the next heir (i.e., *verus* not *hæres apparens*), or on behalf of a tenant-in-tail, or *hæres factus*, as a devisee in fee, in tail, or for life, to guard them against supposititious births. Obsolete. Consult *Hubback on Succn.* p. 391. See JURY-WOMAN.

Devest, or **Divest** [fr. *de* and *vestis*, Lat.], to deprive, to take away; opposite to *invest*, which is to deliver possession of anything to another.

Deviation. (1) In the law of marine insurance, any departure without lawful excuse as defined by s. 49, *ibid.*, from the due course of the voyage; it discharges the underwriters; see Marine Insurance Act, 1906 (6 Edw. 7, c. 41), ss. 45 and 46. (2) In the law of railways, a departure from plan in the construction of the line (cf. Railways Clauses Act, 1845, ss. 11–15).

Devil on the Neck, an instrument of torture, formerly used to extort confessions, etc. It was made of several irons, which were fastened to the neck and legs and wrenched together so as to break the back.

Devil's Advocate. See ADVOCATUS DIABOLI.

Devisavit vel non, an issue sent from the

Court of Chancery to a court of law, to try the validity of a paper asserted to be a will disposing of real estate, to ascertain whether or not the testator did devise or whether or not the paper was his will. Obsolete.

Devise [fr. *deviser*, Fr., to sort into parcels], a gift or disposition by will. The giver is called the devisor or testator, the person to whom it is given the devisee. This word is properly only applied to real property, but, in wills, it may, upon construction, transmit personal property as well as the word bequeath, the proper term—and *vice versâ*. See *Hall* v. *Hall*, 1892, 1 Ch. 361.

Devoire [Law Fr.], a duty; a tax of customs.—34 Edw. 3, c. 18.

Devonshiring. See DENSHIRING.

Dewan, Duam, place of assembly; native minister of the revenue department; and chief justice in civil causes, within his jurisdiction; receiver-general of a province. This term is also used to designate the principal revenue servant under a European collector and even of a Zemindar. By this title the East India Company were receivers-general of the revenues of Bengal under a grant from the Great Mogul.—*Indian.*

Dewanny Adawlut, a court for trying revenue and other civil cases.—*Indian.* The 'Sudder Dewanny Adawlut' (corrupted from *Sadr-Divani-Adalat*) is the Court of Final Decision for each Presidency in India, from which there is an appeal to the Judicial Committee of the Privy Council in England.

Dewanny, Duannee, the office or jurisdiction of a Dewan.

Dextrarius, one at the right hand of another.

Dextras dare, to shake hands in token of friendship; or to give up oneself to the power of another person.—*Walsingh.* p. 332.

Diaconate, the office of a deacon.

Diagnosis (Med.), the discovery of the source of a patient's illness.

Dialectics, that branch of logic which teaches the rules and modes of reasoning.

Diallage [fr. διαλλαγή, Gk., interchange], a rhetorical figure in which arguments are placed in various points of view, and then turned to one point.

Dialogus de Scaccario. This has generally passed as the work of Gervase of Tilbury; but Mr. Madox thinks it was written by Richard Fitz-Nigel, Bishop of London, who succeeded his father in the office of treasurer, in the reign of Richard I., and was therefore qualified for such an undertaking. This book treats, in a way of dialogue, of the whole establishment of the Exchequer, as a court and an office of revenue; giving an exact and satisfactory account of the officers and their duties, with all matters concerning that Court, during its highest grandeur, in the reign of Henry II. This is done in a style somewhat superior to the Law-Latinity of those days.—1 *Reeves*, 220; and see *Mad. Hist. of the Exchequer; Stubbs's Select Charters.*

Dianatic, a logical reasoning in a progressive manner, proceeding from one subject to another.

Diarium, daily food, or as much as will suffice for the day.—*Du Cange.*

Dica [fr. δεκα, Gk., ten], a tally for accounts.

Dicast [fr. δικαστής, Gk.], an officer in ancient Greece answering nearly to a juryman.

Dice. All games placed with dice, or 'with any other instrument, engine or device in the nature of dice,' except backgammon, are unlawful by the Gaming Act, 1739 (13 Geo. 2, c. 19), s. 9.

Dictores and **Dictum.** The one signifies an arbitrator, the other the arbitrament.—*Jac. Law Dict.*

Dictum. An observation as to the law made by a judge in the course of a case, but not necessary to its decision, and therefore of no binding effect; often called an *obiter dictum*, 'a remark by the way.' Formerly also the award of an arbitrator (dictor).

Dictum de Kenilworth. The declaration of the terms arranged between Edward I. and the supporters of Simon de Montfort (Oct., 1266). Although included in the Statutes of the Realm, it is not a statute.

Diem clausit extremum, a writ issued in the event of the death of a tenant *in capite*. By this writ the escheator of the county was commanded to inquire by a jury of what lands the tenant died seised, and of what value, and who was the next heir to him. It was one of the five writs issued by the Crown for taking inquisitions *post mortem*. See *Hubback on Succn.*, ch. vii. p. 584.

Dies amoris (the day of love), the appearance day of the term, the fourth day or *quarto die post*. It was the day given by the favour and indulgence of the Court to the defendant for his appearance, when all parties appeared in court and had their appearance recorded by the proper officer.—*Co. Litt.* 135 *a.*

Dies cedit, the day begins; *dies venit*, the day has come. Two expressions in Roman

law which signify the vesting or fixing of an interest, and the interest becoming a present one.—*Sand. Just.*, 7th ed. 227, 235; and see *Ulpian*, D. L. 16, 213.

Dies datus, the day of respite given to a defendant; another term for *dies amoris.*

Dies dominicus non est juridicus. *Co. Litt.* 135.—(Sunday is not a court day.) See SUNDAY.

Dies fasti, nefasti, et intercisi (business days, holidays, and half-holidays).

For the purpose of the administration of justice all days were divided by the Romans into *fasti* and *nefasti*. *Dies fasti* were the days on which the prœtor was allowed to administer justice in the public courts; they derived their names from *fari* (*fari tria verba, do, dico, addico*, Ovid, *Fast.* i. 45, etc.; Varro, *De Ling. Lat.* vi. 29, 30, edit. Müller; Macrob., *Sat.* i. 16). On some of the *dies fasti* comitia could be held, but not on all. —Cic., *pro Sect.* 15, with the note of Manutius.

Dies nefasti were days on which neither courts of justice nor comitia were allowed to be held, and which were dedicated to other purposes. According to the ancient legends, they were said to have been fixed by Numa Pompilius, Liv. i. 19. One part of a day might be *fastus*, while another was *nefastus.* —Ovid, *Fast.* i. 50.

Dies juridicus, a court-day.

Dies marchiæ, the day of meeting of English and Scotch, which was annually held on the marches or borders to adjust their differences and preserve peace.

Dies non juridicus, or **Dies non,** not a court-day.

Diet [fr. *dies*, Lat., an appointed day, *Skinner*; or *diet*, an old German word, meaning a multitude, *Junius*]. I.—A deliberative assembly of princes or estates.

II.—Food. The statute of Nottingham, 10 Edw. 3, c. 3, relating to excess in diet (*de cibariis utendis*), was repealed by 19 & 20 Vict. c. 64.

Dieta, a day's journey; a day's work.

Dieu et mon droit (God and my right), the motto of the royal arms, first assumed by Richard I.

Dieu et son acte (the visitation of God), words often used in our law. It is a maxim that the act of God, or inevitable accident, shall prejudice no man, *actus Dei nemini facit injuriam.* See ACT OF GOD.

Diffacere, to destroy.

Difforciare rectum (to take away or deny justice).

Digamia, or **Digamy** [fr. διγαμια, Gk.], second marriage; marriage to a second wife after the death of the first; as *bigamy* in law is having two wives at once (q.v.).

Digest, generally a compilation or distribution of a subject into various classes or departments; particularly the Pandects of Justinian in fifty books, containing the opinions and writings of eminent lawyers, digested in a systematical method. (See PANDECTS.) An ordered collection of legal principles, as Mr. Justice Stephen's Digest of the Criminal Law. Also an arrangement of the results (usually transcribed from the marginal or head notes of the reporters) of the decisions of the courts upon litigated points of law, as Fisher's Common Law Digest, Mews's Digest of English Case Law, the Law Reports Digest, the Law Journal Quinquennial Digest, English and Empire Digest, etc.

Dignitary [fr. *dignus*, Lat., worthy], a clergyman advanced to be a bishop, dean, archdeacon, prebendary, etc. But there are prebendaries without cure or jurisdiction, who are not dignitaries.—3 *Inst.* 155.

Dignities, a species of incorporeal hereditament, in which a man may have a property or estate. As an incorporeal hereditament, a dignity was held to be 'land' within the meaning of s. 37 of the Settled Land Act, 1882 (*Re Rivett-Carnac*, (1885) 30 Ch. D. 136). See now ss. 67 and 75 (5) of the Settled Land Act, 1925. Dignities were originally annexed to the possession of certain estates in land, and created by a grant of those estates; or, at all events, that was the most usual course. And although they are become little more than personal distinctions, they are still classed under the head of real property; and as having relation to land, in theory at least, may be entailed by the Crown, within the Statute *de Donis*; or limited in remainder, to commence after the determination of a preceding estate-tail in the same dignity. See PEOPLE; PRECEDENCE.

Dijudication, judicial distinction.

Dilapidation, decay; a kind of ecclesiastical waste, either voluntary, by pulling down, or permissive, by suffering the chancel, parsonage house, and other buildings thereunto belonging to decay. See the Ecclesiastical Dilapidations Acts, 1871 and 1872 (34 & 35 Vict. c. 43, and 35 & 36 Vict. c. 96), *Chitty's Statutes*, tit. '*Church and Clergy.*'

The term is also used to signify that disrepair for which a tenant is usually liable to a landlord during and at the end of a tenancy under an express agreement to

keep and yield up the demised premises in good repair; see *Lister* v. *Lane*, 1893, 2 Q. B. 212; *Torrens* v. *Walker*, 1906, 2 Ch. 166; *Anstruther-Gough-Calthorpe* v. *McOscar*, 1924, 1 K. B. 716 (C. A.), also FORFEITURE, and Landlord and Tenant Housing Act.

Dilatory Pleas, a class of defence founded on some matter of fact not connected with the merits of the case, but such as might exist without impeaching the right of action itself. They were either pleas to the jurisdiction, showing that, by reason of some matter therein stated, the case was not within the jurisdiction of the Court, or pleas in suspension, showing some matter of temporary incapacity to proceed with the suit; or pleas in abatement, showing some matter for abatement or quashing the declaration. These pleas must have been verified by affidavit or otherwise, and pleaded within four days from delivery of declaration.—4 Anne, c. 16. Pleas in Abatement are now abolished. See ABATEMENT.

Diligence, care, of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety; but the law recognizes only three degrees of diligence: (1) Common or ordinary, which men in general exert in respect of their own concerns; the standard is necessarily variable with respect to the facts, although it may be uniform with respect to the principle. (2) High or great, which is extraordinary diligence, or that which very prudent persons take of their own concerns. (3) Low or slight, which is that which persons of less than common prudence, or indeed of no prudence at all, take of their own concerns.

The Civil Law is in conformity with the Common Law. It lays down three degrees of diligence—ordinary (*diligentia*), extraordinary (*exactissima diligentia*), slight (*levissima diligentia*).—*Story on Bailments*, 19.

In Scots law, the term 'diligence' signifies execution. See NEGLIGENCE.

Diligiatus [fr. *de lege ejectus*, Lat.], outlawed.

Dilligrout, pottage formerly made for the king's table on the coronation day. There was a tenure in serjeanty, by which lands were held of the king by the service of finding this pottage at that solemnity.—39 Hen. 3.

Dimetæ, the ancient Latin name of the people who inhabited Carmarthenshire, Pembrokeshire, and Cardiganshire.

Dimidietas, the moiety or half of a thing.

Diminution, the act of making less, opposed to augmentation. In proceedings for the reversal of judgment, if the whole record be not certified, or not truly certified by the inferior Court, the party injured thereby, in both civil and criminal cases, may allege a diminution of the record and cause it to be rectified.

Dimissory, Letters. Where a candidate for Holy Orders has a title in one diocese, and is to be ordained in another, the former diocesan sends his letters dimissory directed to some other ordained bishop, giving leave that the bearer may be ordained, and have such a cure within his district. See *Cripps's Law of the Church and Clergy*, 6th ed. p. 12.

Dinarchy [fr. δίς, Gk., and ἀρχή, dominion], a government of two persons.

Diocesan, belonging to a diocese; a bishop, as he stands related to his own clergy or flock.

Diocesan Courts, the consistorial courts of each diocese, exercising general jurisdiction of all matters arising locally within their respective limits, with the exception of places subject to *peculiar* jurisdiction; deciding all matters of spiritual discipline—suspending or depriving clergymen—and administering the other branches of the ecclesiastical law.—2 *Steph. Com.*

Diocese, or **Diocess** [fr. *diocese*, Fr.; *diocesi*, Ital. and Span.; διοίκησις fr. διοικεω to govern, Gk.; *diœcesis*, Lat.], the circuit of every bishop's jurisdiction; it is divided into archdeaconries, each archdeaconry into rural deaneries, and rural deaneries into parishes. —*Co. Litt.* 94.

Diolchia, the district over which a bishop exercised his spiritual functions.

Diploma [fr. διπλόω, Gk., to fold double, consisting of two leaves], a royal charter or prince's letters-patent. An instrument given by colleges and societies, on commencement of any degrees. A license for a clergyman to exercise the ministerial function, or a physician, etc., to practise his art.

Diplomacy, the conducting of negotiations between nations by means of ambassadors, envoys, and the like, or by correspondence.

Diplomatic Privileges Act, 1708 (7 Anne, c. 12), by which ambassadors and other public ministers of foreign princes and their domestic servants are privileged from being sued in this country; see *Magdalena Steam Nav. Co.* v. *Martin*, (1859) 2 E. & E. 94; *Musurus Bey* v. *Gadban*, 1894, 2 Q. B. 352.

Diplomatics (should not be confounded with *diplomacy*), the art of judging of ancient charters, public documents, or diplomas, etc., and discriminating true from false.

Direct, an epithet for the line of ascendants and descendants in genealogical succession, opposed to collateral. Collateral relationship is relationship through another branch, as cousins, etc.

Direct, of a judge, to give the rule of law to a jury. See *Taylor on Evidence*, ch. 3; R. S. C., Ord. XL.

Direct Evidence, opposed to circumstantial evidence. See that title.

Direction, the rule of law in a case given to a jury. See DIRECT.

Directions, Summons for, one general summons with respect to pleadings, discovery, and other matters previous to trial, first authorized by R. S. C. 1883, Ord. XXX., for the purpose of saving the expense of many successive summonses, and of enabling the Court, through the particular master to whom each action is assigned, to obtain control over the action at an early stage. It is compulsory to take out this summons in all actions except Admiralty actions, or actions where the writ has been specially indorsed, or where the plaintiff proposes to proceed to trial without pleadings. See *Annual Practice*.

Director of Public Prosecutions. See PUBLIC PROSECUTOR.

Directors, persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company. The whole of the directors collectively form the board of directors. Their powers, if the company be incorporated by Act of Parliament, are derived from its special Acts and ss. 90-100 of the Companies Clauses Act, 1845; if the company be incorporated under the Companies Act, 1929, see ss. 139 *et seq.*, *ibid.* The company is bound by all acts of the directors within the scope of their authority. They may receive a salary, but may make no personal profit from the company (see, however, *Re Dover Coalfield Ltd.*, 1908, 1 Ch. 65), nor can a pension be granted to a retiring managing director (*Normandy* v. *Ind, Coope & Co.*, 1908, 1 Ch. 84); but they were under no personal liability except for fraud, as to the criminal liability for which see Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 81 *et seq.*, and DECEIT. Public companies registered after October 31st, 1929, must have at least two directors. A private company, however, need not have any directors, and one company can be the sole director of another company (*Re Bulawayo Market Co.*, 1907, 2 Ch. 458). Directors are not trustees, but paid confidential agents, with very extensive powers, selected to manage the affairs of the company; they are, however, trustees of any property of the company that may have come into their hands, however honestly they may have acted, and can as such plead the limitation under the Trustee Act, 1888, s. 8 (*Re Lands Allotment Co.*, 1894, 1 Ch. 616). As to their position generally, see *Re Faure Electric Accumulator Co.*, (1889) 40 Ch. D. 141.

The (repealed) Directors Liability Act, 1890 (53 & 54 Vict. c. 64), now reproduced in an amended form by the Companies Act, 1929, s. 37 (see DECEIT), was passed in consequence of the decision of the House of Lords in *Peek* v. *Derry*, (1889) 14 App. Cas. 337, that directors making an untrue statement in a prospectus which they honestly, though without reasonable ground, believed to be true, were not liable to a shareholder taking shares on the faith of such prospectus, reversed the law as so laid down. There are, however, qualifications to meet the case of withdrawal of consent to become a director before the issue of the prospectus and that it was issued without his authority, knowledge, or consent, or otherwise by public notice that it was issued without his knowledge or consent and of the grounds for any withdrawal of consent, see s. 37 (1) (iii), and to meet the case of statements made on the authority of 'experts,' or official documents, see s. 37 (1) (iv.). By sub.-s. (3) any director becoming liable to pay damages under the Act is entitled to contribution from his co-directors, unless the co-directors were innocent, and he was guilty of fraudulent misrepresentation, thus forming an exception to the old rule of *Merryweather* v. *Nixan*, (1799) 8 T. R. 196, that there was no right of contribution amongst tortfeasors (see now LAW REFORM). Section 372 of the Act of 1929 allows the Court in certain cases to relieve a director from liability for negligence or breach of trust. A director will not generally be personally liable on a promissory note or cheque which he has signed on behalf of the company (*Chapman* v. *Smethurst*, 1909, 1 K. B. 927).

The Companies Act, 1929, disqualifies (ss. 140 and 141) a person from being appointed director of a company or from being named in a prospectus or advertised as a director or proposed director unless he has signed and filed with the registrar a consent in writing to act and to take his qualification shares, if any, and other formalities, and obliges him to obtain the qualification shares, if any, within two months with penalties for contravention; for

other offences see s. 60 (concealment of name of creditor, or nature or amount of any debt); s. 275 (carrying on the company's business to defraud creditors or for any fraudulent purpose); s. 93 (not publishing the company's name or not using the companies as provided by the section); s. 41 (irregular allotment under ss. 39 and 40).

Directory Statute. The term directory, when applied to a statute (or part of a statute) which enjoins or forbids the doing of certain acts, is used in two different senses:—

(I.) As opposed to declaratory, i.e., a statute which merely declares what the Common Law is.—1 *Bl. Com.* 54 and 86.

(II.) As opposed to imperative. When a statute directs that an act should be done in a specific manner, or authorizes it upon certain conditions, if a strict compliance with its provisions is not essential to the validity of the act, it is said to be directory, although the performance might be enforced by mandamus, but if such compliance is essential, it is said to be imperative. See per Lord Mansfield in *R.* v. *Loxdale*, (1758) 1 Burr. 445; *Maxwell on Statutes*.

Diriment Impediments, absolute bars to marriage, which would make it null *ab initio*. —See IMPEDIMENTS.

Disability, incapacity to do any legal act. It is divided into two classes: (1) absolute, which, while it continues, wholly disables the person; such were outlawry, excommunication, attainder (but see the Forfeiture Act, 1870 (32 & 33 Vict. c. 23), s. 1, abolishing attainder on conviction for treason or felony), and acts by statutory bodies or corporations in excess of their statutory powers, see ULTRA VIRES; (2) partial, as infancy, coverture, lunacy, and drunkenness. As to which, see the various titles relating thereto. The compulsory purchase, by railway and other companies, of the lands of persons under disability is regulated by the Lands Clauses Acts, and see ULTRA VIRES.

Disabling Statutes, Acts of Parliament restraining and regulating the exercise of a right or the power of alienation; the term is especially applied to 1 Eliz. c. 19, and similar Acts, restraining the power of ecclesiastical corporations to make leases.

Disadvocare, to deny a thing.

Disafforest, to throw open; to reduce from the privileges of a forest to the state of common ground.

Disagreement, the refusal by a grantee, lessee, etc., to accept an estate, lease, etc., made to him: the annulling of a thing that had essence before. No estate can be vested in a person against his will, consequently no one can become a grantee, etc., without his agreement: the law implies such an agreement until the contrary is shown, but his disagreement renders the grant, etc., inoperative: see *Peacock* v. *Eastland*, (1870) L. R. 10 Eq. 17. If an infant purchase an estate he may, on coming to full age, disagree thereto; and if he do not agree thereto, his heirs, after his death, may waive it. See *Co. Litt.* 2 *b*, 3 *a*, 380 *b*; 3 *Preston's Abstracts*, 104; *Vin. Abr.* '*Disagreement*.'

Disalt, to disable a person.

Disappropriation. See APPROPRIATION.

Disbarring, expelling a barrister from the bar, a power vested in the benchers of each of the four Inns of Court, subject to an appeal to the judges. A barrister may be disbarred upon his own application, as for example, if he wants to become a solicitor.

Disbocatio, a turning wooded ground into arable or pasture.

Discarcare, to unlade a ship.

Disceit. See DECEIT.

Discent. See DESCENT.

Discharge, to relieve of a duty. A sheriff is said to be discharged of his prisoner; a prisoner discharged from custody; a jury discharged from the cause. See next title.

Discharge, a rule *nisi* is discharged when the Court decides that it shall not be made absolute, i.e., that the party who obtained the rule *nisi* should take nothing, and the suit remain *in statu quo*. See RULE.

Discharge of a Jury takes place (1) either by the act of God, as the death of one of the jury; or (2) in due course on the termination of the trial by verdict (or sentence); or by the discretion of the judge determining that they are so exhausted as to be incapable of continuing their deliberations, or so divided as to be unable ever to agree, or that there is other sufficient cause. After such discharge there may be a further trial by another jury. See *Winsor* v. *The Queen*, (1866) L. R. 1 Q. B. 289, 390, in which the Exchequer Chamber held this upon writ of error in a trial for murder in which the jury had declared at five minutes before a Saturday midnight that they were unable to agree, and on a second trial another jury found the prisoner guilty and she was sentenced to death and afterwards hanged.

Discharge of Trustees. See Trustee Act, 1925, ss. 39, 40, and as to deeds of discharge of trustees for the purpose of the Settled Land Act, 1925, and endorsement upon of notices, etc., or annexing the same vesting

instruments, see Settled Land Act, 1925, s. 35.

Discharge, Order of. See ORDER OF DISCHARGE.

Discharged Prisoners Aid Act, 1862 (25 & 26 Vict. c. 44), amended by 28 & 29 Vict. c. 126, s. 43.

Disclaimer, a renunciation, or a denial by a tenant of his landlord's title, either by refusing to pay rent, denying any obligation to pay, or by setting up a title in himself or a third person, and this is a distinct ground of forfeiture of the lease or other tenancy, whether of land or tithe. See *Vivian* v. *Moat,* (1878) 16 Ch. D. 730, in which Fry, J., held landlords entitled to eject tenants without notice to quit on a letter disputing the right of the landlords to raise the rent and asserting a right to hold on a quit-rent.

A devisee in fee may, by deed, without matter of record, disclaim the estate devised, and after such disclaimer has no interest in the estate. An heir-at-law could not disclaim.

An executor may, before probate, 'disclaim,' or as it is more properly called, 'renounce,' the executorship, and the executor of an executor may, before probate of the will of his own testator, disclaim to be the executor of the first testator; but he cannot so disclaim after he has proved the will of his own testator; for he thereby becomes his complete executor, and consequently the executor of the first testator.

A trustee who has not accepted may disclaim, but a conveyance by him of the trust estate to a co-trustee would amount to an acceptance of the trusts. An estate of freehold may be disclaimed as well by deed as by matter of record, and even by conduct (*Re Birchall,* (1889) 40 Ch. D. 436); but a deed is the best evidence of disclaimer.—1 *Saunders' Uses,* 426. The word 'disclaim' was introduced in the repealed 3 & 4 Wm. 4, c. 47, s. 77, to obviate a question whether a married woman might disclaim.

In Bankruptcy. A trustee in bankruptcy may disclaim onerous property under s. 54 of the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), and Rules of Court thereunder, and see WINDING UP.

Patent, and *Trade Mark.* As to disclaimer of a patent, see the Patents and Designs Acts, 1907 (7 Edw. 7, c. 29), 1932 (22 & 23 Geo. 5, c. 32); and as to disclaimer of a trade mark, see s. 15 of the Trade Marks Act, 1905 (5 Edw. 7, c. 15).

Disclosure. Every solicitor whose name is on a writ must, on demand in writing by the defendant, declare whether the writ was issued with his privity. R. S. C. 1883, Ord. VII., r. 1.

When a writ is sued out by partners in the name of their firm, they or their solicitor may be compelled to disclose the names and residences of the various partners. (*Ibid.,* r. 2; and see NAME.)

Discontinuance, an interruption or breaking off. This happened when he who had an estate-tail made a larger estate of the land than by law he was entitled to do; in which case the estate was good, so far as his power extended to make it, but no further.—*Finch, L.* 190; 1 *Rep.* 44. The learning relative to discontinuances has now become of no account, as far as future transactions are concerned, not merely in consequence of the abolition of fines, but by the effect of the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27), which provides (s. 39) that no discontinuance shall thereafter avail to take away the right of entry.

Discontinuance by the plaintiff in an action in the High Court is governed by R. S. C., Ord. XXVI.; and in the county court by C. C. Rules, Ord. IX. In either court there must be notice in writing (of which there are prescribed forms, which, though not compulsory, it is desirable to use), which in the county court is to be given by post or otherwise to the registrar, and to every party as to whom the plaintiff desires to discontinue.

R. S. C., Ord. XXVI., gives the only mode of discontinuance (*Fox* v. *Star, etc., Co.,* 1900, A. C. 19), and requires the leave of the Court or judge after an early stage. Rule 1 of the Order empowers the Court or a judge to allow discontinuance by a defendant.

Discount [fr. *dis* and *conté,* Fr.], abatement; commonly a sum of money deducted from a money obligation in consideration of its payment before the stipulated time.

Discovert, a widow; a woman unmarried; one not within the bonds of matrimony.

Discovery, revealing or disclosing matter. The Courts of Common Law were originally unable to compel a litigant to disclose any fact resting merely within his knowledge, or discover any document in his power, which would aid in the enforcement of a right, the repelling of an unjust demand, or the redress of a wrong; an infirmity which the equity judges cured by compelling such a party to disclose the fact, or discover the document, upon his oath, in his answer to a bill of complaint, filed by the opposite

party, called a bill of discovery, which was an original bill.

Sir James Wigram, V.-C., in his work, entitled *Points in the Law of Discovery*, epitomized the two cardinal principles on this subject in the two following propositions:

(1) It is the right, as a general rule, of a plaintiff in equity to exact from the defendant a discovery upon oath as to all matters of fact, which, being well pleaded in the bill, are material to the plaintiff's case about to come on for trial, and which the defendant does not by his pleading admit.

(2) The right of a plaintiff in equity to the benefit of the defendant's oath is limited to a discovery of such material facts as relate to the '*plaintiff's case*,' and does not extend to a discovery of the manner in which the '*defendant's case*' is to be exclusively established, or to evidence which relates exclusively to his case.

As to the grounds on which discovery might be obtained by bill in Equity, see further *Dan. Ch. Pr.*, 5th ed. 1408.

The Common Law Courts obtained a power of discovery by 14 & 15 Vict. c. 99, s. 6, and C. L. P. Act, 1854 (17 & 18 Vict. c. 125), s. 50.

By R. S. C. 1883, Ord. XXXI., it is provided that any party may, without filing any affidavit, apply to a judge for an order directing any other party to the action to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question in the action (r. 12), but the judge will not order discovery if he is of opinion it is not necessary either for disposing fairly of the cause or matter or for saving costs. In commercial causes (see COMMERCIAL COURT) it is the usual practice for the solicitors on each side to exchange lists of documents, and for an affidavit to be dispensed with. The second branch of discovery is by interrogatories (*q.v.*), that is, a party to an action is asked by leave of the Court certain questions of fact relevant to the issue and within his knowledge, and is required to answer them by affidavit (rr. 1–11).

As a general rule discovery cannot be obtained in an action to recover penalties (*Martin* v. *Treacher*, (1886) 16 Q. B. D. 507; *Saunders* v. *Weil*, 1892, 2 Q. B. 321; and compare *Derby Corporation* v. *Derbyshire County Council*, 1897, A. C. 550); nor by a landlord in an action to enforce a forfeiture (*Mexborough* v. *Whitwood Urban District Council*, 1897, 2 Q. B. 111). A party can object to make discovery of any document which may tend to incriminate him; see *National Assen. of Operative Plasterers* v. *Smithies*, 1906, A. C. 434. Communications between solicitor and client are privileged, but not communications to others (*Jones* v. *G. C. Ry.*, 1910, A. C. 4). See further the titles INTERROGATORIES and INSPECTION; and consult *Bray* or *Ross on Discovery*: *Ann. Prac.*

Discredit, to show to be unworthy of credit. See CROSS-EXAMINATION and HOSTILE WITNESS.

Discretion. See JUDICIAL DISCRETION.

Discussion. By the Roman Law sureties were not primarily liable to pay the debt for which they became bound as sureties: but were liable only after the creditor had sought payment from the principal debtor, and he had failed to pay. This was called the benefit or right of discussion. Under those systems of jurisprudence which adopt the Roman Law, and under the present law of France, the rule is similar; and the obligation contracted by the surety with the creditor is, that the latter shall not proceed against him until he has first discussed the principal debtor, if he is solvent. This right the surety enjoys, as the *beneficium ordinis vel excussionis*. And again, if other persons are joined with him in the obligation as sureties, he is not in the first instance to be proceeded against for the whole debt, but only for his share of it, if his co-sureties and co-obligees are solvent. This is commonly known as the benefit of division, or *beneficium divisionis*. *Story's Confl. of Laws*, 456.

Diseases Prevention. See INFECTIOUS DISEASES.

Disentailing Deed. Under the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), a tenant-in-tail can bar his estate tail by disposing of the land for an estate in fee simple or any less estate, and thus defeat the rights of persons claiming under and after him (with certain exceptions) by executing a disentailing deed and (before 1926) enrolling the same within six months in the High Court of Justice (s. 41, and R. S. C., Ord. LXI., r. 9). If there is a protector (*q.v.*) under the instrument creating the entail, his consent must be obtained, otherwise an equitable interest corresponding to a base fee only will be created. The deed usually consisted of a conveyance to a stranger to such uses as the tenant-in-tail shall appoint, or in default of appointment to the use of him and his heirs. By the L. P. Act, 1925, s. 1, all estates tail were converted into

equitable interests, and by the 9th Schedule to the L. P. Act, 1924, the Fines and Recoveries Act, 1833, as amended, remains in force in regard to dealings with entailed interests as equitable interests. By the L. P. Act, 1925, s. 133, the necessity for enrolment in the case of disentailing deeds executed after 1925 is abolished. The conveyance barring the entail may be made by a simple conveyance either upon trust for or absolutely to the grantor.

Disforest. See DISAFFOREST.

Disfranchisement, the act of depriving of a franchise, immunity, or privilege; the depriving a constituency of a right to return a member to Parliament, or a person of a right to vote at a Parliamentary or Municipal Election.

Disgavel, to exempt from the rules of the tenure of gavelkind (*q.v.*).

Disgrading, the act of degrading.

Disherison, the act of debarring from inheritance.

Disheritor, one who puts another out of his inheritance.

Dishonour, to refuse or neglect to accept or pay when duly presented for payment a bill of exchange or promissory note or draft on a banker. See Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 47.

Disincarcerate, to set at liberty, to free from prison.

Disinherison. See DISHERISON.

Disme [fr. *decima*, Lat., a tenth, the tenth part], tithes due to the clergy, the tenth of all spiritual livings.—2 & 3 Edw. 3, c. 35.

Dismissal of Action. This may take place upon default in delivery of statement of claim, failure to give notice of trial, failure within 14 days to take out a summons for directions, etc.—R. S. C. 1883, Ord. XXVII., r. 1; XXXVI., r. 12; XXX., r. 8.

Dismortgage, to redeem from mortgage.

Disorderly Houses. Houses where persons congregate to the probable disturbance of the peace or other commission of crime. See Disorderly Houses Act, 1751 (25 Geo. 2, c. 36), by which prosecutions by indictment of persons keeping 'bawdy houses, gaming houses, and other disorderly houses' for the Common Law misdemeanour of keeping such houses are encouraged, and see also s. 13 of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69), as amended by the Criminal Law Amendment Act, 1912, s. 3, and the Criminal Law Amendment Act, 1922, s. 3, by which the keeping of bawdy houses is punishable on summary conviction; see *Siviour* v. *Neapolitane*, 1931, 1. K. B. 636; (lessee who sub-let not included); and *Winter* v. *Woolfe*, 1931, 1 K. B. 636 (premises kept for allowing illicit intercourse). See BROTHEL; GAMING.

Dispacheurs, persons appointed to settle cases of average.—*Goirand's Fr. Com. Law.*

Disparagement, the matching an heir in marriage under his degree or against decency.—*Co. Litt.* 107.

Dispark, to throw open a park.

Dispatch, or **Despatch** [fr. *despescher*, Fr., to send away quickly, to discharge], a message, letter, or order sent with speed on affairs of state.

Dispauper, when a person by reason of his poverty is admitted to sue *in formâ pauperis*, and afterwards, before the suit be ended, acquires any lands or personal estate, or is guilty of anything whereby he is liable to have this privilege taken from him, then he loses the right to sue *in formâ pauperis* (see that title), and is said to be dispaupered. See R. S. C., Ord. XVI., r. 29.

Dispensation, an exemption from some laws, a permission to do something forbidden, an allowance to omit something commanded, the canonistic name for a license. See also BILL OF RIGHTS.

Dispersonare, to scandalize or disparage.—*Blount.*

Dispone, to transfer or alienate.—*Scots Law.*

Dispunishable, without penal restraint; also, without impeachment for waste. See WASTE.

Disrationare, or **Dirationare,** to justify; to clear one's self of a fault; to traverse an indictment, to disprove.—*Encyc. Londin.*

Dissection, the anatomical examination of a dead body. It is regulated by the Anatomy Act, 1832 (2 & 3 Wm. 4, c. 75), 'An Act for regulating Schools of Anatomy,' as slightly amended by 34 & 35 Vict. c. 16. The seventh section of the first-mentioned Act allows an executor to permit dissection unless the deceased shall have expressed a desire to the contrary, or the husband or wife of the deceased or any known relative shall have required interment without dissection, and the eighth enjoins dissection if the deceased shall have directed it, and neither husband nor wife nor nearest known relative shall have objected; while the sixteenth repeals so much of 9 Geo. 4, c. 31, as authorized the dissection, after execution, of the body of a person convicted of murder.

Disseise, to dispossess, to deprive.

Disseisin [fr. *dissaisin*, Fr.], a wrongful putting out of him that is seised of the freehold, not, as in *abatement* or *intrusion*, a wrongful entry, where the possession was vacant; but an attack upon him who is in actual possession, and turning him out; it is an ouster from a freehold in deed, as abatement and intrusion are ousters in law.—3 *Steph. Com.* A title by disseisin is a good title against all but the rightful owner. Consult *Williams on Seisin.*

Disseisinam satis facit, qui uti non permittit possessorem, vel minus commode, licet omnino non expellat. *Co. Litt.* 331.—(He makes disseisin enough who does not permit the possessor to enjoy, or makes his enjoyment less beneficial, although he does not expel him altogether.)

Disseisor, a person who unlawfully puts another out of his land.

Disseisoress, a woman who unlawfully puts another out of his land.

Disseissee, a person turned out of possession.

Dissenters, Protestant seceders from the Established Church. They are of many denominations, principally Presbyterians, Independents or Congregationalists, Methodists, and Baptists; but as to Church government the Baptists are Independents.

The penal laws, for the enforcement of legal uniformity, have been abrogated. The Toleration Act, 1 W. & M. st. 1, c. 18, extended to Unitarians by 53 Geo. 3, c. 160, first allowed dissenters to assemble for religious worship according to their own forms in places of meeting duly certified; as to such places, see now 18 & 19 Vict. c. 81, and 19 & 20 Vict. c. 119, ss. 17, 27. The Dissenters Chapels Act, 1844 (see that title), provided for meeting-houses; and the Trustees Appointment Act, 1850 (13 & 14 Vict. c. 28), commonly called Peto's Act, amended by the Trustees Appointment Act, 1890 (53 & 54 Vict. c. 19), provides for facilities in regard to the appointment of trustees and the title to lands purchased for religious or educational purposes. The Places of Worship Registration Act, 1855, (18 & 19 Vict. c. 81), provides for the certifying and registering of dissenters' places of worship. See *Chitty's Statutes*, tit. '*Religious Worship.*'

The Universities Tests Act, 1871 (35 & 36 Vict. c. 26), has abolished the University Tests, and dissenters are enabled to take any degree (other than a divinity degree) in any of the Universities of Oxford, Cambridge, or Durham.

Dissenters Chapels Act (7 & 8 Vict. c. 45), (statutory title, 'The Nonconformist Chapels Act, 1844'), an Act passed in 1844 for the relief of Unitarians, though it applies to Nonconformists of every description. Its effect is to exclude, by a special law of limitation made for that express purpose, all inquiry into the conformity or otherwise of the doctrines taught or ritual practised in any chapel or meeting-house of any Nonconformist body, or the intentions of the founders by whom the building or its accessories or endowments were given, when such doctrines have been taught there, or such ritual practised, for the last twenty-five years; unless they are, in express terms, prohibited or excluded by some written instrument governing the foundation. The Act was passed in consequence of the decision in what is commonly known as 'Lady Hewley's Case,' *Shore* v. *Wilson*, (1842) 9 Cl. & F. 355, in which it was held by the House of Lords that Unitarian congregations, in spite of long and undisturbed possession, were not entitled to retain chapels and meeting-houses originally founded under Trinitarian Nonconformist trust deeds dated prior to 1813, when the benefit of the Toleration Act was first extended to Unitarians by the Act (53 Geo. 3, c. 160); see *Lord Selborne's Defence of the Church of England against Disestablishment*, 5th ed. p. 218.

Dissignare, to break open a seal.

Dissolution, the act of breaking up. A partnership may be dissolved either by a proper notice, or effluxion of time as agreed upon in the articles of partnership, or by death, marriage, lunacy, bankruptcy, or by judgment of the High Court.—Partnership Act, 1890 (53 & 54 Vict. c. 39), ss. 32–34.

A dissolution is the civil death of the parliament, and is effected in two ways:—(1) By the sovereign's will, expressed either in person or by representation. (2) By length of time, i.e., five (formerly seven) years. See PARLIAMENT ACT, 1911; SEPTENNIAL ACT. By the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), s. 51, parliament is not determined or dissolved by the demise of the Crown.

When a company has been completely wound up by the Court, the Court must make an order that the company is dissolved from the date of the Order (Companies Act, 1929, s. 221): as to dissolution on a voluntary winding up see ss. 236 and 245 *ibid.* Under the same sections the Court may defer and, under s. 294, avoid a dissolution within two years from its date, and see BONA VACANTIA.

Dissolution of Marriage. See DIVORCE.

Dissolve, to put an end to, cancel, abrogate, annul; applied to an injunction in Chancery; as *discharge* is to a rule *nisi* in Common Law. *Dissolvo* is the Latin for both verbs.

Distance. For any statute passed after 1st January, 1890, distance is to be measured in a straight line on a horizontal plane.—Interpretation Act, 1889, s. 34.

Distinguish, to point out an essential difference; to show that a case, cited as applicable, is inapplicable.

Distrain, to make seizure to goods or chattels by way of distress. See DISTRESS.

Distrainer, or **Distrainor,** he who seizes a distress.

Distraint, seizure.

Distress [fr. *distringo*, Lat., to bind fast; *districtio*, Med. Lat., whence *distraindre*, Fr.], a taking, without legal process, of a personal chattel from the possession of a wrong-doer into the hands of a party grieved, as a *pledge* for the redressing an injury, the performance of a duty, or the satisfaction of a demand.

This remedy may be resorted to by a landlord for recovery of rent in arrear, by a rate collector or tax collector for recovery of rates or taxes, and by justices of the peace for the recovery of fines due on summary convictions.

A distress may be made of common right for the rent payable by a tenant to a landlord, technically termed 'rent-service,' and by particular reservation, or under s. 121 of the Law of Property Act, 1925, for rent-charges, and also for rents-seck since the Landlord and Tenant Act, 1730 (4 Geo. 2, c. 28), s. 5, which extended the same remedy to rents-seck, rents of assize, and chief-rents, and thereby in effect abolished all material distinction between them.

Distress may also be made at Common Law on cattle damage feasant, and by statute for rates and taxes, and for tithe annuities which have been substituted for tithe rent-charge (*q.v.*) (Tithe Act, 1936, s. 16).

If a tenant, after his rent is in arrear, fraudulently or clandestinely remove his own chattels off the premises, and does not leave thereon sufficient to meet the arrears (*Tomlinson* v. *Consolidated Credit Corporation*, (1889) 24 Q. B. D. 135), the landlord may within thirty days take and seize such goods wherever found (11 Geo. 2, c. 19, ss. 1–3, 7).

All chattels and personal effects found upon the premises may be distrained by a landlord, with the following exceptions:—

(1) Fixtures (see *Provincial Bill-posting Co.* v. *Low Moor Iron Co.*, 1909, 2 K. B. 344); (2) Animals *feræ naturæ*: (3) Goods delivered to a person in the way of his trade, as a watch sent to a watchmaker to be repaired; (4) Things in the custody of the law; (5) An ambassador's goods, by the Diplomatic Privileges Act, 1708 (7 Anne, c. 12), s. 3; (6) The goods of an under-tenant, lodger, or other person not having any beneficial interest in the tenancy, by the Law of Distress Amendment Act, 1908 (8 Edw. 7, c. 53), if a declaration is made as required by the Act that the immediate tenant, in respect of whose rent the distress is made, has no property or interest in the goods; (7) Woollen, cotton, or silk looms, by 6 & 7 Vict. c. 40; (8) Gas-meters, being the property of a gas company incorporated by statute, by 10 Vict. c. 15, s. 14; (9) Railway rolling stock in works not belonging to any tenant thereof, by the Railway Rolling Stock Protection Act, 1872 (35 & 36 Vict. c. 50); (10) Wearing apparel and bedding of the tenant or his family and the tools and implements of his trade to the value of 5*l.*, by the Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), s. 4, unless the interest of the tenant has expired and possession has been demanded and distress is made not earlier than seven days after demand of possession: see *Boyd* v. *Bilham*, 1909, 1 K. B. 14. All the above are absolutely privileged, as also things in actual use.

(11) Beasts of the plough and sheep, by 51 Hen. 3, st. 4; and (12) Tools of trade above 5*l.* in value, both of which are privileged 'sub modo' or conditionally, that is, only if there be other sufficient distress on the premises.

Also, on agricultural holdings; (13) Hired machinery and breeding stock absolutely; and (14) Agisted stock, conditionally.

A distress cannot be made in the night, i.e., after sunset and before sunrise (except in the case of cattle *damage feasant*), nor on the day of rent becoming due; but must be made within six years from its becoming due. The Landlord and Tenant Act, 1709, (8 Anne, c. 18) (commonly numbered 14), ss. 6, 7, gives a landlord power to distrain within six months after determination of the lease, but it must be made during the continuance of the landlord's title or interest, and also during the possession of the tenant. By the Real Property Limitation Act, 1874, s. 1, distresses for the recovery of any rent may be made at any time within twelve years next after the time at which the right

to make them shall have first accrued; but (by s. 42 of the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27)) no arrears of rent can be recovered by distress but within six years next after the same shall have become due, etc. A distress must be made upon the land whence the rent issues, and the whole of what is due should be distrained for at one time. The outer door of the house can in no case be broken open; but if the outer door be open the person distraining may justify breaking open an inner door or lock to find any goods distrainable.

The landlord's powers are chiefly regulated by the Act of William and Mary, 2 W. & M. s. 1, c. 5 (under which the power to *sell* was first obtained, the goods being at Common Law taken by way of *pledge* only), as amended by the Law of Distress Amendment Act, 1888 (51 & 52 Vict. c. 21), which made applicable to all tenancies *some* of the provisions applied to agricultural tenancies only by the Agricultural Holdings Act, 1883.

The Act of William and Mary allows the sale only after written notice of the distress, and gives double damages against any person distraining and selling if no rent is due.

The same Act also requires appraisement before sale in all cases, but the Act of 1888 dispenses with it unless it be required in writing by the tenant or owner of the goods; and enacts also that the goods must, at the request of the tenant or owner, be removed to a public auction room, and there sold. The Act of William and Mary postponed the power of sale for five days, and this period is extended, by the Act of 1888, to not more than fifteen on the written request of the tenant or owner. The Act of 1888 also requires that no person shall act as a bailiff to levy a distress for rent unless he be authorized so to act by the certificate of a county court judge, and empowers the Lord Chancellor to make rules from time to time for regulating the security to be required from bailiffs, and the fees, charges, and expenses of distress, and also for carrying into effect the objects of the Act of 1888, and the Law of Distress Amendment Act, 1895 (58 & 59 Vict. c. 24), has extended the power of a county court judge to cancel a bailiff's certificate, and otherwise amended the Act of 1888; and see the County Courts Act, 1934, ss. 121, 134, 153 and 193, and RENT REDUCTION ACTS.

In addition to the above provisions in favour of tenants generally, agricultural tenants enjoy three special privileges under the Agricultural Holdings Act, 1923 (see that title). These are: (1) that the six years' arrears of rent recoverable from other tenants are reduced to one year; (2) that agricultural or other machinery on hire, and live stock on hire for breeding purposes, are absolutely exempted, while agisted stock can only be distrained if there be no other distrainable goods upon the premises, and then only for the amount due to the tenant for their keep; and (3) disputes as to distress may be determined either by a county court judge or a justice of the peace.

Lastly, the Law of Distress Amendment Act, 1908 (see above), provides (s. 2) for the determination of distress disputes under that Act by a magistrate or justices, and also enables (s. 6) a 'superior landlord' to require payment of rent direct to himself whenever the immediate tenant is in arrear. See *Shenstone* v. *Freeman*, 1910, 2 K. B. 84; and for statutes and general law relating to the subject, see *Smith's Leading Cases*, sub tit. *Simpson* v. *Hartopp; Oldham and Foster's Law of Distress; Woodfall's L. and T.; Foa, Landlord and Tenant;* and *Chit. Stat.*, tit. '*Landlord and Tenant.*' See also BANKRUPTCY; WINDING-UP; PREFERENTIAL PAYMENTS.

Distress Infinite, one that has no bounds with regard to its quantity, and may be repeated from time to time, until the stubbornness of the party is conquered. Such are distresses for fealty or suit of court, and for compelling jurors to attend, and under a writ of delivery, as to which see DETINUE.

Distribution, the act of dealing out to others; dispensation.

Distribution, Statute of (22 & 23 Car. 2, c. 10), now only applied to intestacies prior to 1926, repealed by Administration of Estates Act, 1925 (see WIDOW), explained by the Statute of Frauds, 29 Car. 2, c. 3, enacts that the surplusage of intestates' personal estate (except of *femes covert*, the administation and enjoyment of whose estates belonged, at Common Law, to their husbands—but see MARRIED WOMEN'S PROPERTY) shall, after the expiration of one year from the death of the intestate, be distributed in the following manner: one-third shall go to the widow of the intestate, and the residue in equal proportions to his children, or, if dead, to their representatives, that is, their lineal descendants; *if there be no children or legal representative subsisting, then a moiety shall go to the widow, and a moiety to the next of kindred in equal degree, and their representatives;* if no widow, the whole shall go to the children;

if neither widow nor children, the whole shall be distributed amongst the next of kin, in equal degree, and their representatives, but no representatives are admitted among collaterals farther than the children of the intestate's brothers and sisters. The following relations are considered as of the same degree of kindred: (1) parents and children; (2) grandfather, grandson, and brother; (3) great-grandfather, great-grandson, uncle, and nephew; (4) great-great-grandfather, great-great-grandson, great-uncle, great-nephew and first-cousin. The half blood take equally with the whole blood in the same degree.

The widow of an intestate dying without issue before 1926 was, in amendment of the words italicized above, entitled, by the Intestates Estates Act, 1890 (see that title), to at least 500*l.* out of the real and personal assets of the intestate, or if such assets did not amount to 500*l.*, then to the whole of his estate, as against the next of kin.

Distributive Finding of the Issue. The jury are bound to give their verdict for that party who, upon the evidence, appears to them to have succeeded in establishing his side of the issue. But there are cases in which an issue may be found distributively; i.e., in part for plaintiff and in part for defendant. Thus, in an action for goods sold and work done, if the defendant pleaded that he never was indebted, on which issue was joined, a verdict might be found for the plaintiff as to the goods, and for the defendant as to the work.

District [fr. *districtus*, Lat.]: (1) The circuit or territory within which a person may be compelled to appear; (2) Circuit of authority; province.

District Boards, in London, constituted by the Metropolis Management Act, 1855, for the management of the sanitary affairs of combinations of parishes not singly represented by vestries. Their powers are transferred to the metropolitan boroughs constituted under the London Government Act, 1899 (62 & 63 Vict. c. 14). See also the London County Council (General Powers) Act, 1934 (c. xl.).

District Council: (1) Urban, the name given to an urban sanitary authority, not being the council of a municipal borough, by the Local Government Act, 1894 (56 & 57 Vict. c. 73), which Act abolished plural voting for, and any property qualification of, such authority; (2) Rural, the governing body under the same Act of every rural sanitary district, consisting of chairman and councillors, elected by the parishes or other areas. See new Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 31, which deals with the constitution of district councils. This Act consolidates with amendments the enactments relating to the subject.

District Parishes, ecclesiastical divisions of parishes for all purposes of worship, and for celebration of marriages, baptisms, churchings, and burials formed at the instance of the Royal Commissioners for Building New Churches, and regulated by the New Parishes Acts, 1843 and 1844 (6 & 7 Vict. c. 37, and 7 & 8 Vict. c. 94).

District Registrars. See next title.

District Registry. By the Judicature Act, 1925, s. 84, replacing the Judicature Act, 1873, s. 60, it is provided that to facilitate proceedings in country districts the Crown may, from time to time, by Order in Council, create district registries and appoint district registrars for the purpose of issuing writs of summons and for entertaining proceedings generally in an action down to and including entry for trial. Documents sealed in any such district registrary are to be received in evidence without further proof; and the district registrars may administer oaths or do other things as provided by rules or a special order of the Court (s. 62). Power, however, is given to a judge to remove proceedings from a district registry to the Office of the High Court; and see generally, Judicature Act, 1925, ss. 84–87, and Judicature Act, 1873, ss. 64 and 66, which are still unrepealed. By Order in Council of 12th of August, 1875, a number of district registries have been established in the places mentioned in that order; and the prothonotaries in Liverpool, Manchester, and Preston, the district registrar of the Court of Admiralty at Liverpool, and the county court registrars in the other places named, have been appointed district registrars. Proceedings in district registries are regulated by R. S. C. 1883, Ord. XXXV. The defendant may as of right remove the action from the district registry except (r. 13) where within four days after appearance to a specially indorsed writ under Ord. III., r. 6, the plaintiff has taken out a summons under Ord. XIV.

Districtio, a distress; a distraint.

Districtione scaccarii. See 51 Hen. 3, st. 5, relating to distresses in the Exchequer for the king's debts.

Distringas (that you distrain), anciently called *constringas*, a writ addressed to the

sheriff, and issued to effect various purposes. The cases in which it was used in Common Law proceedings may be thus stated :—

(1) A *distringas* to compel appearance, where defendant had a place of residence within England or Wales. The writ was abolished by the C. L. P. Act, 1852, s. 24, and the practice provided for by s. 17 substituted in its stead.

(2) A *distringas nuper vicecomitem*, to compel the late sheriff to sell goods, etc., or to bring in the body.

(3) A *distringas* in detinue, a special writ of execution to compel defendant to deliver the goods by repeated distresses of his chattels ; or a *scire facias* might be issued against a third person in whose hands they might happen to be, to show cause why they should not be delivered ; and if the defendant still continued obstinate, then (if the judgment had been by default or on demurrer) the sheriff summoned an inquest to ascertain the value of the goods and the plaintiff's damages, which (being either so assessed, or by the verdict in case of an issue) were levied on the goods or person of the defendant.—1 *Rol. Ab.* 737. See DETINUE.

(4) A *distringas juratores*, a jury process, abolished by C. L. P. Act, 1852, s. 104.

In Equity a *distringas* was issued in these two cases :—

(1) Against a corporation agrgegate ; the first process to compel appearance was *distringas*, and on its return an *alias distringas* and then a *pluries* were issued, and upon the return of the latter, if default were made, an order *nisi* for a sequestation was obtained as of course, and if no cause was shown, the order would be made absolute.—11 Geo. 4 & 1 Wm. 4, c. 36.

(2) When a transfer of stock by the Bank of England or other public company was sought to be immediately restrained, a *distringas* was, by 5 Vict. c. 5, s. 15, allowed to be issued. The effect of this writ was temporary and merely prevented the stock being dealt with until the person putting in the *distringas* had had an opportunity of asserting his claim. It was incumbent on him, therefore, at once to bring an action against the stock-holder, either for a restraining order under 5 Vict. c. 5, s. 5, or an injunction pursuant to 40 Geo. 3, c. 36.

By R. S. C. 1883, Ord. XLVI., r. 2 (annulled by R. S. C. (No. 3, 1926)), no *distringas* under 5 Vict. c. 5, s. 5, may now be issued, but rr. 3–11 of the same order provide a procedure to be pursued by any person interested in any stock in any company, which has the same effect as *distringas* under that statute.

Disturbance, annoyance ; also the wrongful obstruction of the owner of an incorporeal hereditament in its exercise or enjoyment. There are five sorts of this injury, viz., disturbance of (1) franchise, (2) common, (3) ways, (4) tenure, and (5) patronage.—3 *Steph. Com.* As to compensation for disturbance under the Agricultural Holdings Act, 1923 (13 & 14 Geo. 5, c. 9), see s. 12, *ibid.*

Disturbance of Divine Worship, an offence against the public peace. See BRAWLING.

Disturber. If a bishop refuse or neglect to examine or admit a patron's clerk, without reason assigned or notice given, he is styled a disturber by the law, and shall not have any title to present by lapse ; for no man shall take advantage of his own wrong.—2 *Bl. Com.* 278.

Dittay, the matter of charge or ground of indictment against a person accused of crime.—*Scots term.*

Divan [an Arabic or Turkish word], a council-room, a state-chamber, a raised bench or cushion.

Diversité des Courtes, a law treatise supposed to have been written in the early part of the sixteenth century.

Diversity, a plea by the prisoner in bar of execution, alleging that he is not the same who was attainted, upon which a jury is immediately empanelled to try the collateral issue thus raised, viz., the identity of the person ; and not whether he is guilty or innocent, for that has been already decided.—4 *Bl. Com.* 396. See also 1 *Hale's Pleas of the Crown*, 370.

Divest. See DEVEST.

Dividend, a share, the part allotted in division ; the interest paid on the public funds ; the share of profits of a company payable to each shareholder (see Articles 89 to 96 of Table A to Companies Act, 1929, and ss. 120–123 of the Companies Clauses Consolidation Act, 1845) ; a distributive share of a bankrupt's estate or on the winding-up of the company, of its assets.

As to the liability upon a company in respect of a dividend when the warrant for it, having been duly posted, is lost in the post, see *Thairlwal* v. *G. N. Ry.*, 1910, 2 K. B. 509*l*.

Dividenda, an indenture ; one part of an indenture.—*Old Records.*

Divine Right, the title whereby, particularly in the seventeenth century, English sovereigns claimed to reign. See NON-RESISTANCE.

Divine Service, Tenure by, an obsolete

holding, in which the tenants were obliged to perform some special divine services, as to sing so many masses, etc.—*Litt.* s. 137.

Divisa, a device, award, or decree ; also a devise ; also bounds or limits of division of a parish or farm, etc.—*Cowel.* Also a court held on the boundary, in order to settle disputes of the tenants.—*Anc. Inst. Eng.*

Divisional Court. A court (which takes under the Jud. Act the place of the court 'in banc': see BANC) constituted of two judges of the High Court, or as many more judges as the President of a Division, with the concurrence of the judges of the Division, may think expedient, for the transaction of such business as may be ordered by Rules of Court to be heard by a Divisional Court (Judicature Act, 1925, s. 63, replacing App. Jur. Act, 1876, s. 17). Much of the business of the King's Bench Division, but none of that of the other Divisions, is transacted by Divisional Courts, consisting usually of two judges. Five judges have thrice sat, but in order for more than two to sit, the President of the Division, with the concurrence of not less than two judges thereof, must be of opinion that it is expedient so to constitute the Court (Judicature Act, 1925, s. 63 (6), replacing Jud. Act, 1884, s. 4). See PRECEDENTS and R. S. C. Ord. LIX.

Appeals from County Courts no longer lie to the Divisional Court, but by Administration of Justice (Appeals) Act, 1934 (24 & 25 Geo. 5, c. 40), s. 120, and County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), s. 105, appeals lie to the Court of Appeal.

Divisions of the High Court (see new Judicature Act, 1925, ss. 1–5). The High Court of Justice, created by the Judicature Act, 1873 (36 & 37 Vict. c. 66). was by s. 31 of that Act, for the more convenient despatch of business, divided into five Divisions, which were called the Chancery, the Queen's Bench, the Common Pleas, the Exchequer, and the Probate, Divorce and Admiralty Divisions, the judges of these Divisions being for the most part those who sat in the courts whose jurisdiction is transferred to the High Court (ss. 5, 16) ; but s. 32 of the same Act gave the Sovereign in Council power to reduce or increase the number of Divisions or the number of judges attached to each Division ; and an Order in Council under this section which came into force on the 26th February, 1881, united in one 'Queen's Bench Division' (since the accession of King Edward the Seventh styled the 'King's Bench Division') the judges attached to the Common Pleas and Exchequer Divisions ; so that (see Judicature Act, 1925), ss. 1 to 5, there are now three Divisions: Chancery, King's Bench, and Probate, Divorce and Admiralty.

Divorce [fr. *divortium*, Lat.], the dissolution of the marriage contract, grantable (after 31st December, 1937) to either a husband or wife under the Matrimonial Causes Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 51), amending the Judicature Act, 1925, for (*a*) adultery, (*b*) desertion for three years preceding petition, (*c*) cruelty, (*d*) incurable unsoundness of mind, and, on the wife's petition, for unnatural offences, subject to the statutory provisions. Petitions may not be presented for three years after marriage.

Judicial Separation is grantable on any ground available for divorce, or for non-compliance with a decree for restitution of conjugal rights or any former ground for divorce *à mensa et thoro* (*q.v.*) ; divorce may be obtained on proof of facts which have founded a judicial separation or an order under the Summary Jurisdiction Acts, which order may be made for adultery as well as other grounds. See JUDICIAL SEPARATION.

Additional grounds for a decree of nullity of marriage are : (*a*) refusal to consummate, (*b*) mental deficiency or epileptic affliction at the time of marriage, (*c*) communicable venereal disease, (*d*) pregnancy at time of marriage by another man. A decree absolute may be made against the party obtaining the decree *nisi*. The Act of 1937 applies to England and Wales only.

In Scotland the remedy of divorce is open to either spouse on the ground of adultery, or on the ground of desertion. See DESERTION.

Doab, Doowab, any tract of country included between two rivers.—*Indian.*

Do ut des (I give that you may give).

Do ut facias (I give that you may perform).

Dock [fr. *docke*, Fle., a bird-cage], (1) the place in a court of criminal law in which a prisoner is placed during his trial, and from which he may instruct counsel without the intervention of a solicitor ; (2) an enclosed space, either dry or filled with water, in which a ship is repaired, loaded, or unloaded. In this last sense a 'dock' is a factory within the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), s. 104. For regulations regarding loading and unloading, see the Docks Regulations, 1934 (S. R. & O. 1934, No. 279), and the Public Health Act 1936 (26 Geo. 5 & 1 Edw. 8, c. 49), ss. 2–10, in regard to sanitation and health.

Dock Defence. A dock defence is said to

have been accepted by a barrister when he is instructed direct by the defendant in the precincts of the court without the intervention of a solicitor. The fee of one guinea (or 1*l.* 3*s.* 6*d.*) must be paid then and there.

Dock Warrants, certificates given to the owners of goods warehouses in the docks. They have been held to be negotiable and to pass from hand to hand, so as to vest the property in the goods mentioned in them in the holders.

Docket, Docquet [fr. *tocyn*, W., a slip or ticket], or **Dogged,** a list; a brief writing on a small piece of paper or parchment containing the effect of a greater writing; a register.

Doctor and Student. Saint Germain is an author who gained considerable note by this book, published in 1518, in Latin, and in English in 1530. The book consists of two dialogues, in popular style, between a Doctor of Divinity and a Student of the Common Law.

Doctors' Commons, an institution near St. Paul's Cathedral, where the Ecclesiastical and Admiralty Courts were held. In 1768 a royal charter was obtained, by virtue of which the members of the society and their successors were incorporated under the name and title of 'The College of Doctors of Laws exercent in the Ecclesiastical and Admiralty Courts.' The college consisted of a president (the Dean of Arches for the time being), and of those Doctors of Laws who, having regularly taken that degree in either of the Universities of Oxford and Cambridge, and having been admitted advocates in pursuance of the rescript of the Archbishop of Canterbury, had been elected fellows of the college in the manner prescribed by the charter. The property of the college was sold, the charter surrendered, and the college dissolved under the Probate Act, 1857 (20 & 21 Vict. c. 77), ss. 116, 117.

Documents, records, writings, precepts, instructions, or directions. See DISCOVERY; ROLLS.

Doe, John, the fictitious plaintiff in ejectment, whose services have been dispensed with since the abolition of the fiction by the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76). See EJECTMENT.

Dœd-bana, the actual perpetrator of a homicide.

Dog. *Draught.*—The Protection of Animals Act, 1911, s. 9, and the Protection of Animals (Scotland) Act, 1912, s. 8, prohibit, under a penalty, the use of any dog in England or Scotland for the purpose of draught.

Licenses.—Dog licenses are regulated by the Dog Licenses Act, 1867 (30 Vict, c. 5), as amended by 32 & 33 Vict. c. 14, s. 38, 41 Vict. c. 15, ss. 17–23, and 42 & 43 Vict. c. 21, s. 26. They commence on the day of grant, and terminate on the 31st of December following; but procuring a license on the day of a conviction will not avoid the penalty up to 5*l.* under s. 8 of the Act of 1867 (*Campbell* v. *Strangways*, (1877) 3 C. P. D. 105). The present duty is 7*s.* 6*d.*, to which it was raised from 5*s.* by the Customs and Inland Revenue Act, 1878 (41 & 42 Vict. c. 15), and this section is amended by s. 5 of the Dogs Act, 1906. See *Johnson* v. *Wilson*, 1909, 2 K. B. 497. No duty is payable for dogs under six months old (Act of 1867, s. 10), or hound whelps under twelve, never used or entered with any pack of hounds, the proof of age lying on the owner by s. 19 of the latter Act, which also, by s. 21, exempts the dogs of the blind used solely by them for their guidance, and by s. 22 shepherds' dogs, on a special procedure being followed by farmers or shepherds. The Protection of Animals (Cruelty to Dogs) Act, 1933 (23 & 24 Geo. 5, c. 17), gives power to any Court before which a person is committed under the Protection of Animals Act, 1911, of an offence of cruelty to a dog, to order him to be disqualified for keeping a dog and for holding or obtaining a dog license for such period as the Court thinks fit.

Injury to Cattle.—The Dogs Act, 1906 (6 Edw. 7, c. 32), repealing and re-enacting the Dogs Act, 1865, which had set aside the rule of the common law, enacts that—

> The owner of a dog shall be liable in damages for injury done to any cattle [including, by s. 7, horses, mules, asses, goats and swine] [or poultry, by the Amendment Act, 1928, s. 1] by that dog; and it shall not be necessary for the person seeking such damages to show a previous mischievous propensity in the dog, or the owner's knowledge of such previous propensity, or to show that the injury was attributable to neglect on the part of the owner. See *Arneil* v. *Paterson*, 1931, A. C. 560 (two dogs owned by different owners, each liable for whole damages); *Knott* v. *L. C. C.*, 1934, 1 K. B. 126 (responsibility of person in control).

Injury to Human Beings.—To recover damages, the injured party must show that the dog to the knowledge of the owner or controller was ferocious towards mankind: e.g., that it had bitten or attempted to bite mankind (*Osborne* v. *Chocqueel*, 1896, 2 Q. B. 109); but the knowledge of a servant is not enough (*Applebee* v. *Percy*, (1874) L. R. 9 C. P. at p. 325). The owner may be liable though the bite was caused by the interven-

tion of a third person (*Baker* v. *Snell*, 1908, 2 K. B. 825).

Stray Dogs.—The Dogs Act, 1906, empowers police officers to seize any stray dog found in a highway or place of public resort, with the result that it may be sold or destroyed if not claimed after notice to the owner or person whose name and address is on its collar; and by s. 4 any person taking possession of a stray dog must either return it to its owner or give notice to the police.

As to importation and quarantine of dogs, see the Dogs Act, 1906, s. 2, and ANIMAL (DISEASES).

Dangerous Dogs.—The destruction of a dangerous dog by order of a Court of Summary Jurisdiction without giving the owner the option of keeping it under control (*Pickering* v. *Marsh*, (1874) 43 L. J. M. C. 143; *Lockett* v. *Withey*, (1909) 99 L. T. 838), is provided for by s. 2 of the Dogs Act, 1871. 'Dangerous,' as used here, is not confined to meaning dangerous to mankind (*Williams* v. *Richards*, 1907, 2 K. B. 88).

Board of Agriculture Orders.—Section 2 of the Act of 1906 empowers the Board of Agriculture and Fisheries to make orders prescribing and regulating the muzzling and the wearing of collars by dogs, and 'with a view to the prevention of worrying of cattle for preventing dogs or any class of dogs from straying during all or any of the hours between sunset and sunrise,' on pain of being seized and treated as 'stray.' Dogs belonging to a pack of hounds are exempted (*Burton* v. *Atkinson*, (1908) 98 L. T. 748; *Rasdall* v. *Coleman*, (1909) 100 L. T. 934).

The Commissioner of Police in the Metropolis may require dogs while in the streets and not led to be muzzled (Metropolitan Police Act, 1839 (c. 47)).

Although dogs are not the subject of larceny at common law, the offence is covered by the Larceny Act, 1861, s. 18, and the Larceny Act, 1916, s. 5. See DOG STEALING; ANIMALS.

See *Manson on Dogs*; *Chit. Stat.*, tit. '*Dogs.*'

Dog-draw, the manifest deprehension of an offender against venison in a forest, when he was found drawing after a deer by the scent of a hound led in his hand; or where a person had wounded a deer or wild beast, by shooting at it, or otherwise, and was caught with a dog drawing after him to receive the same.—*Manwood*, p. 2, c. viii. See STABLE-STAND.

Dog spear, lawful in party's own wood, so that owner of killed dog failed to recover (*Jordin* v. *Crump*, (1841) 8 M. & W. 782).

Dog stealing is punishable on summary conviction, for the first offence, by six months' imprisonment and hard labour, or fine not exceeding 20*l.* beyond the value of the dog. A second offence is, however, an indictable misdemeanour, punishable by imprisonment with or without hard labour not exceeding eighteen months. Similar punishment is provided for persons found in possession of dogs or their skins, knowing them to have been stolen, and a justice may order the restoration of the stolen property to the owner. Corruptly taking money or reward, to aid in the recovery of a stolen dog, is punishable by imprisonment with or without hard labour for eighteen months. Dogs are not the subject of larceny at common law. See Larceny Act, 1861, ss. 18, 19, 21 and 22; Larceny Act, 1916, ss. 5 and 48, and Sched.

Dogger, a light ship or vessel; *dogger-fish*, fish brought in ships.

Dogger-men, fishermen that belong to dogger-ships.

Dogma, a decree or order (eccl. Lat.); a theological doctrine promulgated by ecclesiastical authority.

Doitkin, or **Doit** [fr. *dutt*, Dut.; *daoto*, Venet.; *da otto soldi*, a piece of eight *soldi*], a base coin of small value, prohibited by 3 Hen. 5, c. 1, rep. by Stat. Law Rev. Act, 1863.

Dole, the act of distribution or dealing; a portion or lot; a boundary mark, e.g., a post or mound of earth; also popularly employed to denote sums to which unemployed persons are entitled under the Unemployment Insurance Acts.

In Scottish Criminal Law, a criminal intention. Without it, no act can be a crime—with the exception of crimes based on negligence and various statutory offences.

Dole-fish, the share of fish which the fishermen employed in the north seas customarily received for their allowance.—35 Hen. 8, c. 7, rep. by Stat. Law Rev. Act, 1863.

Dole-meadow, one wherein the shares of divers persons are marked by doles or landmarks.

Doles, or **Dools,** slips of pasture left between the furrows of ploughed land.

Dolg-bote [fr. *dolg*, Sax., wound, and *bote*, recompense], a recompense for a scar or wound.—*Cowel.*

Doli capax (capable of crime).

Doli incapax (incapable of crime).

Dolosus versatur in generalibus. 2 *Rep.* 34.—(A deceiver deals in generalities.)

Dolus malus (a degree of *dolus*, artifice) means fraud.—*Sand. Just.*

Domboc. or **Dombec** [Sax.], dome-book.

Dome, or **Doom** [Sax.], a judgment, sentence, or decree.

Dome-book [*liber judicialis*, Lat.], a book composed under the direction of Alfred, for the general use of the whole kingdom, containing the local customs of the several provinces of the kingdom. This book is said to have been extant so late as the reign of Edward IV., but is now lost.

Domesday, or **Domesday-book** [*liber judiciarius vel censualis Angliæ*, Lat.], an ancient record made in the time of William the Conqueror, and now kept at the Record Office, consisting of two volumes, a greater and lesser; the greater containing a survey of all the lands in England except the counties of Northumberland, Cumberland, Westmorland, Durham, and part of Lancashire, which, it is said, were never surveyed; and excepting Essex, Suffolk, and Norfolk, which three last are comprehended in the lesser volume. There is also a third book, which differs from the others in form more than in matter, made by command of the same king. And there is a fourth book called Domesday, which is only an abridgment of the others. The question whether lands are ancient demesne or not is to be decided by the Domesday of William I., whence there is no appeal. The addition of *day* to this Dome-book was not meant for an allusion to the final day of judgment, as most persons have conceived, but was to strengthen and confirm it, and signifies the judicial decisive record or book of dooming justice and judgment. Consult *Ellis's Introd. to Domesday Book.*

Domesmen, judges of men appointed to doom and determine suits and controversies, hence, *æg deme*, I deem or judge.—*Jac. Law Dict.* See DAYSMEN.

Domestics, menial servants (so called from being *intra mœnia domus*, within the walls of a house). The contract between them and their masters arises upon the hiring. In this country it is usual to engage domestic servants at a fixed amount of wages per annum. But there is generally no express stipulation as to the time that the service is to last; and when the terms are not otherwise defined the contract is thus understood, that either party may determine the service at pleasure, upon a month's warning or upon payment of a month's wages. As to the persons entitled under a bequest to 'domestic servants,' see *Re Lawson*, 1914, 1 Ch. 682; *Re Jackson*, 39 T. L. R. 400. See MASTER AND SERVANT.

For the purposes of Unemployment Insurance, employment in domestic service, except where the employed in any trade or business carried on for the purpose of gain, is an excepted employment under the Unemployment Insurance Acts, 1935 and 1936 (25 & 26 Geo. 5, c. 8) and (26 Geo. 5 & 1 Edw. 8, c. 13). Health Insurance: domestic service is an employment within the meaning of the National Health Insurance Act, 1924 (14 & 15 Geo. 5, c. 33), s. 1.

Domicellus, a better sort of servant in monasteries: also an appellation of a king's bastard.

Domicile, the place where a person has his home.

By the term 'domicile,' in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense the place where a person has his actual residence, inhabitancy, or commorancy, is sometimes called his domicile. In a strict and legal sense, that is properly the domicile of a person where he has his true fixed permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning (*animus revertendi*).

Two things, then, must concur to constitute domicile: first, residence; and secondly, the intention of making it the home of the party. There must be the fact and intent; for, as Pothier has truly observed, a person cannot establish a domicile in a place except it be *animo et facto.*

From these considerations and rules the general conclusion may be deduced, that domicile is of three sorts: domicile by birth, domicile by choice, and domicile by operation of law. The first is the common case of the place of birth, *domicilium originis;* the second is that which is voluntarily acquired by a party, *proprio Marte;* the last is consequential, as that of the wife arising from marriage.—*Story's Confl. of Laws*, s. 46. A good definition, as applied to an acquired domicile, is—that place in which a man has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home: *Lord* v. *Colvin*, (1859) 4 Drew. 366, per Kindersley, V.-C. But no definition is

perhaps quite satisfactory; see *Dicey's Conflict of Laws*, p. 731.

If a person leaves his own country with the intention of remaining abroad till death, he, nevertheless, retains his domicile of origin until he fix his domicile in some particular place.

It is a clearly established rule that the validity of a will, disposing of personal estate, as regards form, is regulated by the law of the country in which the deceased was domiciled at the time of his death. The application of this rule to the case of British subjects dying abroad, and of foreigners dying in this country, gave rise to great inconvenience, to remove which two statutes were passed in 1861.

By the first of these, the Wills Act, 1861 (24 & 25 Vict. c. 114), it is enacted among other things that every will made out of the United Kingdom by a British subject (whatever may have been his domicile) shall, as regards personal estate, be held to be well executed, for the purpose of probate, and in Scotland of confirmation, if the same be made according to the law of the place where it was made, or the law of the place where the deceased was domiciled when it was made, or the laws then in force in that part of the dominions of the Crown where he had his domicile of origin. By the second statute, 24 & 25 Vict. c. 121, in cases where a convention shall have been entered into between the Crown and any foreign state that such statute shall be applicable to the subjects of the Crown and such foreign state, it is enacted that no British subject dying in such foreign state, and that no subject of such foreign state dying here, shall be deemed to have acquired a domicile in the place of his death unless he shall have resided there for one year; but no convention having been entered into with any foreign state, this enactment is inoperative.

The domicile of a wife is that of her husband (*A.-G. of Alberta* v. *Cook*, 1926, A. C. 444.) For the English Courts to have jurisdiction to entertain a suit for dissolution of marriage the parties must be domiciled in England or Wales, though in the case of a suit for judicial separation mere residence is sufficient (*Armytage* v. *Armytage*, 1898, P. 178). A decree annulling a marriage on the ground of impotence is in effect a decree for dissolution and can only be pronounced by the courts of the domicile of the parties (*Inverclyde* v. *Inverclyde*, 1931, P. 29). The question whether a person is or is not domiciled in a foreign country is to be determined in accordance with English law as to domicile irrespective of the question whether that person has or has not acquired a domicile in the foreign country in the eyes of the law of that country (*Re Annesley*, 1926, Ch. 692). In matters coming before the English Courts and depending on foreign domicile, the *lex domicilii* in the widest sense must *prima facie* apply (*Re Askew*, 1930, 2 Ch. 259). See *Dicey's Conflict of Laws*; *Westlake's Private International Law*.

Domigerium, power over another; also danger.—*Bract.* l. 4, t. l, c. x.

Domina (Dame), a title given to honourable women, who, anciently, in their own right of inheritance, held a barony.—*Cowel.*

Dominant tenement, a term used in the civil law, and thence in ours, and also in Scots law relating to servitude. It means the tenement or subject in favour of which the service or easement is constituted; as the tenement over which the servitude or easement extends is called the 'servient tenement.' See *Bell's Dict.*; *Smith's Dict. of Antiq.*, tit. '*Servitudes*'; and *Gale* or *Goddard on Easements*.

Dominica. An island in the West Indies. See 2 & 3 Wm. 4, c. 125; 5 & 6 Wm. 4, c. 57; 23 & 24 Vict. c. 57; and 30 & 31 Vict. c. 91; see the Leeward Islands Act, 1871 (34 & 35 Vict. c. 107), which enacts provisions for the federation and general government of the Leeward Islands of which Dominica is one. As to Court of Appeal, see West Indian Court of Appeal Act, 1919 (9 & 10 Geo. 5, c. 47).

Dominica in ramis palmarum. Palm Sunday.

Dominical, that which denotes the Lord's Day, or Sunday. See SUNDAY.

Dominicide [fr. *dominus*, Lat., master, and *cædo*, to kill], the act of killing one's lord or master.

Dominion (His Majesty's). The Statute of Westminster (22 Geo 5, c. 4), s. 1, provides: "In this Act the expression Dominion means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland"; see also COLONY. These Dominions are also styled self-governing Dominions.

Dominion Register. A branch register of members in any part of His Majesty's Dominions where a company registered under the Companies Act, 1929, may be carrying on business, of the names of members resident in that part. The register is to be kept in

the same manner as the principal register. Any reference to colonial registers in articles shall be construed as references to Dominion registers. See Companies Act, 1929, ss. 103 *et seq.*

Dominium directum, in the Feudal Law, the interest vested in the superior; the superiority. See *Bell's Dict.*

Dominium utile, the possessory or vassal's title to the soil, or the right to its use and profits. See *Bell's Dict.*

Dominus. This word, prefixed to a man's name, in ancient times, usually denoted him a knight or a clergyman, a gentleman or the lord of a manor; also a principal in the Roman Law.

Dominus litis, the controller of a suit or litigation; also an advocate who, after the death of his client, prosecuted a suit to sentence for the executor's use.—*Civil Law.*

Dominus navis, the absolute owner of a ship.

Domitæ naturæ animalia, tame and domestic animals, as horses, kine, sheep, poultry, etc.

Domitellus, a title anciently given to the French kings' natural sons. See DOMICELLUS.

Dommages interets [Fr.], damages.

Domo reparandâ, a writ that lay for one against his neighbour, by the anticipated fall of whose house he feared a damage and injury to his own.—*Reg. Brev.* 153.

Domus conversorum, an ancient house built or appointed by King Henry III. for such Jews as were converted to the Christian faith; but King Edward III., who expelled the Jews from this kingdom, deputed the place for the custody of the rolls and records of the Chancery.—*Tomlin's Law Dict.*

Domus Dei, the hospital of St. Julian, in Southampton, so called. *Dugd. Mon.* tom. 2, 440. A name applied to many hospitals.

Domus Procerum, the House of Lords, abbreviated into *Dom. Proc.* or *D. P.*

Domus sua cuique est tutissimum refugium, (To every one his own house is the safest refuge.) See *Broom's Leg. Max.; Semayne's case,* (1605) 5 Rep. 91; 1 *Sm. L. C.*, 1, in which the extent of a sheriff's power to break doors was discussed, and five points resolved, the first being that every man's house 'is to him as his castle,' so that he is justified in killing another who breaks into his house to rob or murder him; and a sheriff to execute process may not break an outer door (see per Lord Ellenborough, C.J., in *Burdett* v. *Abbott,* (1811) 14 East, at p. 157); neither may a bailiff to distrain for rent, though he may enter through an open window (*Crabtree* v. *Robinson,* (1885) 15 Q. B. D. 312) or over a wall (*Long* v. *Clarke,* 1894, Q. B. 119).

Dona clandestina sunt semper suspiciosa. 3 *Rep.* 81.—(Clandestine gifts are always suspicious.) See GIFT.

Donary, a thing given to sacred uses.

Donatio inter vivos, a gift made by some one not in prospect of death, as distinguished from *donatio mortis causâ* (*q.v.*). It is constituted by an intention to give coupled with such acts as are necessary to give effect to such intention. If the donor dies within three years the subject-matter, if over 100*l.* in value, is generally subject to estate duty, unless given in consideration of marriage or a normal expenditure (Finance (1909–10) Act, 1910, s. 59).

Donatio mortis causâ, a gift of personal property in prospect of death; a death-bed disposition; an inchoate gift of personalty consummated by the giver's death.

It is derived from the Civil Law; Justinian's *Inst.* lib. 2, tit. 7, shows its nature. To render this kind of gift valid, it (1) must be made by the giver, when ill, in anticipation of his death; (2) must be intended to take effect only upon his death by his existing illness, for his recovery from that illness, or his subsequent personal revocation of the gift, as by resuming its possession, will defeat it; and (3) a *traditio* or delivery, either actual or symbolical, of the subject of the gift, or of the instrument which represents it, must be made to the donee, either for his own use, or upon trust for another person, or for a particular purpose. The gift of a cheque upon the donor's banker is not good as a *donatio mortis causâ,* because it is a gift which can only be made effectual by obtaining payment of it in the donor's lifetime, and is revoked by his death; see *Tate* v. *Hilbert,* (1793) 2 Ves. Jun. 111; *Re Beaumont,* 1902, 1 Ch. 889. And so a promissory note not payable to bearer. But a deposit in the Post Office Savings Bank can be the subject of such a gift (*Re Weston,* 1902, 1 Ch. 680; *Re Andrews,* 1902, 2 Ch. 394; *Re Harrison,* 78 Sol. Jo. 135).

This kind of gift resembles a legacy, inasmuch as it is ambulatory, incomplete, and revocable during the donor's life; is liable to his debts upon a deficiency of assets; may be made to his wife, and is subject to legacy duty under the Stamp Duties Act, 1845 (8 & 9 Vict. c. 76), and to estate duty under the Finance Act, 1894 (57 & 58 Vict. c. 30). It differs from a legacy in that it does not need probate, the donee's title being

directly derived from the giver in his lifetime; it is not a testamentary act; and it is taken against and not from the executor, whose assent to its enjoyment is not necessary. See *Ward* v. *Turner*, (1752) 2 Ves. Sen. 431, 1 W. &. T. L. C.; *Re Wasserberg*, 1915, 1 Ch. 195; *Re Hawkins; Watts* v. *Nash*, 1924, 2 Ch. 47.

Donatio perficitur possessione accipientis. A gift is made perfect by the possession of it by the donee.

Donative, a species of advowson, when the king, or any subject by his license, founded a church or chapel, and ordained that it should be merely in the gift or disposal of the patron; subject to his visitation only, and not to that of the ordinary; and vested absolutely in the clerk of the patron's deed of donation without presentation, institution, or induction. This is said to have been anciently the only way of conferring ecclesiastical benefices in England. If the patron *once* waived the privilege of donation and presented to the bishop, and his clerk was admitted and instituted, the advowson became representative, and was never donative any more. Donatives, which did not amount to one hundred in number, were all converted into presentatives by s. 12 of the Benefices Act, 1898 (61 & 62 Vict. c. 48). See ADVOWSON.

Donator nunquam desinit possidere antequam donatarius incipiat possidere. *Dyer*, 281.—(A donor never ceases to possess until the donee begins to possess.)

Donatory, the person on whom the king bestows his right to any forfeiture that has fallen to the Crown.—*Scots Law.*

Donatrix, a female giver. See DONOR.

Donee [fr. *dono*, Lat.], one to whom a gift is made.

Don grant et render, a fine sur, was a double fine, comprehending the fine *sur cognizance de droit come ceo*, etc., and the fine *sur concessit*, and might have been used to create particular limitations of estates; whereas the fine *sur cognizance de droit come ceo*, etc., conveyed nothing but an absolute estate, either of inheritance or at least of freehold.—1 *Steph. Com.*

Donis conditionalibus, Statute de (13 Edw. 1, c. 1, A.D. 1285), otherwise called Westminster the Second. At the date of this statute a gift to a man and the heirs of his body, provided that if he had no heirs the lands should revert, was construed to give the donee a conditional fee, which enabled him, after issue begotten, to alien the land, and thereby to disinherit the issue and to deprive the donor of his right of reverter. This interpretation is declared by this statute to be 'contrary to the minds of the giver, and the form impressed in the gift': wherefore it is ordained that the

'will of the giver, according to the form in the deed of gift manifestly expressed, be henceforth observed; so that they, to whom the land is given under such condition, shall have no power to alien the land so given, but that it shall remain unto the issue of them to whom it is given after their death, or shall revert to the giver or his heirs if issue fail, or there is no issue at all. . . . And if a fine be levied hereafter upon land so given, it shall be void in law.'

The intolerable mischief introduced by this statute, viz., the creation of inalienable estates tail, was got rid of by the fictitious proceedings of common recoveries, which were abolished by the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), which substituted an enrolled deed as the mode of barring an estate tail. Enrolment is not necessary, see Law of Property Act, 1925, s. 133. See *Challis's Real Property*. See TAIL.

Donor, a giver, a bestower, one who gives land to another in tail, etc.

Doom [fr. *dom*, A.S., judgment; fr. *deman*, to deem or form a judgment], judicial sentence; judgment.

Doomsday-book. See DOMESDAY-BOOK.

Dormant Claim, a claim in abeyance.

Dormant Funds, funds in court which have not been dealt with for fifteen years. See R. S. C. Ord. XXII., r. 11, as to service on the Official Solicitor; Supreme Court Funds Rules, 1927, r. 96. As to triennial publication of list of funds, see UNCLAIMED PROPERTY.

Dormant Partners, subject to s. 2, Partnership Act, 1890, and the Business Names Registration Act, 1916, those whose names are not known or do not appear as partners, but who nevertheless are silent partners, and partake of the profits, and thereby become partners, either absolutely to all intents and purposes, or at all events in respect to third parties. Dormant partners, in strictness of language, mean those who are merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm as principals. Unknown partners are properly secret partners: but in common parlance they are usually designated by the appellation of dormant partners. They are held responsible as partners, until retirement, to third parties, although they may not be so chargeable *inter se*. Consult *Lindley on Partnership*. See PARTNERSHIP (LIMITED

PARTNERSHIP) and BUSINESS NAMES REGISTRATION ACT, 1916; DISCLOSURE.

Dorture [contracted from *dormiture*], a dormitory of a convent; a place to sleep in.

Dossale, hangings of tapestry.—*Mat. Par.*

Dotal, relating to the portion of a woman; constituting her portion.

Dotation, the act of giving a dowry or portion; endowment in general.

Dote assignandâ, a writ for a widow, where it was found by office that the king's tenant was seised of lands in fee or fee-tail at his death, and that he held of the king in chief, etc.—*Fitz. N. B.* 26; *Reg. Brev.* 297.

Dote unde nihil habet, a writ of dower that lay for the widow against the tenant, who bought land of her husband in his lifetime, whereof he was solely seised in fee-simple or fee-tail, and of which she was dowable.—*Fitz. N. B.* 147.

Dotis administratio, admeasurement of dower, where the widow holds more than her share, etc.

Double Avail of Marriage, the double of the value of the vassal's wife's tocher, formerly due to the superior, when the vassal refused a wife equal to him and offered by the superior; but this was modified to three years' rent of the vassal's free estate.—*Old Scots Law.*

Double Complaint, or **Double Quarrel,** *duplex querela,* a grievance made known by a clerk or other person, to the archbishop of the province, against the ordinary, for delaying or refusing to do justice in some cause ecclesiastical, as to give sentence, or institute a clerk, as in the celebrated case of *Gorham* v. *Bishop of Exeter,* (1850) 19 L. J. Ex. 376, C. P. 200, Q. B. 279, in which the plaintiff, a clerk, succeeded on appeal in *duplex querela* against the defendant for not instituting him on the ground of alleged unorthodox views on Baptism, etc. It is termed a double complaint, because it is most commonly made against both the judge and him at whose suit justice is denied or delayed; and by Canon 95 the period of two months which the bishop had to inquire of the sufficiency of a clerk was abridged to twenty-eight days, before the expiration of which a *duplex querela* could not be brought.

Double or Treble Costs have been frequently granted by statute, e.g., to successful defendants in actions for irregular distress, by the Distress for Rent Act, 1737 (11 Geo. 2, c. 19), s. 20. The true mode of estimating the amount of double costs was first to allow the successful party the single costs, including the expenses of witnesses, counsel's fees, etc., and then allow him one-half of the amount of the single costs, without deducting counsel's fees, etc. Treble costs consisted of the single costs, half the single costs, and half of that half. But the public statutes prior to 1842 which gave these costs were repealed by the Limitations of Actions and Costs Act, 1842 (5 & 6 Vict. c. 97), popularly called 'Pollock's Act,' which enacted that the successful party should be entitled only to full and reasonable costs, to be taxed by the proper officer—an enactment repealed in its turn by the Public Authorities Protection Act, 1893 (see that title).

Double or **Treble Damages** are given, in some cases, by particular statutes; see, e.g., 2 Wm. & M. sess. 1, c. 5, ss. 4 and 5, which gave double and treble damages for pound breach and wrongful sale upon a distress respectively, but at common law the damages are always single. They are not reckoned in the same manner as double and treble costs, but arithmetically.

Double Entry, a term among merchants to signify that books of account are kept in such a manner that they present the debit and credit of every transaction. It is used in contradistinction to single entry.

Double Insurance takes place when the assured makes two or more insurances on the same subject, the same risk, and the same interest. The assured may recover the amount of his actual loss against any of the insurers, but nothing beyond this, and if he obtains full satisfaction from one of the assurers, the latter is entitled to contribution from the others. Excess of indemnity received by the assured is held by him in trust for the assurers. Double insurance is therefore entirely different from re-insurance, which is effected by the underwriter to secure himself from a loss. Double insurances are not prohibited by the law maritime unless fraudulently made; see *Arnould on Marine Insurance,* 8th ed. p. 430; the Marine Insurance Act, 1906, ss. 32, 80; *Newby* v. *Reid,* (1763) 1 W. Bl. 416.

Double insurance is prohibited under the National Health Insurance, Old Age, and Widows, etc., Contributory Pensions Acts, 1936.

Double Pleading. This was not allowed either in the declaration or subsequent pleadings. Its meaning with respect to the former was, that the declaration must not, in support of a single demand, allege several distinct matters, by any one of which that demand is sufficiently supported. With respect to the subsequent pleadings, the

meaning was that none of them was to contain several distinct answers to that which preceded it; and the reason of the rule in each case was, that such pleading tended to several issues in respect of a single claim. See *Steph. Plead.*, pp. 313 *et seq.*

Double Possibility. Before 1926 it was supposed (see *Whitby* v. *Mitchell*, (1890) 44 Ch. D. 85) that a limitation in remainder after a life interest to an unborn person of an interest in land to the unborn child or other issue of an unborn person was void for remoteness. This rule has been abolished by the Law of Property Act, 1925, s. 161, without prejudice to any other rule against perpetuities.

Double Quarrel. See DOUBLE COMPLAINT.

Double Rent. This is a penalty on a tenant holding over after his own notice to quit has expired. By the Distress for Rent Act, 1737 (11 Geo. 2, c. 19), s. 13, in case any tenant give notice to quit, and shall not deliver up possession at the time in such notice contained, he must from thenceforward pay to the landlord double the rent or sum which he should otherwise have paid. As to the effect of the Rent and Mortgage Interest Restrictions Acts, 1920 and 1923, see *Flannagan* v. *Shaw*, 1920, 3 K. B. 93; *Barton* v. *Fincham*, 1921, 2 K. B. at p. 299; *Northcotte* v. *Roche*, 37 T. L. R. 364. See *Woodfall's Landlord and Tenant.*

Double Value. This is a penalty on a tenant holding over after his landlord's notice to quit. By the Landlord and Tenant Act, 1730 (4 Geo. 2, c. 28), s. 1, if any tenant for life or years hold over any lands, etc., after the determination of his estate, after demand made, and notice in writing given, for delivering the possession thereof, by the landlord, or the person having the reversion or remainder therein, or his agent thereunto lawfully authorized, such tenant so holding over must pay to the person so kept out of possession at the rate of double the yearly value of the lands, etc., so detained, for so long a time as the same are detained. As to the effect of the Rent and Mortgage Interest Restrictions Acts, 1920 and 1923, see *Crook* v. *Whitbread*, 147 L. T. 80. See now the Act of 1933, ss. 3, 4 (1), and Sched. See *Woodfall's Landlord and Tenant.*

Double Waste. When a tenant, bound to repair, suffers a house to be wasted, and then unlawfully fells timber to repair it, he is said to commit double waste.

Doubles, letters-patent.

Dow [fr. *do*, Lat.], to give or endow.

Dowable, entitled to dower.

Dowager, a widow endowed.

Dowager-queen, the widow of a king.

Dower [fr. *dos*, *dotis*, Lat., a marriage gift; *dotare dower*, Fr., endow, to furnish with a marriage portion. *Dotarium*, M. Lat., *dotaire*, Prov.; *douaire*, Fr., a dowry or marriage provision; *douairière*, a widow in possession of her portion, a dowager], the right which a wife has in the third part of the lands and tenements of which her husband dies possessed in fee-simple, fee-tail general, or as heir in special tail, which she holds from and after his decease, in severalty by metes and bounds, for her life, whether she have issue by her husband or not, and of what age soever she may be at her husband's decease, provided she be past the age of nine years.

The legal estate in dower (being an estate for life) has been abolished and converted into an equitable interest (*ibid.*), L. P. Act, 1925, s. 1; it can only arise in respect of deaths after 1925 in case the deceased husband was a lunatic or defective on January 1st, 1925, and died without regaining testamentary capacity or before his committee or receiver was discharged, see A. E. Act, 1925, ss. 45 (1) (*c*) and 51 (2), or in the construction of equitable interests under s. 130, Law of Property Act, 1925, as an entailed interest according to the old law. Although the Dower Act, 1833, has been repealed by the A. E. Act, 1925, s. 45, for deaths after 1925, it is not apparent that the Act does not form an integral part of the old law. Where dower has been assigned by metes and bounds the widow would apparently be a tenant for life within the meaning of s. 1 (4) of the S. L. Act, 1925. Except as against an infant entitled in possession, in which case a settlement arises, a dowress, otherwise than by metes and bounds, apparently retains a share in the land (if the dower has arisen before 1926) analogous to an undivided share, see *Williams* v. *Thomas*, 1909, 1 Ch. 713; and *Wolst. & Ch. Conv. Acts*, 12th ed. p. 941. The following note has been preserved *verbatim* owing to the importance of the subject in relation to titles existing before 1926.

The original law of dower became among our ancestors, with the increase of alienation, highly inconvenient and obstructive of the free course of conveyances. The legislature by the 27 Hen. 8, c. 10 (the Statute of Uses), set about a method of diminishing the evil by providing a *jointure* in lieu of *dower*. By effect of this statute no widow can claim both jointure and dower. See JOINTURE.

But this statutable bar was found highly inconvenient, and recourse was had to many ingenious devices to prevent or defeat dower; but they were all more or less imperfect, and at length gave way to the universal practice of making an artificial form of a conveyance, on a purchase of land, which obtained the name of a 'conveyance to uses to bar dower.' The land was conveyed to such uses as the purchaser should appoint, and in default of appointment, to him for life, and on the determination of his estate in his lifetime, to a trustee and his heirs for the life of the purchaser in trust for him, and on the determination of the estate of the trustee, to the purchaser and his heirs.

An equitable bar of dower was deemed sufficient as between vendor and purchaser; as if a wife contract before marriage to relinquish her dower, either in consideration of a substituted provision or of marriage, which is valuable in itself and the highest consideration known to the law.

The Report of the Real Property Commissioners led the way to the passing of the Dower Act (3 & 4 Wm. 4, c. 105), which places a wife's right to dower entirely at the mercy of her husband. This Act (now repealed by the A. E. Act, 1925, s. 56, 2nd Sched., Part I.), in regard to deaths after 1925, after attaching dower, which formerly was attached to a legal estate only, to an equitable estate also, enacts that—

No widow is entitled to dower out of any land which shall have been absolutely disposed of by her husband in his lifetime or by his will (s. 4). A widow is not entitled to dower out of any land of her husband when, in the deed by which it was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land (s. 6). The widow's right to dower is subject to any conditions, restrictions, or directions which shall be declared by her husband's will (s. 8).

These sections contain the essential alterations made by this Act, and put the widow's dower altogether in the husband's power.

The Act does not extend to the dower of any woman married on or before the 1st January, 1834, and does not give to any will, deed, contract, engagement, or charge executed, entered into, or created before that day, the effect of defeating any right to dower.

No arrears of dower, nor any damages on account thereof, are recoverable by action or suit for more than six years next before the commencement of such action or suit by the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27), s. 41. An action for assignment of dower is not within this Act, though the Court may refuse relief on the ground of *laches* (*Williams* v. *Thomas*, 1909, 1 Ch. 713).

Dower unde nihil habet, Writ of, the remedy for a widow to whom no dower had been assigned within the time limited by law.—3 *Bl. Com.* 183. Abolished by C. L. P. Act, 1860, s. 26.

Dower, Writ of Right of, the remedy for a widow who had been deforced of part of her dower. Abolished by C. L. P. Act, 1860, s. 26.

Dowl and Deal [fr., the Brit. *dal, divisio*, from the Sax. *dælan*, i.e., *dividere*, whence *dealing*], a division.—*Cowel's Law Dict.*

Dowle Stones, stones dividing lands, etc.

Dowress, a widow entitled to dower.

Dowry [*dos mulieris*, Lat.], otherwise called *maritagium*, or marriage goods, that which the wife brings the husband in marriage. This word should not be confounded with dower.—*Co. Litt.* 31.

Dozein, a territory of jurisdiction. Stat. 18 Edw. 2. See DECINERS.

Drachm: (1) Apothecaries' weight, $\frac{1}{8}$ of an ounce; (2) Apothecaries' measure, $\frac{1}{8}$ of a fluid ounce. Not to be confused with dram (*q.v.*).

Draft, or **Draught,** a bill drawn by one person upon another for a sum of money; an order in writing to pay money; also a sketch or suggested form of a legal or any document, etc., to be settled previously to engrossment. Drafts are the property of the client, in business within the Solicitors Remuneration Order, 1882 (see SOLICITOR), by r. 3 of that Order. See CHEQUE.

Dragoman, an interpreter in the East.

Drain. By s. 343 of the Public Health Act, 1936, the following definition is given for that Act if not inconsistent with the context:

'Drain' means a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilege.

'Sewer' does not contain a drain as defined in this section, but, save as aforesaid, includes all sewers and drains used for the drainage of buildings and yards appurtenant to buildings. The definitions under the Public Health Act, 1875, s. 4, and amending Acts, gave rise to some uncertainty, see *Humphrey* v. *Young*, 1903, 1 K. B. 44, and *Travis* v. *Utley*, 1894, 1 Q. B. 233, and see s. 90 of the 1936 Act.

See PUBLIC SEWER.

Drainage, *Sanitary.*—Drainage for sanitary purposes is regulated by Part II, ss. 14–52, of the Public Health Act, 1936, which provides (s. 39) that local authorities may enforce drainage of undrained houses, etc.

Agricultural.—Drainage for agricultural

purposes is provided for by the Land Drainage Act, 1930 (20 & 21 Geo. 5, c. 44), which provides for the constitution of drainage districts with their respective drainage boards, which districts are to consist of catchment areas or other drainage districts and any drainage districts or areas constituted under the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), and any subsequent enactment subject to the provisions of the Act of 1930. Catchment Boards are appointed partly by the Minister of Agriculture and Fisheries and partly by local authorities within the catchment area and partly by the Minister consulting internal Drainage Boards; see s. 3 of the L. D. Act, 1930. Drainage Boards are elected by owners and occupiers having votes on a progressive scale, according to the rateable value of their land, s. 5, Sched. *ibid.* The expenses of Catchment Boards are defrayable out of general rates; of District Boards out of rates levied by these Boards. See *Chitty's Statutes.*

Drainage of House let furnished. In letting a furnished house it is an established rule that it is fit for occupation, and in *Wilson* v. *Finch-Hatton*, (1877) 2 Ex. D. 336, this rule was applied to defective drainage of a London house, and the tenant who had quitted was held liable neither for the rent nor for use and occupation.

Dram, $\frac{1}{16}$ of an ounce (Weights and Measures Act, 1878, s. 14). Not to be confused with drachm (*q.v.*) of the Apothecaries' weights.

Dramatic Copyright. See COPYRIGHT.

Drana, or **Drecca,** a drain or water-course. See 24 & 25 Vict. c. 133.

Drapery [*pannaria*, Lat.] is used as a head in our old statute books, and extended to the making and manufacturing of all sorts of woollen cloths.

Drawback, a term used in commerce to signify the remitting or paying back upon the exportation of a commodity of the duties previously paid on it.

A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all. It differs from a bounty in this, that the latter enables a commodity to be sold for *less* than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost. Were it not for the system of drawbacks it would be impossible, unless when a country enjoyed some very peculiar facilities of production, to export any commodity that was more heavily taxed at home than abroad. But the drawback obviates this difficulty, and enables merchants to export commodities loaded at home with heavy duties, and to sell them in the foreign markets on the same terms as those fetched from countries where they are not taxed.

Most articles imported or to be exported into or out of this country may be warehouses for subsequent exportation in bonded warehouses (see 45 & 46 Vict. c. 72; 63 & 64 Vict. c. 7; 5 & 6 Geo. 5, c. 89; 11 & 12 Geo. 5, c. 32). In this case they pay no duties if imported; and, of course, get no drawback on their exportation.

Sometimes a drawback exceeds the duty or duties laid on the article; and in such cases the excess forms a real bounty of that amount, and should be so considered.

See Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36), ss. 100, 104, and 117 *et seq.* Consult *Smith's Wealth of Nations.*

Drawee, the person on whom a bill of exchange is drawn, who is called, after acceptance, the acceptor. He must be named or otherwise indicated in the bill with reasonable certainty.—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 6. See BILL OF EXCHANGE.

Drawer, the person making a bill of exchange and addressing it to the drawee.

By the Bills of Exchange Act, 1882, s. 21, capacity to draw is co-extensive with capacity to contract (except that a corporation is not, by virtue of that section, capable), and by s. 23 signature is essential to liability.

Draw-latches, thieves, robbers, wasters, and roberdsmen.—5 Edw. 3, c. 14; 7 Rich. 2, c. 5.

Dreit Dreit. See DROIT DROIT.

Drenches, or **Drenges,** tenants *in capite.* They are said to be such as, at the coming of William the Conqueror, being put out of their estates, were afterwards restored to them, on their making it appear that they were the true owners thereof, and neither *in auxilio* nor *consilio* against him.—*Spelm.*

Drengage, the tenure by which the drenches or drenges held their lands. See preceding title.

Drifts of the Forest [*agitatio animalium in forestâ*, Lat.], a view or examination of what cattle are in a forest, chase, etc., that it may be known whether it be surcharged or not; and whose the beasts are, and whether they are commonable. These drifts are made at certain times in the year by the officers of the forest; when all cattle are driven into some pound or place enclosed for the beforementioned purposes, and also to discover

whether any cattle of strangers be there, which ought not to common.—*Manwood*, p. 2, c. xv.

Drift-land, Drofland, or Dryfland, a yearly rent paid by some tenants for driving cattle through a manor to fairs or markets.—*Cowel, Law Dict.*

Driftway. A way along which there is a right to drive cattle.

Drilling, Unlawful. The Unlawful Drilling Act, 1820, as amended by the Firearms Act, 1920, makes it an offence to attend a meeting in order to drill or to be drilled unless the meeting be authorized by the Crown or a Secretary of State or any officer deputed by him for the purpose.

Drince-lean, or **Drink-lean,** a contribution from tenants in the time of the Saxons towards a potation, or ale provided to entertain the lord or his steward.

Drinking-fountains may be established in London by sanitary authorities in such convenient and suitable situations as they may deem proper under s. 51 of the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), which takes the place of s. 70 of the Metropolis Management Act, 1855.

Drivers, etc., of Carriages. As to misconduct by them, see Highways Act, 1835 (5 & 6 Wm. 4, c. 50), s. 78; 6 & 7 Vict. c. 86, s. 35); Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), ss. 37 *et seq.*; Offences against the Person Act, 1861, s. 35; Licensing Act, 1872, s. 12; Metropolitan Police Act, 1839, s. 54; and the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), as amended by 24 & 25 Geo. 5, c. 50, and see DRUNKENNESS. As to licensing, etc., of drivers of motor cars, see MOTOR CAR.

Droiden, a grove or woody place where cattle were kept.—*Jac. Law Dict.*

Droit [Fr.], right, justice, equity. The many writs of *droit* or right used in our law were all abolished by 3 & 4 Wm. 4, c. 27, except a writ of dower, or writ of dower *unde nihil habet*, which were in their turn abolished by the C. L. P. Act, 1860, s. 26.

Droits of Admiralty, the perquisites attached to the office of Admiral of England (or Lord High Admiral). Prince George of Denmark, the husband of Queen Anne and Lord High Admiral, resigned the rights to these *droits* to the Crown for a salary, as Lord High Admiral, of 7,000*l.* a year. When the office was vacant, they belonged to the Crown. Of these perquisites, the most valuable is the right to the property of an enemy seized on the breaking out of hostilities. In the arrangement of the Civil List during the recent reigns, it was settled that whatever *droits* of Admiralty accrued were to be paid into the Exchequer for the use of the public. The Lord High Admiral's right to the tenth part of the property captured on the seas has been relinquished in favour of the captors. Droits of Admiralty also included all unclaimed wreck, flotsam, jetsam, ligan and derelict, which are now dealt with by the Receiver of Wreck for the district, Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 523–528; and Droits of Admiralty must be distinguished from Droits of the Crown in time of war, see PRIZE. The Admiralty jurisdiction in the High Court, however, extends to trover property and ships recaptured from pirates, Judic. Act, 1925, s. 22.

Droit d'aubaine [*jus albinatus*, Lat., i.e., *alibi natus*, born elsewhere], in old French law, a right of the king, entitling him, at the death of an alien, to all such alien was worth, unless he had a peculiar exemption.

Droit-droit, or **jus duplicatum,** a double right, i.e., the right of possession joined with the right of property, which makes a complete title to lands, tenements, and hereditaments. And when to this double right the actual possession is also united, when there is, according to the expression in Fleta, *juris et seisinæ conjunctio*, then, and then only, is the title to property completely legal.—2 *Bl. Com.* 199.

Droitural, relating to right.

Dromoes, dromos, dromunda, ships of great burden; men-of-war.—*Walsing. Anno* 1292.

Droog, a fortified hill or rock.—*Indian.*

Drop : When the members of a court are equally divided on the argument showing cause against a rule *nisi*, no order is made, i.e., the rule is neither discharged nor made absolute, and is said to drop. In practice, there being a right to appeal, it has been usual to make an order in one way, the junior judge withdrawing his judgment; see e.g., *Bunch* v. *Great Western Railway Company*, (1886) 17 Q. B. D. at p. 217.

Drovers, those that buy cattle in one place to sell in another. See 5 Eliz. c. 12, repealed by 12 Geo. 3, c. 71, s. 1.—*Jac. Law Dict.*

Dru, a thicket or wood.—*Domesday Book.*

Drugs, adulteration of, see the Sale of Food and Drugs (Adulteration) Act, 1928 (18 & 19 Geo. 5, c. 31); and ADULTERATION.

Drugs, Dangerous. The importation, exportation, manufacture, sale, and use of opium and other dangerous drugs is regulated by the Dangerous Drugs Act, 1920 to

1932. Raw opium may only be imported and exported under license and at approved ports, and regulations are authorized for restricting its production, possession, sale, and distribution. The importation or exportation of opium prepared for smoking is absolutely prohibited. Medicinal opium, morphine, cocaine, ecgonine, heroin, and new drugs specified by Order in Council may only be imported or exported by license: their manufacture and sale are regulated. Wide powers of arrest are given to the police and severe penalties provided for offenders against these Acts. The Extradition Act, 1932 (22 & 23 Geo. 5, c. 39), includes offences in relation to dangerous drugs and attempts to commit such offences, among extradition crimes. See also the Pharmacy Act, 1868, and the Poisons and Pharmacy Act, 1908. See CHEMISTS AND DRUGGISTS; POISON.

Drunkenness, intoxication with strong liquor; habitual inebriety. A contract made by a person when so drunk as to be unable to understand what he is doing is *voidable* if the person with whom the contract was made was aware of the fact, but it is *not void*, and may be ratified when he becomes sober (*Matthews* v. *Baxter*, (1873) L. R. 8 Ex. 132). Mere drunkenness was punishable by statutes 4 Jac. 1, c. 5, and 21 Jac. 1, c. 7, ss. 1, 3, by a fine of five shillings and confinement in the stocks in default of distress. Under the Licensing Act, 1872 (35 & 36 Vict. c. 94), which repeals various previous enactments, drunkenness in a public place or licensed house is punishable by fine (s. 12). Disorderly drunkenness is punishable by fine or imprisonment, and refusal by drunken persons to quit licensed premises is punishable by fine (Licensing Consolidation Act, 1910, s. 80).

The 1st section of the Licensing Act, 1902 (2 Edw. 7, c. 28), enacts that—

> If a person is found drunk in any highway or other public place [which by s. 8 includes both for the purposes of that Act and of s. 12 of the Act of 1872, 'any place to which the public have access, whether on payment or otherwise'] . . . or on any licensed premises, and appears to be incapable of taking care of himself, he may be apprehended and dealt with according to law.

The 3rd section of the same Act empowers a court on conviction of a drunkard to order him to enter into a recognizance, with or without sureties, to be of good behaviour, and the 4th section enacts that—

> Where a licensed person is charged with permitting drunkenness on his premises, and it is proved that any person was drunk on his premises, it shall lie on the licensed person to prove that he and the persons employed by him took all reasonable steps for preventing drunkenness on the premises; and see DRIVER.

By the law of England drunkenness is no excuse for a crime. 'A drunkard,' says Sir Edward Coke (1 *Inst.* 247), 'who is *voluntarius dæmon*, has no privilege thereby; but what hurt or ill soever he doth, his drunkenness doth aggravate it; *nam crimen ebrietas et incendit et detegit*.' Nevertheless, 'although drunkenness is no excuse for any crime whatever, yet it is often of very great importance where it is a question of intention. A person may be so drunk as to be utterly unable to form any intention at all, and yet he may by guilty of very great violence.'—Per Patterson, J., in *R.* v. *Cruse*, (1838) 8 C. & P. 541. Thus if a man is so drunk that he is incapable of knowing that what he is doing is dangerous or likely to inflict serious injury he will not be guilty of murder (*R.* v. *Meade* 1909, 1 K. B. 895; but see *R.* v. *Beard*, 1920, A. C. 479).

Habitual Drunkards.—The confinement of habitual drunkards is regulated by the Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19), as amended by the Inebriates Act, 1888 (51 & 52 Vict. c. 19), which made the Act of 1879 perpetual, and the Inebriates Act, 1898 (61 & 62 Vict. c. 60). The Act of 1879 defines an habitual drunkard as a 'person who, not being amenable to any jurisdiction in lunacy, is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or herself, or to others, or incapable of managing himself or herself, and his or her affairs,' and this definition applies under the Act of 1898, with which it is construed as one. But while the Act of 1879 applied only to persons *voluntarily* submitting themselves thereto in the first instance, the Act of 1898 is compulsory in certain cases, authorizing the Court to order the detention in an inebriate reformatory of an habitual drunkard convicted on indictment of an offence committed under the influence of drink, and punishable with imprisonment or penal servitude; and the Act also enacts that—

> Any person who commits any of the offences mentioned in the first schedule to this Act [i.e., being found drunk in a public place or committing other offences under s. 12 of the Licensing Act, 1872, or otherwise similarly punishable], and who within the twelve months preceding the date of the commission of the offence has been convicted summarily at least three times of any offences so mentioned, and who is a habitual drunkard, shall be liable upon conviction on indictment, or if he

consents to be dealt with summarily on summary conviction, to be detained for a term not exceeding three years in any certified inebriate reformatory the managers of which are willing to receive him.

The expenses of a prosecution are by an Act of 1899 payable out of the local rates; but an habitual drunkard cannot be placed on a 'black list' (see below) without his consent (*Donovan's case*, 1903, 1 K. B. 895; and see *R.* v. *Briggs*, 1909, 1 K. B. 381, and HABITUAL DRUNKARD).

Black List.—The 'black list' above spoken of is the popular term for the list which a licensed person would, probably for his own purposes, frame on receiving notice of conviction of an habitual drunkard, together with a statement of his name, address, and occupation, and description of his personal appearance, in order to refrain from supplying him with intoxicating liquor in pursuance of s. 9 of the Act of 1902 and the elaborate Home Office Regulations issued in aid of that enactment. See BLACK LIST.

'Certified inebriate reformatories' may be certified as such by the Secretary of State if satisfied of their fitness, on the application of the council of any county or borough; or of any persons desirous of establishing an inebriate reformatory; and 'State inebriate reformatories' may also be established by the Secretary of State and maintained out of moneys provided by Parliament. 'Retreats' may also be licensed by borough and county councils, which councils are also empowered to contribute to their maintenance. In such retreats habitual drunkards, *voluntarily* submitting themselves, may be detained compulsorily for not more than two years. The drunkard, if he escapes from the retreat, may be apprehended and sent back by order of a justice of the peace.

See also Licensing (Consolidation) Act, 1910, s. 80; Refreshment Houses Act, 1860, s. 41; Merchant Shipping Act, 1894, s. 287; Firearms Act, 1920, s. 2; Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), ss. 5, 6 (children in bars of licensed premises), repealed 1932 Act. By s. 15 of the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), any person driving or attempting to drive or in charge of a motor vehicle in a road or other public place while under the influence of drink or drugs is liable to fine, imprisonment, and disqualification for 12 months or more for holding or obtaining a license.

Dry-Cræft [Celt. *dravi*, magician; *draoidheadh*, magic; hence also druid], witchcraft; magic.—*Anc. Inst. Eng.*

Dry Exchange [*cambium siccum*, Lat.], a term invented in former times for the disguising and covering of usury, in which something was intended to pass on both sides, whereas nothing passed but on one side, in which respect it was called dry; punished by 3 Hen. 7, c. 5.

Dry Multures, corn paid to the owner of a mill, whether the payers grind or not.—*Scots Law.*

Dry-Rent, a rent reserved without clause of distress. See RENT-SECK.

Duarchy [fr. δύο, and ἀρχή, Gk.], a form of government where two reign jointly.

Duces tecum, subpœna (you shall bring with you under penalty). If a person, even if he be a party to a cause, have in his possession any written instrument, etc., which it is desired to put in evidence at the trial, instead of the common subpœna he is served with a subpœna *duces tecum*, commanding him to bring it with him and produce it at the trial. Upon being served with a copy of this subpœna, he must attend at the trial with the instrument required, and produce it in evidence, unless he have some lawful or reasonable excuse for withholding it, of the validity of which excuse the Court and not the witness is to judge. It is no excuse that the legal custody of the instrument belongs to another, if it be in the actual possession of the witness; but if it tend to criminate himself or his client (if the witness be a solicitor), or if it be his title-deed, the Court will not compel him to produce it.

If the witness, instead of bringing the papers, etc., required, deliver them to the opposite party, by whom they are withheld, the Court will allow secondary evidence of the contents of them to be given, without a notice to produce the originals. A witness, producing papers under a subpœna *duces tecum*, need not be sworn unless he be examined.

Duces tecum licet languidus, a writ directed to the sheriff upon a return that he cannot bring his prisoner without danger of death, he being *adeo languidus;* whereupon the Court grants a *habeas corpus* in the nature of a *duces tecum licet languidus*. But this has long since been out of use; and where the person's life would be endangered by removal, the law will not permit it to be done.

Duchy Court of Lancaster, a tribunal of special jurisdiction, held before the chancellor of the duchy or his deputy, concerning all matters of equity relating to lands holden of the Crown in right of the Duchy of Lan-

caster, but not necessarily in Lancashire, and the Duchy Court which has not been abolished and has not sat for upwards of a century must not be confused with the Chancery Court of County Palatine (*q.v.*). The proceedings were similar to those on the Equity side of the Courts of Exchequer and Chancery, and the Chancery Court exercised a concurrent jurisdiction with the Duchy Court, so that it seems not to be a Court of Record. See COUNTY PALATINE.

Duchy of Cornwall. See CORNWALL.

Ducking-stool. See CASTIGATORY.

Ducroire [Fr.], guaranty; equivalent to DEL CREDERE, which see.

Due [fr. *du*, Fr.], anything owing. That which one contracts to pay or perform to another; that which law or justice requires to be paid or done.

It should be observed that a debt is said to be *due* the instant that it has existence as a debt; it may be *payable* at a future time.

Duel, in our ancient law, a legal combat between persons in a doubtful case for the trial of the truth, long since disused.

In modern times a duel is a combat with weapons between two persons upon some quarrel precedent, wherein, if one of them is killed, the other and the seconds are guilty of murder whether the seconds fight or not.—*Hawk. Pl.* 47.

Notwithstanding that this was the undoubted law, duels were by no means unfrequent in England up to about the middle of the nineteenth century, e.g., the Duke of Wellington exchanged shots without effect with Lord Winchelsea in 1829; Lord Cardigan wounded Captain Tuckett, and was tried before, and acquitted by, the House of Lords in 1841; and Mr. Seton was killed by Lieutenant Hawkey in 1845. For a full list of celebrated duels, see *Haydn's Dictionary of Dates*, tit. '*Duel.*'

It is a misdemeanour to challenge another to fight, or to provoke another to send a challenge (*R.* v. *Phillips*, (1805) 6 East, 464); and fighting or promoting a duel renders an officer liable to be cashiered and a soldier to suffer inprisonment by s. 38 (founded upon Articles of War made in 1844) of the Army Act (44 & 45 Vict. c. 58).

Dues, certain payments; rates or taxes.

Duke, the highest order amongst the nobility. The first duke in England was the Black Prince, who was created Duke of Cornwall in the eleventh year of Edward III. See NOBILITY.

Duke of Exeter's Daughter, a rack in the Tower, so called after a minister of Henry VI., who sought to introduce it into this country.

Dulocracy [fr. δοῦλος, Gk., a servant, and κράτος, power], a government where servants and slaves have so much license and privilege that they domineer.

Duly, in a contract for payment of a sum of money, does not mean 'punctually,' and payment after the stipulated time will suffice; see *Starkey* v. *Barton*, 1909. 1 Ch. 284.

Dum-barge, a barge without sails or oars.

Dum bene se gesserit. See QUAMDIU SE BENE GESSERIT.

Dum Bidding, in sales at auctions, when the amount which the owner of the thing sold was willing to take for the article was written, and placed by the owner under a candlestick or other things, and it was agreed that no bidding should avail unless equal to that amount.

Dum casta vixerit (so long as she shall live chaste). In deeds of separation of husband and wife, it is not uncommonly provided that the allowance thereby insured by the husband to the wife shall continue only so long as she shall live a chaste life. This proviso is termed the 'dum casta clause.' As to the insertion of such a clause when the Court, in decreeing a dissolution of marriage, orders the husband to make an allowance to the wife, see *Squire* v. *Squire*, 1905, P. 4.

Dum fuit infra ætatem (while he was within age), an abolished writ whereby one who had made a feoffment of his lands while an infant might, when he came of full age, recover them. Within age, he might enter into the land and take it back again, and by his entry he was remitted to his ancestor's right.—*Fitz. N. B.* 192.

Dum fuit in prisonâ (while he was in prison), an abolished writ of entry to restore a man to lands which he had aliened under duress of imprisonment.—2 *Inst.* 482.

Dum non fuit compos mentis (while he was not of sound mind), an abolished writ that lay, when a man not of sound mind had aliened any lands or tenements, to recover them from the alienee.—*Fitz. N. B.* 499.

Dum sola, whilst single or unmarried.

Dun, a mountain or high open place. The names of places ending in *dun* or *don* were either built on hills, or near them in open places.

Duna, a bank of earth thrown out of a ditch.—*Old Records.*

Dungeon, such an underground prison as was formerly placed in the strongest part

of a fortress; a close prison, dark or subterraneous.

Dunlo, a double, a kind of base coin less than a farthing.—*Old Records.*

Dunnage, pieces of wood or other material placed against the sides and bottom of the hold of a vessel, to stow the cargo.

Dunsetts, people that dwell on hilly places.—*Old Records.*

Dunum, or **Duna** [fr. *dunnarium*, Lat.], a down or hill.

Duo de Concilio, probably a clerical error or in a contracted form of 'domini de Concilio.' The lords of the council.

Duo non possunt in solido unam rem possidere. *Co. Litt.* 368.—(Two cannot possess the whole of one thing in specie.)

Duodena, a jury of twelve men.

Duodena manu, twelve witnesses to purge a criminal of an offence.

Duplex querela (a double plaint), a process ecclesiastical, in the nature of an appeal from the refusal of an ordinary to institute, to his next immediate superior. See DOUBLE COMPLAINT.

Duplicate, second letters-patent, granted by the Lord Chancellor in the same term as the first when the letters were void; a copy or transcript of a deed, or other writing; the ticket given by a pawnbroker (see that title) to the pawner of a chattel.

Duplicate Will, where a testator executes two copies of his will, one to keep himself and the other to be deposited with another person. Upon application for probate of a duplicate will, both copies must be deposited in the registry of the Court of Probate.

Duplicatio, the Roman pleading answering to our rejoinder.

Duplicity, the term corresponding to double pleading in law. See DOUBLE PLEADING AND PLEADING.

Durante, during; as *durante bene placito*, during pleasure; *durante minore ætate*, during minority; *durante viduidate*, during widowhood; *durante vitâ*, during life.

Durbar, a court, a hall of audience, a levee.—*Indian.*

Durden, a thicket of wood in a valley.—*Cowel's Law Dict.*

Duress [fr. *duresse*, Fr.; *durities*, Lat., constraint], imprisonment, compulsion.

Duress is either by imprisonment or by threats. In order to constitute duress by imprisonment, either the imprisonment or the duress consequent upon it must be tortious and unlawful.

By the Common Law, a contract made during duress is not void, but voidable; and the person upon whom it is practised may avail himself of the duress as a special defence to an action thereupon at any time. But the person who has employed the force cannot allege it as a defence, if the contract be insisted upon by the other.

Where a person is not a free agent, and is not able to protect himself, the Court will protect him, and will set aside a contract made under duress. Circumstances also of extreme necessity and distress of the party, although not accompanied by any direct restraint or duress, may, in like manner, so entirely overcome his free agency as to justify the Court in setting aside a contract made by him on account of some oppression or fraudulent advantage, or imposition, attendant upon it. See *Scott* v. *Sebright*, (1886) 12 P. D. 21, in which Butt, J., declared a marriage void on the petition of the wife.

Durham, County Palatine of. The jurisdiction which was, for a long time, vested in the Bishop of Durham for the time being, was taken from him by 6 & 7 Wm. 4, c. 19, which is amended by 21 & 22 Vict. c. 45, and vested as a separate franchise and royalty in the Crown.

As to the jurisdiction of the Durham Court of Chancery, see these Acts; appeals from the Chancellor of Durham lie to the Court of Appeal (Jud. Act, 1925, s. 28); and as to the Durham Court of Pleas, see 33 Geo. 3, c. 68, and 2 & 3 Vict. c. 16, ss. 4–37, and the Palatine Court of Durham Act, 1889 (52 & 53 Vict. c. 47); the Durham Court of Pleas is now abolished and its jurisdiction transferred to the High Court of Justice (Jud. Act, 1873, s. 16). See also COUNTY PALATINE.

The jurisdiction of the Durham Court of Chancery within its territorial limits is coextensive and concurrent with that of the Chancery Division of the High Court; Judic. Act, 1925, s. 18.

Dursley, blows without wounding or bloodshed; dry blows.—*Blount.*

Dustuck, a term used in Hindustan for a passport, permit, or order from the English East India Company. It generally meant a permit under their seal, exempting goods from the payment of duties.—*Encyc. Londin.*

Dusty-foot. See PIEDPOUDRE.

Dutch Auction, the setting up of property for sale by auction above its value, and gradually lowering the price till some person takes it.

Duty, a tax, an impost, or imposition; also an obligation. See PENSION.

Dwined, consumed, whence the word dwindle.—*Jac. Law Dict.*

Dyeing and Bleaching Works are 'non-textile factories' within the Factory and Workshop Act, 1901. See FACTORY.

Dying Declarations. See DEATH-BED DECLARATIONS.

Dyke-reed, or **Dyke-reve,** an officer who has the care and oversight of the dykes and drains in fenny countries.

Dynamite. The storage and carriage of dynamite is regulated by the Explosives Act, 1875; and see EXPLOSIVES. The use of it in public fisheries was prohibited by the Fisheries Dynamite Act, 1877, extended by the Freshwater Fisheries Act, 1878, s. 12, to private fisheries. Now see Salmon and Freshwater Fisheries Act, 1923.

Dysnomy [fr. δύς, ill, Gk., and νομος, law], the act of making bad laws.

Dyvour (otherwise *Bare-man*), a Scotch term for a person involved in debt, and unable to pay his creditors; synonymous with the word *bankrupt.—Skene.*

E.

Ea [Sax.], the water or river; also the mouth of a river on the shore between high and low watermark.

Ealder, or **Ealding,** an elder or chief. See ADELING.

Ealderman, or **Ealdorman.** See ALDERMAN.

Ealdor-biscop, an archbishop.

Ealdorburg [Sax.], the metropolis; the chief city.

Ealehus [fr. *eale,* Sax., ale, and *hus,* house], an alehouse.

Earl [fr. *eorl,* Sax.; *eoryl,* Erse; *comes,* Lat.], a title of nobility, formerly the highest in England, now the third, ranking between a marquis and a viscount, and corresponding with the French Comte and the German Graf. The title originated with the Saxons, and is the most ancient of the English peerage. William the Conqueror first made it hereditary. An earl has an hereditary seat in the House of Lords. In official instruments he is called by the sovereign 'trusty and well-beloved cousin,' an appellation as ancient as the reign of Henry IV., who was, as a fact, related to the greater part of the nobles (see Shakespeare's *Henry IV.,* Second Part, Act 2, sc. 2), and took this public notice of it as a means of popularity.

Earl Marshal of England, a great officer of state who had anciently several courts under his jurisdiction, as the Court of Chivalry and the Court of Honour. Under him is the Heralds Office, or College of Arms. This office of Earl Marshal is of great antiquity, and has been since 1672 hereditary in the family of the Howards, the present holder being the Duke of Norfolk.—3 *Steph. Com.*

Earldom, the seigniory of an earl; the title and dignity of an earl.

Earles-penny, money given in part payment. See EARNEST.

Earmark, a mark for identification. Money has no earmark, but it is an ordinary term for a privy mark made by any one on a coin, but money in a purse or container and set aside for a purpose, i.e., may be traced. As to the appropriation of payments, see CLAYTON'S CASE.

Earnest [fr. *eornest,* Sax.], the sum paid by the buyer of goods in order to bind the seller to the terms of the agreement. It is enacted by the 4th section of the Sale of Goods Act, 1893, re-enacting, but not quite in the same words, the 17th section of the Statute of Frauds, 29 Car. 2, c. 3, that 'a contract for the sale of any goods, for the price of 10*l.* or upwards, shall not be enforceable by action, unless the buyer accept part of the goods or give something in earnest to bind the contract, or in part payment,' or some note in writing of the bargain be made and signed by the parties to be charged or their agents.

As to what amount is sufficient earnest, Blackstone lays it down (Bk. II. p. 447) that 'if any part of the price is paid down, if it be but a penny, or any portion of the goods is delivered by way of earnest,' it is binding. To constitute earnest the thing must be given as a token of ratification of the contract, and it should be expressly stated so by the giver.

Earwitness, one who attests, or can attest, anything as heard by himself.

Easement, a privilege without profit which the owner of one neighbouring tenement hath of another, existing in respect of their several tenements, by which the owner of the one (called the *servient*) tenement is obliged to suffer, or not to do something on his own land, for the advantage of the owner of the other (called the *dominant*) tenement, e.g., a right of way, a right of passage of water. It is the *servitus* of the Civil Law. An easement being a mere right without profit must be distinguished from a profit *à prendre* (*q.v.*), which confers a right to take something

from the servient tenement. Instances of easements are rights of way, light, support, or flow of water. Easements have been classified as *positive*, such as a right of way, or for advertisement, a pew or grave, or *negative*, such as light, water, or the submission to a nuisance; *continuous*, such as a path or road; *discontinuous*, for intermittent use; *apparent or patent; non-apparent*, where there is no external indication that it exists, and *easements of necessity or not of necessity*. Easements of necessity arise by implied grant upon a severance of property without which the property granted, or retained, as the case may be, would be useless, but except for easements strictly of necessity there is no implication that the grantor has reserved any easement, however useful to his property it may be. Such easements must be expressly provided for either in the conveyance or by a regrant by the grantee of the land. See *Wheeldon* v. *Burrows*, (1879) 12 Ch. D. 31. An easement is an incorporeal hereditament, which from its nature can only be created by grant: hence the origin of all easements may be referred to a grant by the owner of the servient tenement either expressed or implied. In the majority of cases the right is founded upon the implication of a grant, the terms of which can only be ascertained from the actual enjoyment of the easement. (1) Where a right of way had been enjoyed longer than living memory and the land had been settled for longer than living memory so that there was never any person during that period who could have dedicated the way absolutely, it was held that there was no evidence that the way had not been dedicated before living memory and the grant was presumed (*Williams & Ellis* v. *Cobb*, 1935, 1 K. B. 310).

(2) By severance of one tenement in two parts.

By s. 62, sub-ss. (1), (2), of the Law of Property Act, 1925, replacing s. 6 (1), (2) of the C. Act, 1881, easements are included in a conveyance of land by implication, and see s. 205 (1) (xxiii.) of the L. P. Act, 1925, and by the same Act, s. 1 (2), an easement in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute is capable of subsisting and being conveyed or created at law. *All other easements are equitable*—by s. 187, *ibid.*, easements over or in relation to land may be enjoyed in common with any other person. Equitable easements created after 1925 must be registered before completion of purchase of a legal estate under s. 10, Class D (iii.) of the Land Charges Act, 1925, or they will be void against a purchaser of a legal estate for money or money's worth even though he may have notice *aliunde*. In all other cases notice (see ss. 197–199 of the L. P. Act, 1925) will affect a purchaser or grantee. Equitable easements affecting land within any of the three Ridings in Yorkshire must be registered locally, see L. P. (Amendment) Act, 1926, amending the Land Charges Act, 1925, s. 10. Upon a reservation by a grantor of any easement in a conveyance to the grantee of a legal estate in an easement, the grantee need not execute the conveyance (s. 65, L. P. Act, 1925).

(3) By prescription. Easements are extinguished *pro tem.* by the union of the dominant and servient tenements in one owner and revive upon severance in favour of the grantee or both or more of the grantees. They are also extinguished by release, by the disappearance of the dominant or servient property, by lapse of time or disuse. See EXTINGUISHMENT. See *Gale on Easements*; *Goddard on Easements*; and the title PRESCRIPTION.

East India Company. The East India Company was originally established for prosecuting the trade between England and India, which they acquired a right to carry on exclusively. By the middle of the eighteenth century, however, the company's political affairs had become of far more importance than their commerce. In 1858, by 21 & 22 Vict. c. 106, the government of the territories of the company was transferred to the Crown. Consult *Mill's History of British India*; *Jac. Law Dict.* See INDIA.

Easter [fr. *Ostern*, Ger., supposed to be derived from the name of the Teutonic goddess *Ostera* (*oster*, to rise), celebrated by the ancient Saxons early in the spring], a movable feast of the church, held in memory of our Saviour's resurrection.

Easter Day, on which all the other movable feasts and holy days of the church depend, is always the first Sunday after the Full Moon which happens upon, or next after, the twenty-first day of March; and if the Full Moon happens upon a Sunday, Easter Day is the Sunday after.—*Book of Common Prayer*.

Easter Monday is made a Bank Holiday by 34 & 35 Vict. c. 17, and 38 & 39 Vict. c. 13.

Easter Offerings, or Easter Dues, small sums of money paid to the parochial clergy

by the parishioners at Easter as a compensation for personal tithes, or the tithe for personal labour; recoverable under 7 & 8 Wm. 3, c. 6, before justices of the peace. See *Reg.* v. *Hall*, (1868) L. R. 1 Q. B. 632. In that case the vicar of Batley in Yorkshire was held entitled to recover, on evidence of a custom, for every communicant, 2*d.*; every cow, 2*d.*; every plough, 2*d.*; every foal, 1*s.*; every hive of bees, 1*d.*; every house, 3½*d.*; and the question whether a payment of 2*d.* per head for every member of a family of or above the age of sixteen was left open. A Rubric at the end of the Communion Service of the Prayer Book to the effect that 'yearly at Easter every Parishioner shall reckon with the Parson, Vicar, or Curate, or his or their Deputy or Deputies, and pay to them or him all Ecclesiastical Duties accustomably due, then and at that time to be paid,' probably refers to such specific payments as those in *Reg.* v. *Hall*. General freewill offerings raised by churchwardens in pursuance of a Bishop's letter are assessable to Income Tax, under Schedule E of the Income Tax Act, 1842, as perquisites accruing by reason of office (*Cooper* v. *Blakiston*, 1909, A. C. 104).

Easter Sittings of the Court of Appeal and High Court of Justice commence on the Tuesday after Easter week, and terminate on the Friday before Whitsunday (R. S. C. 1883, Ord. LXIII., r. 1), as amended, 1935.

Easter Term, formerly called a movable term, but afterwards fixed, beginning on the 15th of April and ending on the 8th of May in every year. See 11 Geo. 4 & 1 Wm. 4, c. 70, s. 6; see now Jud. Act, 1925, s. 52, abolishing terms, s. 53, with power to regulate vacations.

Easter Vacation in the Supreme Court commences on Good Friday and terminates on Easter Tuesday (R. S. C. 1883, Ord. LXIII., r. 4). See VACATION.

Easterling, a coin struck by Richard II., which is supposed to have given rise to the name of sterling as applied to English money.

Eastland Company, a company which subsisted under a charter granted by Queen Elizabeth in 1579 for regulating the commerce to the ports of the Baltic. The trade was subsequently thrown open by the Stat. 25 Car. 2, c. 7.

Eat inde sine die, words used on the acquittal of a defendant, 'that he may go thence without a day,' i.e., be dismissed without any further trial or adjournment.

Eaves. The edge of a roof, built so as to project over the walls of a house in order that the rain may drop therefrom to the ground instead of running down the wall.

Eavesdroppers, persons who listen under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales. They were in early times presentable at the court-leet, or indictable at the sessions, and punishable by fine and finding sureties for good behaviour.—2 *Hawk. P. C.*, c. x., s. 58.

Ebdomadarius, an officer in cathedral churches who supervised the regular performance of divine service, and prescribed the particular duties of each person in the choir.

Eberemorth, Eberemors, Ebere-murder. See ABEREMURDER.

Ecclesiastic, or **Ecclesiastical,** something belonging to or set apart for the church, as distinguished from *civil* or *secular*, with regard to the world.

Ecclesiastical Commissioners for England, a body corporate established by the Ecclesiastical Commissioners Act, 1836 (6 & 7 Wm. 4, c. 77), the long preamble of which sets out the recommendations as to the more equal distribution of episcopal duties and revenues of two previous Royal Commissions, empowered to suggest measures conducive to the efficiency of the Established Church to be ratified by Orders in Council. Church Estates Commissioners are appointed *ex officio* members of this corporation. See amending Acts of 1840, 1841, 1850, 1860, and 1873 (3 & 4 Vict. c. 113; 4 & 5 Vict. c. 39; 13 & 14 Vict. c. 94; 23 & 24 Vict. c. 124; 36 & 37 Vict. c. 64); and subsequent Acts; and CHURCH BUILDING ACTS; also Welsh Church Act, 1914 (4 & 5 Geo. 5, c. 91).

Ecclesiastical Corporations. Corporations created for the furtherance of religion, and for the perpetuation of the rights of the church, the members of which are exclusively spiritual persons. They are of two kinds: corporations sole—viz., bishops, certain deans, parsons, and vicars; and corporations aggregate—viz., deans and chapters, and formerly prior and convent, abbot and monks, and the like. For a statutory definition see 14 & 15 Vict. c. 104, s. 11.

Ecclesiastical Courts [*curiæ Christianitatis*, Lat.] are the Archdeacon's Court, the Consistory Courts, the Court of Arches, the Courts of Peculiars, the Prerogative Courts of the two archbishops, the Faculty Court, and the Privy Council, which is the Appeal Court.

Ecclesiastical Dilapidations. The liability of an incumbent to make good dilapidations in the parsonage house is governed by the Ecclesiastical Dilapidations Measures, 1923 to 1929 (14 & 15 Geo. 5, No. 3, and 19 & 20 Geo. 5, No. 3), which have replaced the former Acts (34 & 35 Vict. c. 43 and 35 & 36 Vict. c. 96). The 54th section of the Act of 1871 directs incumbents to insure.

Ecclesiastical Division of England is into provinces, dioceses, archdeaconries, rural deaneries, and parishes.

Ecclesiastical Law, the law administered in the ecclesiastical courts; it is derived from the Civil and Canon Law. Consult *Phillimore's Ecclesiastical Law*; *Chitty's Statutes*, tit. '*Church and Clergy.*'

Ecdicus [fr. ἔκδικος, Gk., from ἔκ and δίκη, justice], an attorney or proctor of a corporation; a recorder.—*Civil Law.*

E converso, conversely. See CONVERSE.

Ecumenical [fr. οἰκουμένη, Gk., the habitable world], general, universal; as an Ecumenical Council.

Edderbreche [Sax.], the offence of hedge-breaking. Obsolete.

Edestia [fr. *ædes*, Lat.], buildings.

Edia, ease; aid or help.

Edict [fr. *edictum*, Lat.], a proclamation, command, or prohibition; a law promulgated.

Education. Mr. Forster's Elementary Education Act, 1870 (33 & 34 Vict. c. 75), is the starting point in the history of the provision by legislation of a general system of education. Before this date education had been dealt with either as a series of individual problems in respect of which provisions were made for the education of special classes of persons, or by executive, as opposed to legislative methods, as, for example, by a system of grants in aid. This Act was followed by a series of Acts, known collectively as the Education Acts, 1870 to 1919, which together established a system of free and compulsory elementary education of a non-denominational character. The initial Act established 'school boards' with powers of building and maintaining elementary schools and of regulating the attendance of school children between the ages of 5 and 13. The El. Ed. Act, 1876, declared 'the duty of the parent of every child to cause such child to receive efficient elementary education in reading, writing and arithmetic,' and contained provisions directed to enforcing attendance at schools. The Board of Education (*q.v.*) was established in 1889 in place of the Education Department of the Privy Council. In 1900 the age for leaving school was raised to 14 (El. Ed. Act, 1900), and two years later 'local education authorities' (i.e., county and borough councils) were substituted for school boards with power to control secular education in non-provided schools (El. Ed. Act, 1902). The El. Ed. Act, 1918, made provision for the establishment by the local education authorities of continuation schools at which young persons must attend (with certain exceptions). See now the Education Act, 1921, ss. 75 *et seq.*

The Education Act, 1921 (11 & 12 Geo. 5, c. 51), consolidates the existing statutes, and thus substantially codifies the law on this subject. Part III. deals with the Elementary Schools; Part IV. School Attendance; Part V. Blind, Deaf, Defective and Epileptic Children; Part VI. Higher Education, Continuation Schools, etc. See also Education (Institution Children) Act, 1923, and S. R. & O. and a number of later Acts, amongst which the Education Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 41), has raised the school-leaving age for children to 15 years, and with a corresponding amendment to the age of employment of children in the Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12). See, further, *The State in Relation to Education* (*Craik*); *Owen's Education Act Manual*; *Chitty's Statutes*, tit. '*Education*,' and under various Acts; *Halsbury's Laws of England*, and supplements; and the titles CONSCIENCE CLAUSE; COWPER-TEMPLE CLAUSE; KENYON-SLANEY CLAUSE; ENDOWED SCHOOLS; INDUSTRIAL SCHOOLS; PUBLIC SCHOOLS; REFORMATORY SCHOOLS; *and the four titles next below.*

Education, Board of. The central authority as to education (s. 1, Education Act, 1921) was established by the Board of Education Act, 1899. There is a Consultative Committee for advising the Board (s. 2 of the 1921 Act). The Board never, in fact, meets, but its duties are carried out by the President, who is usually a member of the Cabinet. It superseded the Education Department (*q.v.*).

Education Code. A parliamentary grant is made annually to schools on conditions set forth in the document called the Code, issued annually by the Board of Education (Education Act, 1921), ss. 118–120, Sched., s. 170 (19).

Education Committee, is a committee established by a local education authority, which has to report on questions of elementary education, other than finance, before

action is taken (see Education Act, 1921, s. 4).

Education Department, 'the Lords of the Committee of the Privy Council on Education' (Elementary Education Act, 1870, s. 3). It was superseded by the Board of Education (*q.v.*) in 1889.

Eel-fares, a fry or brood of eels.—25 Hen. 8, c. 4. See EELS.

Eels. By the Salmon and Freshwater Fisheries Act, 1923 (13 & 14 Geo. 5, c. 16), s. 35, no person is to fish for eels by rod and line during the annual close season for freshwater fish; s. 36 prohibits the use of eel baskets between 31st December and 25th June; but eels and the fry of eels are not freshwater fish by s. 92; there is a close season for elvers (which includes the fry of eels) in the Severn fishery district between 31st December and 1st March, also between 25th April and 25th June (s. 87). See *Chitty's Statutes*, tit. '*Fish*.'

Effects, property, goods, and chattels.

Effeerers. See AFFEERORS.

Effendi, master; a title of respect.—*Turkish.*

Efforcialiter, forcibly; applied to military force.

Effractor [fr. *ex*, out of, and *frango*, Lat., to break], one that breaks through; a burglar.

Effusio sanguinis, the mulct, fine, or penalty imposed by the old English laws for the shedding of blood, which the king granted to many lords of manors.—*Tomkins' Law Dict.*

Efters [Sax.], ways, walks, or hedges.

Eftsoons, soon afterwards; see 13 Eliz. c. 12, s. 2.

E.G. [*exempli gratia*], for the sake of an instance or example.

Eggs. *Of Poultry.*—For hatching: importation may be regulated by the Minister of Agriculture and Fisheries by 25 & 26 Geo. 5, c. 31. As to marking and grade designation marks, see 18 & 19 Geo. 5, c. 19, and sale of eggs under that designation, 23 & 24 Geo. 5, c. 40, and see ANIMALS.

Of Game.—The destruction or taking of or possessing eggs of any kind of game, or swan, wild duck, teal, or widgeon, by any person not having the right of killing game upon the land is punishable on conviction before two justices with a fine of 5*s.* for every egg, by s. 24 of the Game Act, 1831 (1 & 2 Wm. 4, c. 32). See GAME, and *Chitty's Statutes*, tit. '*Game*.' As to larceny of pheasants' eggs, see *R.* v. *Stride*, 1908, 1 K. B. 617.

Of Wild Birds.—On application by a county council, a Secretary of State may prohibit, by s. 2 of the Wild Birds Protection Act, 1894 (57 & 58 Vict. c. 24), the taking or destroying of eggs of wild birds or of any kind of wild birds, and by an Act of 1902 (2 Edw. 7, c. 6), the eggs taken can be forfeited and disposed of as the Court shall think fit. See BIRDS.

Egistment. See AGISTMENT.

Egyptians. See GYPSIES.

Eia, or **Ey,** an island.

Eigné [fr. *aîné*, Fr.], eldest, or first-born. See BASTARD EIGNÉ.

Ei incumbit probatio, qui dicit, non qui negat: cum per rerum naturam factum negantis probatio nulla sit.—(The proof lies upon him who affirms, not upon him who denies; since, by the nature of things, he who denies a fact cannot produce any proof.) See BURDEN OF PROOF.

Eik *to a reversion*, an additional loan to a wadsetter (or mortgagor), who is the reversioner of the mortgaged estate; also *to a testament*, an addition to an inventory made up by an executor.—*Scots term.*

Einecia, eldership. See ESNECY.

Eire, or **Eyre** [fr. *iter*, Lat.], the Court of justices itinerant, *justiciarii itinerantes*, justices in eyre. They were anciently sent with a general commission into divers counties to hear such causes as are termed Pleas of the Crown; and this was done for the ease of the people, who must else have been brought to the King's Bench, if the cause were too high for the County Court: it is said they were sent but once in seven years. The *eyre of the forest* is the justice-seat, which, by an ancient custom, was held every three years by the justices of the forest journeying up and down for that purpose.—*Bract.* l. 3, c. xi.

Ejecta, a woman ravished or deflowered, or cast forth from the virtuous.

Ejectione custodiæ, *ejectment de garde*, a writ that lay against him who had cast out the guardian from any land during the minority of the heir.—*Reg. Brev.* 162. There were two other writs not unlike this; the one termed *ravishment de gard*, and the other *droit de gard.*

Ejectione firmæ, a writ which lay to eject a tenant from his holding. See next title.

Ejectment, the 'mixed' action at Common Law to recover the possession of land (which is real), and damages and costs for the wrongful withholding of the land (which are personal).

Until abolished by the C. L. P. Act, 1852,

s. 168, the forms of this action exhibited the most remarkable string of fictions then recognized by the Courts of Common Law. The action was commenced by the party claiming title delivering to the party in possession a declaration in which the plaintiff (John Doe) and the defendant (Richard Roe) were fictitious persons. The declaration stated that a lease of the premises in question for a term of years had been made by the party claiming the title (who was the real plaintiff) to John Doe, who entered upon the land by virtue of such demise, and that afterwards Richard Roe, the casual ejector, entered and ousted John Doe during the continuance of his term. Appended to this declaration was a notice signed by Richard Roe, addressed to the tenant in possession (who was the actual defendant), informing him of the action brought by the lessee, and that Richard Roe had no title to the premises, and advising him to appear at a certain time and defend his title, otherwise he, Richard Roe, would suffer judgment by default, by which the actual tenant would be turned out of possession by the sheriff under a writ of *habere facias possessionem*. The title of the action, after the tenant's appearance, stood thus :—Doe (the fictitious lessee), on the demise of ——— (the lessor or person really claiming the title), against ——— (the real defendant, the casual ejector Richard Roe having withdrawn). See *A Cent. of Law Reform*, p. 124.

This fictitious procedure was abolished by the C. L. P. Act, 1852, which substituted a simple writ claiming the land sought to be recovered from the party in possession, but did not allow any pleadings, as in other forms of actions. Under the Judicature Act the name of the action was changed to 'Recovery of Land.' See that title.

Possession can be obtained by a landlord against his tenant by summary proceedings before two justices, under the Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74), where the term exceeds not seven years, and the rent is not more than 20*l*., no fine being reserved; and in a county court, under the County Courts Act, 1934, ss. 48, 49, 179, on the expiration of notice to quit, or on half a year's rent being in arrear if the contract of tenancy contain a proviso for re-entry, and there be no sufficient distress on the premises; while by s. 48 of the same Act a general jurisdiction in ejectment is given in cases where neither the value of the premises nor the rent payable in respect thereof exceeds 100*l*. a year.

As to mesne profits, see that title. See also RENT RESTRICTION.

Ejectum, jet, jetsam, wreck, etc.

Ejectus, a whoremonger.—*Blount's Law Dict.*

Ejuration, renouncing or resigning one's place.

Ejus nulla culpa est cui parere necesse sit. D. 17, 50, 169.—(He is not in any fault who is bound to obey.)

Ejusdem generis (of the same kind or nature).

This term is chiefly used in cases where general words have a meaning attributed to them less comprehensive than they would otherwise bear, by reason of particular words preceding them: e.g., the Sunday Observance Act, 1677 (29 Car. 2, c. 7), enacts that no tradesman, artificer, workman, labourer, 'or other person whatsoever,' shall follow his ordinary calling on Sunday; here (see *Sandiman* v. *Breach*, (1827) 7 B. & C. 96) the word 'person' is confined to those of callings of the same kind as those specified by the preceding words, so as not to include a farmer. The *ejusdem generis* rule, as it is called, is one of the rules of construction applied by the Court in construing documents of all kinds, whether statutes, deeds, wills, mercantile documents, or others. For a discussion of the rule, see *Tillmanns & Co.* v. *S.S. Knutsford, Ltd.*, 1908, 2 K. B. 385, affirmed, 1908, A. C. 406. For instances of the application of the rule, see *Maxwell* or *Hardcastle on Statutes*; *Leake on Contracts*; *Theobald on Wills.*

Elder Brethren. A name of the Masters of the Trinity House (see that title).

Election. (1) The act of selecting one or more from a greater number for an office.

(2) The exercise of his choice by a man left to his own free will to take or to do one thing or another. It is the obligation imposed upon a person to choose between two inconsistent or alternative rights or claims. Thus, in *Scarf* v. *Jardine*, (1882) 7 App. Cas. 345, the House of Lords held that a customer could not sue a new firm after having elected to sue a retiring partner.

Electio semel facta et placitum testatum non patitur regressum. Quod semel placuit in electionibus amplius displicere non potest. Co. Litt. 146, 146 *a.*—(Elections once made and plea witnessed suffers not a recall. What has once pleased a man in elections cannot displease him on further consideration.) See also *Re Simms, Ex p. Trustee*, 1934, Ch. 1.

In equity the doctrine of election is founded on the rule that a person who takes

under an instrument must give effect to every part of it. Thus, if a testator devises his own estate to A. and A.'s estate to B., A. must elect whether he will take 'under' or 'against' the will. If he elects to take under, and consequently to conform with, all the provisions of the will, there is no difficulty—he takes the testator's estate and gives up his own to B. If, on the other hand, he elects to take against the will, i.e., retains his own estate and at the same time claims that devised to him by the testator, he is bound to make compensation out of it to B., whom he has disappointed by thus electing; see *Streatfield* v. *Streatfield*, (1735) *Cas. temp. Talb.* 176; W. & T. L. C.

(3) The term 'election' is also used to signify the determination of persons entitled to the proceeds of property directed to be converted to take the property in its unconverted state and thus put an end to the trust for conversion. See CONVERSION.

Election Commissioners are commissioners appointed by the Crown on the joint address of both Houses of Parliament to inquire into the report made by judges on the trial of an election petition (*q.v.*) that corrupt and illegal practices took place on an extensive scale at an election. The Commissioners report to Parliament, whereupon the constituency may be disfranchised by statute or by refusal of the House of Commons to issue a writ.

Election Committee was a committee of the House of Commons appointed to inquire into the validity of the election of a member.

Election Judges. See ELECTION PETITIONS.

Election Petitions are petitions for inquiry into the validity of the elections of members of Parliament. They are tried by a puisne judge of the High Court in the King's Bench Division (Parliamentary Elections Act, 1868, s. 11; the Judicature Act, 1925, s. 67; the Parliamentary Elections and Corrupt Practices Act, 1879). The judges selected for this duty are known as election judges. See *Fraser's Parl. Elect.*

Election to Municipal Offices. See Ballot Act, 1872 (35 & 36 Vict. c. 33), s. 20 (repealed except as to Scotland and Ireland); Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50); also Local Government Act, 1933 (23 & 24 Geo. 5, c. 51); and MUNICIPAL CORPORATION.

Elector, he that has a vote in the choice of any officer; a constituent; also the title of certain German princes who formerly had a voice in the election of the Emperor.

Electoral Divisions, divisions of an administrative county for the purpose of each of them returning a member of the County Council under the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51).

Electoral Franchise. (1) The qualifications entitling persons to vote at Parliamentary elections. A brief sketch of the changes up to 1884 in (*a*) Counties, and (*b*) Boroughs is as follows:—

(*a*) Originally the freeholders elected the members for the county: later, residence was made an additional qualification. In the fifteenth century the qualification was limited to resident freeholders of lands or tenements to the value of 40*s.* by the year (8 Hen. 6, c. 7). Towards the end of the eighteenth century the residence qualification was abolished. The Reform Act, 1832, extended the franchise to 10*l.* copyholders and to leaseholders for terms of years, and tenants at will paying a minimum of 50*l.* yearly rent (2 & 3 Wm. 4, c. 45, ss. 19 and 20). The Representation of the People Act, 1867, extended the franchise to every duly registered man of full age who was—(i.) the owner of lands or tenements, of whatever tenure, for his own life, for the life of another or for any lives whatsoever, or for any larger estate, if of not less than 5*l.* clear yearly value; or (ii.) was entitled as lessee or assignee to the unexpired residue of a term of years of originally not less than 60 years of the same annual value; or (iii.) was for 12 months immediately preceding the last day of July in any year the occupier of lands or tenements of the rateable value of 12*l.* (ss. 5 and 6).

(*b*) In boroughs the qualifications were both varied and numerous. In some boroughs the corporation elected the members, in others the franchise was exercised solely by the freemen, in others by the burgage holders (see BURGAGE TENURE), in others by those paying what corresponded to local rates (see SCOT AND LOT), in others by the potwallers (*q.v.*), and in others these different qualifications, or some of them, were combined. With certain savings as to corporate towns, the Reform Act, 1832, established a universal 10*l.* household suffrage for adult males. The Representation of the People Act, 1867 (ss. 3 and 4), gave the franchise to every duly registered man of full age and capacity who had been for 12 months the inhabitant occupier of any dwelling-house within the borough in respect of which he had been rated for the relief of the poor and had paid the rate, or who had occupied

and resided in lodgings for a year the annual value of which was 10*l.* or upwards.

The Representation of the People Act, 1884, assimilated the occupation franchise of the counties to that of the boroughs by entitling every man, after a qualifying period, who occupied any land or tenement of a clear yearly value of 10*l.* or more, to be registered as a voter: by extending the household and lodger franchise of the boroughs to the counties, and including in both cases occupiers of dwelling-houses by virtue of office, service, or employment.

The Representation of the People Act, 1918, created great changes: it abolished the voting qualifications of property owners, lodgers, freemen, etc.; it extended the parliamentary franchise to women for the first time, establishing something not unlike universal suffrage for women over 30 and for all adult men resident for a qualifying period of six months in any one constituency or contiguous constituency, or the occupation of business premises of 10*l.* annual value for the same period (s. 1). The Representation of the People (Equal Franchise) Act, 1928, equalized the franchise, and in the case of a business qualification extended it to the wife or husband.

A man or a woman of full age is entitled to be registered as a parliamentary voter for a university constituency if he or she has received, or, being a woman, qualified for, a degree (other than honorary) (ss. 2 and 4 (2)), as amended by the Act of 1928.

As to restrictions on plural voting, see s. 8. For further particulars, consult the Act itself (8 Geo. 5, c. 64), as amended by the Act of 1928.

(2) The qualifications entitling persons to vote at Local Government elections depend on the Representation of the People (Economy Provisions) Act, 1926, and the Representation of the People (Equal Franchise) Act, 1928. A person of full age and not subject to legal incapacity is entitled to be registered as an elector if he or she '(*a*) is on the last day of the qualifying period occupying as owner or tenant any land or premises in that area and (*b*) has during the whole of the qualifying period so occupied any land or premises in that area. . . . (*c*) is the husband or wife of a person entitled to be so registered in respect of premises in which both the person so entitled and the husband or wife, as the case may be, reside' (s. 2 of the Act of 1928). A lodger is entitled if the rooms are let unfurnished.

(3) The qualifications necessary for candidates for Parliament. These are now entirely abolished. See HOUSE OF COMMONS.

Electric Lighting. The supply of electricity for lighting is facilitated and regulated by the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56). Under this Act powers may be obtained either (1) by license from the Board of Trade; or (2) by Provisional Order of the Board of Trade, needing confirmation by special Act of Parliament; or (3) by special Act of Parliament. The Electric Lighting Clauses Act, 1899 (62 & 63 Vict. c. 19), has incorporated in one Act the usual clauses of provisional orders and special Acts, and directed that such clauses are to apply to every undertaking under the Electric Lighting Acts except so far as expressly varied. These licenses and orders may either be granted to the local authorities themselves or, with their consent, to independent contractors. Licenses continue in force for any period not exceeding seven years, but are renewable. By s. 27 of the 1882 Act an undertaking authorized by provisional order or special Act may be purchased compulsorily by the local authority within six months after the expiration of 21 years—a period extended to 42 years by the Electric Lighting Act, 1888, s. 2.

Large powers of supervision are vested in the Board of Trade. By s. 5 that Board may frame rules as to notices, etc., on application for licenses and provisional orders; and the rules now in force provide (*inter alia*) that a local authority is to have a preference over private contractors. By s. 6 the Board may insert in a license or order such provisions as they think proper in addition to the prices to be charged, the enforcement of a supply of the light, and the securing the safety of the public from personal injury. The Electric Lighting Act, 1909 (9 Edw. 7, c. 34), gives power to acquire land compulsorily for generating stations, and also contains other important provisions, including (s. 19) exemption of agreements from stamp duty.

These Acts have been amended subsequently and may be cited as the Electricity (Supply) Acts, 1882–1933. The Act of 1919, as amended by the Act of 1922, provided for the appointment of Elecrricity Commissioners for promoting, regulating and supervising the supply of electricity. The Act of 1926 created the Central Electricity Board, a non-profit corporation charged with supplying either directly or indirectly to authorized undertakers, but they are not empowered to operate generating stations, but

see ss. 5 and 6. The Act of 1933 amended the 1919 and 1922 Acts.

The Electricity Supply (Meters) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 20), provides for the better measurement of electricity supplied by authorized undertakers.

Eleemosyna Regis, and **Eleemosyna Aratri,** or **Carucarum,** a penny which King Ethelred ordered to be paid for every plough in England towards the support of the poor.—*Leg. Ethel.* c. i.

Eleemosynæ, possessions belonging to the church.—*Blount.*

Eleemosynaria, the place in a religious house where the common alms were deposited, and thence by the almoner distributed to the poor.

Eleemosynarius, the almoner or peculiar officer who received the rents and gifts, and in due method distributed them to pious and charitable uses.

Eleemosynary Corporations, corporate bodies constituted for the perpetual distribution of the free alms or bounty of the founder of them. Of this kind are all hospitals for the maintenance of the poor, sick, and impotent, and all colleges, both in our universities and out of them, which are founded for the promotion of piety and learning by proper regulations and ordinances, and for imparting assistance to the members of those bodies, in order to enable them to prosecute their devotions and studies with greater care and assiduity. These eleemosynary corporations, though in some things partaking of the nature of ecclesiastical bodies, are, strictly speaking, lay, and not ecclesiastical, even though composed of ecclesiastical persons; and, accordingly, they are not subject to the jurisdiction of the ecclesiastical courts, or to the visitations of the ordinary or diocesan in their spiritual characters.—3 *Steph. Com.*

Elegit (he has chosen), a judicial writ of execution founded on the statute of Westminster II. (13 Edw. 1, c. 18), by which it became, *in the election of* a party having recovered judgment, either to have a writ of *fieri facias* (see that title) or else to seize all the chattels and half the land of the judgment debtor in specie until judgment satisfied.

The writ of *elegit* was extended by the Judgments Act, 1838 (1 & 2 Vict. c. 110), to all the debtor's lands instead of a moiety as before, and also to his copyhold lands; but it does not now extend to goods (Bankruptcy Act, 1883, s. 146).

After the writ has been returned and filed, the creditor becomes tenant by *elegit;* the legal estate vests in him, and he can bring ejectment or sue for the rent if the estate is in reversion (*Hatton* v. *Haywood,* (1874) L. R. 9 Ch. 236). See R. S. C., Ord. XLIII. The writ will not affect the legal estate against a purchaser unless it is registered and re-registered every five years at the Land Registry (Land Charges Act, 1925, ss. 6 and 7). See s. 23, *ibid.,* in regard to registered land; see also ss. 59 and 61 of the Land Registration Act, 1925; *Edwards on Execution.*

Elementary Education. See EDUCATION.

Elimination, the act of banishing or turning out of doors; exclusion.

Elinguation, the punishment of cutting out the tongue.

Elisors, electors. In case of challenge to the sheriff and coroners for partiality, etc., the jury process was directed to two clerks of the Court, or two persons of the county named by the Court, and sworn. Then these *elisors* indifferently name or choose the jury, and their return is final, no challenge being allowed to the array.—*Co. Litt.* 158 *a.*

Eloigne, or **Eloine** [fr. *éloigner,* Fr.], to put at a distance; to remove one far from another.

Eloignment, removal; sending to a distant place.

Elongata, a return made by a sheriff in replevin, that cattle, etc., are not to be found, or are removed, so that he cannot make deliverance, etc.—*Jac. Law Dict.*

Elongatus, a return to a writ *de homine replegiando,* that the man was out of the sheriff's jurisdiction, whereupon a process was issued, called a *capias in withernam,* to imprison the defendant himself, without bail or mainprize, until he produced him.

Elvers, fry of eels, for which in the Severn fishery district a close time is fixed. See EELS.

Ely, the ancient city and metropolis of the county of Cambridge.

The Isle of Ely was never a county palatine, but it was a royal franchise, which, however, by 6 & 7 Wm. 4, c. 87, was taken away from the bishop, whose secular authority is now vested in the Crown.

Emancipatio. A solemn act by which a *pater-familias* divests himself of his power over his *filius-familias,* so that the *filius-familias* may become *sui juris.* There are three forms of *emancipatio:* (1) The old emancipation, which was by several *mancipationes,* followed by several enfranchise-

ments. The *mancipatio*, or solemn sale, destroyed the *patria potestas* and put the *filius-familias* in *mancipio*, which was a kind of slavery. The enfranchisement by the purchaser made the *filius-familias sui juris*. As the enfranchiser acquired all rights of patronage, the father, on occasion of the last *mancipatio*, added the trust-clause (*fiducia contracta*), i.e., an express condition that the purchaser should remancipate the *filius-familias* to the *pater-familias*, so that having ceased to be a *pater-familias*, and being only an ordinary purchaser, he might enfranchise his child, and so acquire the rights of patronage.

(2) The *Anastasian* emancipation, introduced by Anastasius. It consisted in obtaining an imperial rescript, authorizing the emancipation, which was to be registered with the proper officer. In this way a *filius-familias* might be emancipated in his absence, which could not be done by the old form *per æs et libram*, since the purchaser had to lay hold of the thing.

(3) The *Justinian* emancipation, a mere declaration of the *pater-familias* before the magistrate, no leave being required for the purpose (*recta via*).—*Sand. Just.*

Embargo [fr. *embargar*, Sp.], a prohibition to pass; a stop, arrest, or detention of ships; a prohibition imposed in time of war by a belligerent state upon merchant ships against their leaving port for a time specified.

Embassage, or **Embassy**, the message or commission given by a sovereign or state to a minister, called an ambassador, empowered to treat or communicate with another sovereign or state; also the establishment of an ambassador.

Ember Days. See EMBRING DAYS.

Embezzlement, the appropriation to his own use by a clerk or servant of money, valuable securities or chattels received by him for and on account of his master or employer. Embezzlement differs from larceny in this, that in the former the property misappropriated is not at the time in the actual or legal possession of the owner, whilst in the latter it is. The distinctions between larceny and embezzlement are often extremely nice and subtle, and it is sometimes difficult to say under which head the offence ranges. Unless the offender is a clerk or servant whose business it is to receive money for his master, he is not guilty of embezzlement. But if he have been employed to receive it in a single instance, he need not be a general servant. Partners stealing or embezzling money, etc., belonging to the copartnership may be convicted and punished as if they had not been such partners (Larceny Act, 1916, s. 40 (4)).

Embezzlement is a felony punishable under the Larceny Act, 1916 (see ss. 17–19). Justices can deal summarily with the offence with the consent of the accused when the value of the property does not exceed 20*l.* (Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86), s. 24). A person indicted for embezzlement may be found guilty of larceny if the evidence shows larceny, and a person indicted for larceny may be found guilty of embezzlement if it shows embezzlement (Larceny Act, 1916, s. 44).

As regards summary proceedings for embezzlement of materials, etc., by persons in woollen, etc., trade, see Hosiery Act, 1843 (c. 40).

Emblements [fr. *emblavance de bled*, O. Fr. corn sprung or put above ground], the growing crops of those vegetable productions of the soil which are annually produced by the labour of the cultivator. They are deemed personal property, and pass as such to the executor or administrator of the occupier, whether he were the owner in fee, or for life, or for years, if he die before he has actually cut, reaped, or gathered the same; and this, although being affixed to the soil, they might for some purposes be considered, whilst growing, as part of the realty.

If a tenant for life or *pur autre vie* die, his executor or administrator is entitled to emblements, for the estate was determined by the act of God; and it is a maxim in the law that *actus Dei nemini facit injuriam*. The advantages of emblements are extended to parochial clergy by 28 Hen. 8, c. 11, but a parson who resigns his living, or forfeits it by his own act, is not entitled to emblements, although his lessee is. By devise, the devise may, without express words, be entitled to the growing crops. But a legatee of the goods, stock, and movables on a farm is entitled to growing corn in preference as well to the devisee of the land as to the executor. So, a tenant at will, the duration of whose tenancy is uncertain, is, if the lessor suddenly determine the tenancy, entitled to emblements. And, at Common Law, *fructus industriales*, as growing corn and other annual produce, which would go to the executor upon death, may be taken in execution; but the appraisement and sale thereof are regulated by statute; and, by statute, growing crops may be distrained upon, and sold when ripe. But a crop of *natural* grass growing at the time of the

death of a tenant for life, and although fit to cut for hay, does not belong to his executor, but goes to the remainder-man.

It is provided by the Landlord and Tenant Act, 1851 (14 & 15 Vict. c. 25), s. 1, as amended by the Agriculture Act, 1920 (10 & 11 Geo. 5, c. 76), s. 14, that 'where the tenancy of any farm or lands held by a tenant at rack-rent shall determine by the death or cesser of the estate of any landlord entitled for his life, or for any other uncertain interest, instead of claims to emblements, the tenant shall continue to occupy such farm or lands until the occupation is determined by a twelve months' notice to quit, expiring at the end of a year of the tenancy.'

Emblers de gentz [Fr.], a stealing from the people. The phrase occurs in our old rolls of Parliament.—'Whereas divers murders, *emblers de gentz*, and robberies are committed,' etc.—*Rot. Parl.*, 21 Edw. 3, n. 62.

Embraceor [fr. *embrasour*, Fr.], he that, when a matter is in trial between party and party, comes to the bar with one of the parties, having received some reward so to do, and speaks in the case; or privately labours the jury, or stands in the court to survey and overlook them, whereby they are awed or influenced, or put in fear or doubt of the matter.—19 Hen. 7, c. 13 (repealed by the County Juries Act, 1825 (6 Geo. 4, c. 50), s. 62). *Termes de la Ley.*

Embracery, an attempt to influence a jury corruptly in favour of one party in a trial, by promises, persuasions, entreaties, money, entertainments, and the like. The punishment for this misdemeanour in the person embracing and the juror embraced is, by the Common Law, and also by the County Juries Act, 1825 (6 Geo. 4, c. 50), s. 61, fine and imprisonment.

Embring Days or **Ember Days** [fr. *embers; cineres*, Lat., because our ancestors, when they fasted, sat in ashes, or strewed them on their heads], those days which the ancient fathers called *quatuor tempora jejunii* are of great antiquity in the church; they are observed on the Wednesday, Friday and Saturday next after (*a*) the first Sunday in Lent; (*b*) Whit Sunday; (*c*) Holyrood Day, September 14; and (*d*) St. Lucy's Day, December 13.—*Brit.* c. liii.; *Book of Common Prayer.* Our almanacs call the weeks in which they fall the Ember weeks, and they are now chiefly noticed on account of the ordination of priests and deacons; because the 31st canon appoints the Sunday next after the Ember weeks for the solemn times of ordination.—*Wheatly Com. Pr.*

Emendals, an old word made use of in the accounts of the Society of the Inner Temple, where so much in *emendals* at the foot of an account, on the balance thereof, signifies so much money in the bank or stock of the house, for reparation of losses or other emergent occasions.—*Oxf. Dict.*

Emendare, to make amends for any crime or trespass committed. And a capital crime, not to be atoned by fine, was said to be *inemendabile.*—*Leg. Canut.* 2.

Emendatio, the power of amending and correcting abuses, according to stated rules and measures.

Emergency Legislation, the body of Statutes, Proclamations, Orders in Council, Rules, Regulations, and Notifications passed or made in consequence of the European crisis of August, 1914, and the ensuing state of war.

Emergent Year, the epoch or date whence any people begin to compute their time.

Emigrant Runner, any person, other than a licensed passage broker (see that title) or his clerk, who in any port or within five miles of it, for reward, solicits any intending emigrant on behalf of broker or owner or master of a ship, or any lodging-house keeper, or money changer, or other dealer for any purpose connected with the preparations or arrangements for a passage (Merchant Shipping Act, 1894, s. 347). Like a passage broker, the emigrant runner requires a license in a county borough of the borough council and in a county district (see Local Government Act, 1894, s. 27 (d)) of the district council.

Emigration Officers. See s. 355 of the Merchant Shipping Act, 1894.

Emigration of Poor Persons. See Poor Law Act, 1930 (20 Geo. 5, c. 17), s. 68, by which the council of any county or county borough may, with the consent of the Minister of Health, and in compliance with such rules, orders, and regulations as he may prescribe, procure, or assist in procuring the emigration of, any orphan or deserted child under 16 who is chargeable to the county or county borough; any poor person who is chargeable, or would be, if relieved, be chargeable to the county or county borough; any poor person having a settlement in the county or county borough. In the case of an orphan or deserted child the child must give its consent before a petty criminal court.

Eminence, an honorary title given to cardinals. They were called *illustrissimi*

and *reverendissimi* until the pontificate of Urban VIII.

Eminent Domain,. the right which a Government retains over the estates of individuals to resume them for public use.

Emissary, a person sent upon a mission as the agent of another; also a secret agent sent to ascertain the sentiments and designs of others, and to propagate opinions favourable to his employer.

Empannel [fr. *panne*, Fr.], the writing or entering by the sheriff, on a parchment, schedule or roll of paper, the names of a jury summoned by him.—*Cowel.*

Emparlance. See IMPARLANCE.

Emperor [fr. *empereur*, Fr.; *imperator*, Lat.], a sovereign prince who bears rule over large kingdoms and territories; a monarch of title and dignity supposed to be superior to a king. 'The Emperor' was the title of the head of the Holy Roman Empire, the successor in the West of the Empire founded by Augustus, and this is the proper signification of the term. But in modern times the title 'Emperor' has been assumed by various monarchs. Thus Napoleon I. styled himself Emperor of the French, and the title was again taken by his nephew, Napoleon III. The sovereigns of Austria and Russia were also styled emperor; and in 1870 the King of Prussia assumed the title of German Emperor. The King is Emperor of India by virtue of the Royal Titles Act, 1876 (39 & 40 Vict. c. 10).

Emphyteusis, the *jus emphyteuticarium*, or as it is more generally called, *emphyteusis*, was the right of enjoying all the fruits, and disposing at pleasure of the property of another, subject to the payment of a yearly rent (*pensio* or *canon*) to the owner. Formerly the lands of the Roman municipalities, or of the college of priests, used to be let for different terms of years, sometimes for a short term, such as five years, sometimes for a term amounting almost to a perpetuity, under the name of *agri vectigales* (Gai. iii. 145). Afterwards the lands of private individuals were let in a similar manner, and were also comprehended under the term *agri vectigales*. The emperors let their patrimonial lands in a similar way, and these lands so let were termed *emphyteuticarii* (C. xi. 58, 61), a name arising from there being a new ownership, or what almost amounted to an ownership, engrafted (*ἐν θυτεύω*) on the real *dominion*. Either shortly before or in the time of Justinian, the two rights, that of the *ager vectigalis* and that of *emphyteusis*, were united under the common name of *emphyteusis*, and subjected to particular regulations. Both lands and buildings could be subjected to *emphyteusis* (Nov. vii. 3, 1, 2). The *emphyteuta*, as the person who enjoyed the right was termed, besides enjoying all the rights of usufruct, could dispose of the thing, or rather of his rights over it, in any way he pleased (Nov. vii. 3, 2); he could create a servitude over it or mortgage it (D. xiii. 7, 16, 2); he had a real action (which, however, was said to be a *utilis vindicatio*, because he was not the owner but only in the place of one) to defend or assert his rights, which at his death went to his heirs (Nov. vii. 3).

He was obliged to pay his *pensio* under any circumstances, whether he actually benefited by his *emphyteusis* or not, because the payment of rent was an acknowledgment of the title of the *dominus*. He was also bound to use the thing over which his right extended, so that it was not deteriorated in value at the time his right expired (Nov. vii. 3, 2).—*Sand. Just.*, 7th ed. 134, 371.

Empire, the dominion or jurisdiction of an emperor; the region over which the dominion of an emperor extends; imperial power; supreme dominion; sovereign command.

Empire Settlement Act, 1922 (12 & 13 Geo. 5, c. 13), 'to make better provision for furthering British settlement in His Majesty's Overseas Dominions,' provides for the raising up to 1,500,000*l.* for this purpose in 1922–23, and not more than 3,000,000*l.* in any subsequent year.

Empiric, a practitioner in medicine or surgery who proceeds on experience only, without science or legal qualification; a quack.

Implead, to indict; to prefer a charge against; to accuse.

Employers and Workmen. See MASTER AND SERVANT.

Emporium [fr. *ἐμπόριον*, Gk.], a trading-place, a place for wholesale trade in commodities carried by sea.

Emptor, a buyer. See CAVEAT EMPTOR.

Enabling Statute. A statute giving powers of which the exercise may be obligatory or discretionary according to the enactment, as distinguished from peremptory or prohibitory Acts, e.g., 32 Hen. 8, c. 28, A.D. 1540.

Enach, the satisfaction for a crime; the recompense for a fault.—*Skene.*

Enact, to act, perform, or effect; to establish by law; to decree.

Enbrever, to write down in short.—*Britt.* 56.

Encheason [old law, Fr.], cause ; occasion. —*Cowel* ; *Bailey*.

Encroachment. An unlawful gaining upon the possession of a neighbour.

Encyclopædia. A collective work containing a series of articles by many contributors, either on all subjects, as the Encyclopædia Britannica, Chambers's Encyclopædia, or on all parts of a special subject, as the Encyclopædia of the Laws of England or the Encyclopædia of Sport. An encyclopædia is a 'collective work' within the meaning of the Copyright Act, 1911 ; see s. 35 of the Act, and see also s. 5 (2).

Endemic Disease. A disease habitually prevalent in a certain country and due to permanent local causes.—*Oxf. Dict.* Public Health Act, 1936, Part V. (ss. 143 *et seq.*), repealing and extending the Public Health Act, 1875, empowers the local authority to make regulations to prevent the spreading of any formidable epidemic, endemic, or infectious disease. See INFECTIOUS DISEASE.

Endenzie, or **Endenizen,** to make free ; to enfranchise.

Endorsement. See INDORSEMENT.

Endowed Charities Act (23 & 24 Vict. c. 136). See CHARITABLE TRUSTS.

Endowed Schools. Schools wholly or partly maintained out of an endowment. The Endowed Schools Acts are 23 Vict. c. 11 ; 31 & 32 Vict. c. 32 ; 32 & 33 Vict. c. 56 ; 36 & 37 Vict. c. 87 ; 38 & 39 Vict. c. 29 ; and 42 & 43 Vict. c. 66 ; since which statutes their temporary provisions have been continued by annual Expiring Laws Continuance Acts. The principal Act is that of 1869 (32 & 33 Vict. c. 56), which provided for the reorganization of endowed schools generally (excepting those subject to the Public Schools Act, 1868, as to which see PUBLIC SCHOOLS) through the medium of 'schemes' to be framed by the 'Endowed Schools Commissioners,' whose powers were transferred by the Act of 1874 (37 & 38 Vict. c. 87), to the Charity Commissioners, and are now vested in the Board of Education. As to the dismissal of masters, see the Endowed Schools (Masters) Act, 1908 (8 Edw. 7, c. 39), and *Wright* v. *Zetland* (*Marquess*), 1908, 1 K. B. 63. As to inspection on terms and contributions by local authorities towards cost or free of costs if the Board of Education so decide, see the Education Act, 1921 (11 & 12 Geo. 5, c. 51), and the Local Government Act, 1929 (19 & 20 Geo. 5, c. 17). See also GRAMMAR SCHOOLS.

Endowment, wealth ensured in perpetuity to any person or use. The assuring dower to a woman ; the setting forth a sufficient portion for a vicar towards his perpetual maintenance when the benefice is appropriated ; the creation of a perpetual provision out of lands or money for any institution or person. As to the meaning of the term in s. 62 of the Charitable Trusts Act, 1853, see *Re Clergy Orphan Corporation*, 1894, 3 Ch. 145.

Enemy, Trading with. See the following Acts directed against trading with the enemy during the Great War :—4 & 5 Geo. 5, c. 87, 5 Geo. 5, c. 12, 5 & 6 Geo. 5, cc. 79, 98, 105, and 6 & 7 Geo. 5, cc. 32, 52.

Enfeoffment, the act of investing with any dignity or possession ; also the instrument or deed by which a person is invested with possessions.

Enfranchisement, making free ; used (1) of the newly conferring, as by the Reform Act, 1832, a right of constituency to return a member to Parliament, or of a person to vote at a Parliamentary election ; and (2) of the turning copyholds into freeholds, as to which see COPYHOLD.

Engine. As to malicious injuries to engines and machinery, see Malicious Damage Act, 1861, ss. 11, 14, 15 ; and as to placing wood, etc., on any railway, with intent to obstruct or overthrow any engine, see s. 35. The use of locomotive engines on railways is authorized by the Railways Clauses Consolidation Act, 1845, s. 86, and regulated by s. 116 of that Act. The Railway Fires Act, 1905, as amended by the Railway Fires Act (1905) Amendment Act, 1923, gives compensation for damage by fires caused by sparks or cinders from railway engines ; see *Martin* v. *G. E. Railway*, 1912, 2 K. B. 406 ; *A.-G.* v. *G. W. Railway*, 1924, 2 K. B. 1. See TRACTION ENGINE and SMOKE.

Englecery, Englescherie, or **Englisherie** [fr. *Engleceria*, Lat.], the being an Englishman. Proof of the fact that a man found slain was an Englishman excused the neighbourhood from the fine they would have had to pay if he had been a Norman or Dane. See 14 Edw. 3, st. 1, c. 4.

English Information. A proceeding in the High Court in matters of revenue. See 28 & 29 Vict. c. 104. See EXCHEQUER ; INFORMATION. Consult *Robertson on the Crown*.

English Reports. A complete annotated reprint of the original Reports from 1220 to 1865 in uniform volumes and modern type.

Engravings. See FINE ARTS.

Engross, to copy in a fair and clerkly hand.

Engrosser, he that purchases large quantities of any commodity in order to sell it at a high price.—7 & 8 Vict. c. 24, repealed.

Enicia pars. See ESNECY.

Enlarge, to extend time, as to extend the time within which a rule is returnable, or an appeal may be brought, or an award made.

Enlarger l'Estate, a species of release which enures by way of enlarging an estate, and consists of a conveyance of the ulterior interest to the particular tenant; as if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee.—1 *Steph. Com.*

Enpleet, anciently used for implead.—*Cowel's Law Dict.*; *Dugd. Mon.* tom. 2, p. 412.

Enquest. See INQUEST.

Enquiry. See INQUIRY.

Enrolment, register, record; writing in which anything is recorded.

By the Statute of Enrolments, 27 Hen. 8, c. 16, now repealed by the L. P. Amendment Act, 1924 (15 Geo. 5, c. 5), Sch. 10, every bargain and sale of a freehold interest was required to be enrolled in Chancery within six [lunar] months after its date.

No assurance before 1926 by a tenant-in-tail under the Fines and Recoveries Abolition Act, 1833 (3 & 4 Wm. 4, c. 74), will have any operation unless enrolled in the Central Office within six calendar months after its execution, which enrolment is sufficient of itself, even where the conveyance was by bargain and sale, within the Statute of Enrolments. This provision did not extend to copyholds, the enrolment then being on the court-rolls of the manor. By s. 133 the Law of Property Act, 1925, enrolment is not required in respect of assurances or instruments executed or made after 1925. See DISENTAILING DEED. As to the Central Office, see R. S. C., Ord. LXI.

If a party to a suit in Equity, who had obtained a decree or order, was desirous of preventing a rehearing of the cause before the judge pronouncing the same, or of preventing an appeal to the Lord Chancellor or Lords Justices of Appeal, it must have been enrolled. So also where a decree was pronounced either by the Master of the Rolls or one of the Vice-Chancellors, and the party, instead of appealing to the Lord Chancellor or Lords Justices of Appeal, was desirous of appealing at once to the House of Lords, the decree must first have been enrolled. The effect of enrolling a decree of the Lord Chancellor was to prevent its being reheard by him. After a decree was enrolled, it could only be reversed or altered either by appeal to the House of Lords or by bill of review. It might be enrolled immediately after it had been passed and entered, unless a *caveat* had been entered, and then, if the party entering it did not present his petition of appeal or rehearing within twenty-eight days, the enrolment might be perfected. By Consol. Ord. 1860, XXIII., r. 24, the expenses of enrolment of decrees and orders were diminished; and by Ord. XXII., r. 16, the defendant had power to vacate the enrolment under certain circumstances; but the effect of the Judicature Acts is practically to abolish enrolment. As to enrolling assurances of property for charitable purposes, see CHARITABLE TRUSTS.

Ensient, or **Enseint,** the being with child.—*Old Law Fr.*

Entail [fr. *feudum talliatum,* Lat.; *entaillé,* Fr., from *tailler,* to cut], an estate settled with regard to the rule of its descent. See TAIL. As to Scotland, see Entail (Scotland) Act, 1914 (4 & 5 Geo. 5, c. 43).

Entailed Money, money directed to be invested in realty to be entailed.—Fines and Recoveries Abolition Act, 1833 (3 & 4 Wm. 4, c. 74), ss. 70, 71, 72. See now Law of Property Act, 1925, s. 130, and the L. P. (Entailed Interests Act), 1932 (22 & 23 Geo. 5, c. 27), s. 1, and TAIL.

Enter, to enrol, to commence officially, to inscribe upon the records of a Court or upon an official list. See also ENTRY.

Entering short. When bills not due are paid into a bank by a customer, it is the custom of some bankers not to carry the amount of the bills directly to his credit, but to 'enter them short,' as it is called, i.e., to note down the receipt of the bills, their amounts, and the times when they become due in a previous column of the page, and the amounts when received are carried forward into the usual cash column. See *Giles* v. *Perkins,* (1807) 9 East, 13. Sometimes, instead of entering such bills short, bankers credit the customer directly with the amount of the bills as cash, charging interest on any advances they may make on their account, and allow him at once to draw upon them to that amount. If the banker becomes bankrupt, the property in bills entered short, and not credited to the customer unless by way of advance, does not pass to his trustee, but the customer is entitled to them if they remain in his hands, or to their proceeds, if

received, subject to any lien the banker may have upon them.

Entertainment Tax, a tax levied on payments for admission to entertainments, first imposed by s. 1 (1) of the Finance (New Duties) Act, 1916. 'Entertainment' is defined by s. 1 (6). See also Finance (No. 2) Act, 1931 (21 & 22 Geo. 5, c. 49), s. 5, Sched. II., and *A.-G.* v. *Arts Theatre of London, Ltd.*, 1933, 1 K. B. 439 (part of subscriptions chargeable, apportioned); *A.-G.* v. *Southport Corpn.*, 1934, 1 K. B. 226 (admission of non-bathers to swimming pool).

Enticement. An action lies for damages suffered by the enticement of a person under an obligation to the plaintiff as by a married woman against another woman for enticing away her husband (*Newton* v. *Hardy*, (1933) 149 L. T. 165); see also *Elliot* v. *Albert*, 1934, 1 K. B. 650, loss of *consortium* (*q.v.*).

Entire Contract, a contract wherein everything to be done on the one side is the consideration for everything to be done on the other. See CONTRACT.

Entire Tenancy, contrary to several tenancy, and signifying a sole possession in one man, whereas the other is a joint or common possession in two or more.—*Jac. Law Dict.*

Entireties, Tenancy by. Before the L. P. Act, 1925, where an estate was conveyed or devised to a man and his wife during coverture, they were said to be tenants by entireties, that is, each was said to be seised of the whole estate, and neither of a part. The consequence was, that the husband's conveyance alone would not have had any effect against his wife surviving him. The husband being seised of the whole estate during coverture either in his own right or *jure uxoris*, could of course part with that interest; but to make a complete conveyance of all the interests held in entirety, the wife must concur. Tenants by entireties were seised *pre tout*, and not *per my et per tout*. As a consequence of this doctrine if lands were given to a husband and his wife and a third person, the husband and wife, being reckoned only as one person, took one-half and the third person the other half; but under s. 37 of the L. P. Act, 1925, the husband, wife and third person will each have equal rights. In some respects this species of tenancy seems to be an exception to the rule that the husband and wife are one person in law; if they are to be considered as one person, the husband should have been able to convey alone, which in this case he could not do.—*Watk. Conv.* 170. Tenancies by entireties were abolished by the L. P. Act, 1925, 1st Sched. Part VI., and converted to a joint tenancy without affecting the beneficial interest. The property is to be held upon trust for sale (*ibid.*, s. 36). See Married Women's Property Acts, 1882 to 1907, and MARRIED WOMEN'S PROPERTY.

Entrepôt [Fr.], a warehouse for goods bought and awaiting sale.

Entry, the depositing of a document in the proper office or place; actual entry on land is necessary to constitute a seisin in deed, and is necessary in certain cases, as, e.g., to perfect a common-law lease.

When a person without any right has taken possession of land, the party entitled may make a formal but peaceable entry, which is quite an extrajudicial and summary remedy, on such lands, declaring that thereby he takes possession, which notorious act of ownership is equivalent to a feudal investiture by the lord; or he may enter on any part of it in the same county, declaring it to be in the name of the whole; but if it lie in different counties, he must make different entries. This remedy by entry takes place in three only of the five species of ouster—viz., abatement, intrusion, and disseisin; for as in these the original entry of the wrongdoer was unlawful, they may therefore be remedied by the mere entry of him who has right. But upon a discontinuance or deforcement, the owner of the estate cannot enter, but is driven to his action; for herein the original entry being lawful, and thereby an apparent right of possession being gained, the law will not suffer that right to be overthrown by the mere act or entry of the claimant.—3 *Bl. Com.* 174.

An action must be brought within twelve (formerly twenty) years next after a right of entry first accrued, ten (formerly six) years being allowed after the determination of disabilities, provided it be not more than thirty (formerly forty) years in the whole. See Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), repealing and replacing s. 2 of the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27). All writs of entry and real actions by which lands might have been formerly recovered, except dower, dower *unde nihil habet* and *quare impedit*, are abolished.—3 & 4 Wm. 4, c. 27, s. 36. See DOWER.

By the Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 6, reproduced by s. 4 (2) of the L. P. Act, 1925, the only rights of entry which are now capable of subsisting

or being conveyed at law are rights of entry exercisable over or in respect of a legal term of years absolute or annexed for any purpose to a rent charge (L. P. Act, 1925, s. 1 (2) (*e*)). Before 1925 a lessee had a right but no estate before entry, see now L. P. Act, 1925, s. 149, which confers the estate in the lease without actual entry, but no lease at a rent can be made to commence later than 21 years from its date. See INTERESSE TERMINI. A right of entry may be disposed of by deed.

In Scots law, the term refers to the acknowledgment of the title of the heir, etc., to be admitted by the superior.

As to a burglarious entry, see BURGLARY.

In commerce, the act of setting down in an account-book the particulars of business transacted. Book-keeping is performed either by single or double entry.

Entry, Bill of. See BILL OF ENTRY.

Enure, to take place or to be available for.

Envelope and enclosed letter may be taken and read together (*Pearce* v. *Gardner*, 1897, 1 Q. B. 688). As to examination of letters by Postal Authorities, see 8 Edw. 7, c. 48, and 25 & 26 Geo. 5, c. 15.

En ventre sa mère. [Fr. In its mother's womb.] A child in the womb of the mother is for most purposes regarded in English law as being already born. But there are certain important exceptions. For example, if a child is killed whilst it is within the womb, it cannot be the subject of a murder or manslaughter charge, but otherwise if it receives injuries whilst in the womb which occasion its death *after* birth (*R.* v. *Senior*, (1832) 1 Moo. C. C. 346). In civil matters also the fiction of birth is only to be applied if the maintenance of the fiction is for the child's benefit and not its detriment (*Villar* v. *Gilbey*, 1907, A. C. 139), but it has lately been held by the House of Lords that the doctrine does not apply where a benefit is not destined directly to the child and is only for his indirect benefit, if any: *Elliot* v. *Joicey* (*Lord*), 1935, A. C. 209, and see L. Q. R., January, 1936, for a note on the case. Subject to the narrowing of the doctrine by *Elliot* v. *Joicey*, *ubi. sup.*, a liberal interpretation will be put on the word 'born' in a will (*Re Salaman*, 1908, 1 Ch. 4), and also in a deed (*Ebbern* v. *Fowler*, 1909, 1 Ch. 578). A child *en v.s.m.* is a 'child' within the meaning of Lord Campbell's Act, 1846 (9 & 10 Vict. c. 93 (*The George and Richard*, (1871) L. R. 3 Adm. & Ec. 466); and may also be a 'dependant' within the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58) (*Williams* v. *Ocean Coal Company*, 1907, 2 K. B. 422; *Orrell Colliery* v. *Schofield*, 1909, A. C. 433). See now the Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84). As to exception to 'child living' including child *en ventre sa mère*, see *Jackson* v. *Voss*, 39 T. L. R. 445.

Envoy, a diplomatic agent sent by one State to another.

Eodorbrice [fr. *eoder*, Sax., a hedge, and *brice*, broken], hedge-breaking.—*Leg. Alf.* c. 45.

Eo nomine, by that very name.

Epidemic Disease. A disease prevalent among a people or a community at a special time, and produced by some special causes not generally present in the affected locality. —*Oxf. Dict.* See INFECTIOUS DISEASE.

Epimenia, expenses or gifts.—*Blount.*

Epiphany, a Christian festival, otherwise called the Manifestation of Christ to the Gentiles, observed on the 6th of January.

Epiphany Quarter Sessions, formerly held in the first week after the Epiphany, are directed by the Law Terms Act, 1830 (11 Geo. 4 & 1 Wm. 4, c. 70), to be held in the first week after the 28th December.

The Quarter Sessions Act, 1894 (57 & 58 Vict. c. 6), repeals 4 & 5 Wm. 4, c. 47, which empowered justices at such sessions to name two of their body to fix Easter Sessions.

Episcopacy [fr. *'πίσκοπος*, Gk.], the office of overlooking or overseeing; the office of a bishop who is to overlook and oversee the concerns of the church. A form of church government by diocesan bishops.

Episcopal and Capitular Estates Management. See the temporary Episcopal and Capitular Estates Act, 1851 (14 & 15 Vict. c. 104), and its amending Acts, as set out in the Expiring Laws Continuance Acts.

Episcopalia, or **Onera Episcopalia,** synodals or other customary payments from the clergy to their bishop or diocesan, which were formerly collected by the rural deans, and by them transmitted to the bishop.—*Dugd. Mon.* tom. iii. p. 61.

Episcopalian, a dissentient, in Scotland, from the Established Presbyterian Church, and an adherent of the Reformed Catholic Church deriving apostolic succesSon from the apostles. The clergy of this kind are now placed nearly on a footing with the clergy of the Church of England when in this country. See 27 & 28 Vict. c. 94.

Episcopate, a bishopric.

Episcopus puerorum. It was an old custom that upon certain feasts some lay person should plait his hair and put on the garments

of a bishop, and in them pretend to exercise episcopal jurisdiction, and do several ludicrous actions, for which reason he was called *bishop of the boys*; and this custom obtained here long after several constitutions were made to abolish it.—*Blount.* Such an officer is mentioned in the statutes of some of the cathedrals of the old foundation in England.

Epoch, or **Epocha** [fr. ἔποχη, Gk., a pause], the time at which a new computation is begun; the time whence dates are numbered.

Equerry, an officer of State under the Master of the Horse.

Equitable Assets. Assets which could only be made available to creditors in a court of equity; legal, in a court of law (*Halsb. L.E.*); the distinction is not of any importance in regard to deaths after 1925, see ss. 2 (3) and 32 of the Administration of Estates Act, 1925. See EXECUTOR.

Equitable Assignment of Debt. This may be constituted merely by the debtor being given to understand that the debt has been made over by the creditor to some third person, and an assignment under s. 25 (6) of the Jud. Act, 1873 (as to which see CHOSE), is not necessary (*Brandt* v. *Dunlop Rubber Co.*, 1905, A. C. 454).

Equitable Claims and Defences at Common Law. The Common Law Procedure Act, 1854 (ss. 83–86), enabled any defendant to plead the facts which would entitle him, if judgment were obtained against him, to relief in Equity from such judgment on equitable grounds, by way of defence, and also enabled the plaintiff to avoid such defence by a replication upon equitable grounds. A plea on equitable grounds was good at Law only where an absolute and unconditional injunction would be granted in Equity.

The Judicature Act, 1925, s. 36, and following sections, reproducing s. 24 of the Judicature Act, 1873, has combined the jurisdiction of the Courts of Common Law and Equity so that legal and equitable remedies may be granted in the same court but without affecting the nature of the rights. The object is to avoid multiplicity of actions and it does not confer a new jurisdiction (*The James Westall*, 1905, P., p. 51), and if there is any conflict or variance between the rules of equity and common law, the rules of equity are to prevail. In the County Court a defendant must give notice of any equitable defence he relies on. See C. C. R., Ord. X., r. 19.

Equitable Estates and Interests. Rights relating to property of which the legal ownership is vested in another person, or in the equitable owner himself in another capacity. The rights arise whenever a person obtains a title to have the property or an estate or interest in it vested in himself, e.g., by contract or by any conveyance or assignment which does not by law transfer or vest the legal estate or ownership in the transferee, by mortgage or charge, and whenever a trust arises, either express, constructive, implied or by operation of law. In theory the legal owner alone was entitled, both in law and equity, to the property, and he alone was responsible for the obligations and incidents attaching to the property, the beneficial owner merely having a personal right in equity to force the legal owner to carry out his obligation or trust, but the rights and obligations of beneficial ownership became recognized and affected by statute. The Statute of Uses turned the beneficial right or use in real estate into the legal estate, although the statute did not extend to any use or trust upon a use (*Tyrrel's case*, (1557) Dyer, 155 *a*), and the statute did no more than to impose a simple and merely verbal formality in the operative words of the transfer of a legal estate, leaving the principle of equitable ownership unaffected in its application and its effects. At the same time the Statute, being based on the elastic nature of trusts, introduced a more flexible disposition of legal interests in land.

Under the Statute of Frauds (29 Car. 2, c. 3, s. 7) trusts creating equitable estates or interests in land, including leaseholds and copyholds, were required to be in writing signed by the person entitled by law to declare the trusts, but this did not apply to trusts arising by construction, implication, or operation by law, and see now L. P. Act, ss. 52 to 55.

Among other statutes which assimilated some, if not all, the incidents of beneficial ownership in equity to legal ownership, mention may be made of the Statute of Frauds (29 Car. 2, c. 3, s. 10), which made equitable estates of inheritance assets by descent, the Real Property Limitation Acts, 1833 (3 & 4 Will. 4, c. 27), ss. 24 and 25, and 1874 (37 & 38 Vict. c. 37) (limitation of suits), the Judgments Act, 1838 (1 & 2 Vict. c. 110), extending 29 Car. 2, c. 3, s. 10 (liability under writ of *elegit*), the Land Transfer Act, 1897 (60 & 61 Vict. c. 65), s.1, and the Administration of Estates Act, 1925 (upon the legal interpretation of the words 'real estate' in those Acts). The

Dower Act, 1833 (3 & 4 Will. 4, c. 105), subjected equitable estates to dower, and the Intestates Estate Act, 1884 (47 & 48 Vict. c. 71), to escheat. As between the legal and the beneficial owner, equity followed the law, by analogy to the law applicable to ownership in property of the same nature. The rules of descent were the same; words of limitation were generally construed in the same way (see *Moncton's Settlement*, 1913, 2 Ch. 536). See now L. P. Act, 1925, s. 60, but technical words of limitation are still required for the creation of equitable interests in tail in either real or personal property (L. P. Act, 1925, s. 130).

In regard to equitable interests in personal property, equity also followed the law; the legal incidents fall upon the legal owner, who has a right of indemnity against the beneficial owner, see *Halsbury, L. of E.*, Vol. 13, pp. 96, 97. The equitable right of a beneficial owner of land or any interest therein against the legal owner became a charge upon or attached to the property itself; see *Nesbit and Pott's Contract*, 1905, 1 Ch. 391, 1906, 1 Ch. 386, binding not only the legal owner, but all persons deriving title under him, except purchasers for value without notice. This is still the law subject to statutory modifications which enable certain persons to convey land free from equities in certain cases. See ESTATE OWNER, LEGAL ESTATE, PERSONAL REPRESENTATIVES, SETTLED LAND, TRUSTEES FOR SALE, MORTGAGEE, SALE BY ORDER OF COURT, and subject to statutory modifications as to notice and registration, see NOTICE, LAND CHARGES. The rights of the person entitled to the equitable estate or interest against the 'estate owner' are set out in L. P. Act, 1925, s. 3.

Under the land legislation of 1925 the term equitable interests was extended to many estates, rights and interests which, previously, were recognizable and enforceable at law. All estates, interests and charges in or over land which are no longer legal estates (see LEGAL ESTATE) are included in the term (L. P. Act, 1925, s. 1 (3) (8) and s. 205 (1) (x.) (xi.). As to the importance of registration of some equitable interests, see LAND CHARGES and SEARCHES. As to the automatic vesting of legal estates in a beneficial owner entitled immediately after 1st January, 1926, to require any legal estate (not vested in trustees for sale) to be conveyed to him, see L. P. Act, 1925, 1st Sched., Part II., par 3, as amended by the L. P. Amendment Act, 1926.

By L. P. Act, 1925, s. 3 (3), the owner of a legal estate (the estate owner) is bound to transfer a legal estate to any person who has become entitled to require that estate to be vested in him, and see UNDIVIDED SHARES. See MORTGAGE.

Equitable Executor. Where interests in property cannot be taken in execution under the processes at law available to the judgment creditor, he may obtain the appointment of a receiver and if necessary an injunction restraining the judgment debtor from dealing with the property. See R. S. C. Ord. L., r. 16 and Notes, A. P., *ibid.*

Equitable Mortgage, a mortgage under which the mortgagee does not get the legal estate. The following mortgages are equitable:—

(1) Where the subject of a mortgage is trust property, which security is effected either by a formal deed or a written memorandum, notice being given to the trustees in order to preserve the priority. As a rule these mortgages include mortgages (not being mortgages of a legal estate) under a trust for sale or settlement which are not registrable under the L. C. Act, 1925, s. 10, Class C.

(2) Where the subject of the mortgage is an equity of redemption, which is merely a right to bring an action in the Chancery Division to redeem the estate. Now under the L. P. Act, 1925, Sched. I., Parts VII. (1), (3), and VIII. (1), (3), and see ss. 85, 86, *ibid.*, a mortgagor retains a legal estate in fee simple or for a term of years, and the first and subsequent mortgagees out of that estate each have a legal mortgage.

(3) Where mortgages created before 1925 and whether of the equity of redemption of a legal estate or otherwise affecting the legal estate not being protected by a deposit of documents or by registration have been converted into legal mortgages (*infra*) by the L. P. Act, 1925, and have not been registered as a land charge since 1925 under the L. C. Act, 1925, they are to be deemed to remain an equitable estate as against a purchaser in good faith without notice (L. P. Act, 1925, 1st Sched., Parts VII. and VIII.). Registration not being compulsory (L. C. Act, 1925, s. 10 (1), Class C and (7)) until transfer, proper disclosure of such mortgages is required and ordinary notice will affect a purchaser, even in the absence of registration (L. P. Act, 1925, s. 199).

(4) Where there is a written agreement only to make a mortgage, which creates an equitable lien on the land.

(5) Where a debtor deposits the title-deeds of his estate with his creditor or some person on his behalf, without even a verbal communication. The deposit itself is deemed evidence of an executed agreement or contract for a mortgage for such estate.

This transaction, which appears to be a judicial repeal of the Statute of Frauds (29 Car. 2, c. 3, s. 4), is extensively resorted to, and is known in practice as an equitable mortgage by deposit of title-deeds. Its validity has long been established beyond all question (*Bank of New South Wales* v. *O'Connor*, (1889) 14 App. Cas. p. 282).

An equitable mortgage being a contract for a mortgage, the mortgagee might file a bill or claim in Equity, either for a legal mortgage, a foreclosure and conveyance, or a sale; and may now bring an action for the same purpose in the Chancery Division of the High Court (Jud. Act, 1873, s. 34 (3); 1925 Act, s. 56).

Equitable mortgages are amongst the documents which must be stamped within thirty days after execution, by virtue of s. 15 of the Stamp Act, 1891, re-enacting s. 18 of the Customs and Inland Revenue Act, 1888. See STAMP DUTIES, and as to priorities dependent on the order of registration, see LAND CHARGES, PRIORITIES.

For further information on this subject, consult *Coote* or *Fisher on Mortgages*, and see *Russel* v. *Russel*, (1783) 1 Bro. C. C. 269; 1 W. & T. L. C.

Equitable Waste. See WASTE.

Equity [fr. *æquitas*, Lat.] There is some confusion as to the meaning of Equity; as a scheme of jurisprudence distinct from Law 'Equity' is an equivocal term; the difficulty lies in drawing the dividing lines between the several senses in which it is used. They may be distinguished thus :—

(1) Taken broadly and philosophically, Equity means to do to all men as we would they should do unto us—by the Justinian Pandects, *honeste vivere, alterum non lædere, suum cuique tribuere.* It is clear that human tribunals cannot cope with so wide a range of duties.

(2) Taken in a less universal sense, Equity is used in contradistinction to strict law. This is *Moral* Equity, which should be the genius of every kind of human jurisprudence; since it expounds and limits the language of the positive laws, and construes them not according to their strict letter, but rather in their reasonable and benignant spirit.

Aristotle, in his discussion concerning Moral Equity, *Ethics Eud.*, b. v., c. x, calls it the correction of mere law, where mere law fails on account of its universality (*ἐπανορθῶμα νομίμου δικαίου, ᾗ ἐλλείπει διὰ τὸ καθόλου*) and points to the impossibility of providing for every possible predicament in express words.

(3) But it is in neither of these senses that Equity is to be understood as the substantial justice which has been expounded by the Court of Chancery. It is here accepted in a more limited and technical sense, and may be called *Municipal* Equity, and described as the system of supplemental law administered in Chancery, and founded upon defined rules, recorded precedents, and established principles, to which it closely adheres; the judges, however, liberally expounding and developing them, in order to meet novel exigencies. While it aims to assist the defects of the Common Law, by extending relief to those rights of property which the strict law does not recognize, and by giving more ample and distributive redress than the ordinary tribunals afford, it by no means either controls, mitigates, or supersedes the Common Law, but rather guides itself by its analogies, and does not assume any power to subvert its doctrines. This is amply shown by two well-known maxims of the Court of Chancery, viz., *Æquitas sequitur legem*, and *Where the Equities are equal, the Common Law must prevail.*

The grand characteristic of Municipal Equity is displayed in the nature and extent of its redress. Not content, as the Common Law generally is, to adjudicate strictly and absolutely *in rem*, i.e., upon the transaction itself, as it is presented by the litigants, Equity insists upon the conscientious obligations of the suitors; and by adjudicating *in personam*, may compel specific performance (see that title) of a contract where law would only give damages for the breach of it, and stop a wrong by injunction (see that title) where law would only give damages for the commission of it. Consult *Story's Eq. Juris.*, chap. i. And see TRUST. Complete powers are now given to all branches of the Supreme Court to administer Equity, though many matters of equitable jurisdiction are for convenience assigned to the Chancery Division of the High Court for adjudication (Jud. Act, 1925, s. 36), though in general it may be said that this fusion only allows legal and equitable remedies to be enforced either in Equity or at Common Law; it has not changed the nature of equitable as opposed to legal

rights (A. P. notes to s. 23, *ibid.*). See CHANCERY.

Equity of Redemption. Before 1926 the equitable estate or interest left in a person after he had mortgaged his property. Now the right to call for a reconveyance of a legal estate or of an equitable interest in property from the mortgagee on payment of principal, interest and costs. A mortgagee, although he has become absolute owner of a legal estate in the mortgaged property, on account of the breach of the condition for repayment of the loan within the strict time, is nevertheless compelled to reconvey the legal estate to the mortgagor, who applies to redeem it, on payment of the principal, interest, and costs, Equity treating the breach of the condition as a penalty, and the retention for the mortgagee's own benefit of that which was intended simply as a pledge, as contrary to substantial justice.

This right or equity of redemption is an essential attribute of a mortgage; it is inherent in the thing itself, and any provision inserted in the mortgage to defeat the right is void as a 'clog on the equity' (see that title). But it may be destroyed by (1) a conveyance of the equity of redemption by the mortgagor to the mortgagee; (2) a sale of the mortgaged property by the mortgagee under a power of sale; (3) a decree for foreclosure by the Court; (4) lapse of time (twelve years) under the Real Property Limitation Act, 1874, ss. 7, 8. This equitable right of redemption after the mortgagor has made default in payment must not be confounded with a subsidiary or collateral right in terms of the contract, which is a different thing altogether; see *Cummins* v. *Fletcher*, (1880) 14 Ch. D. 708.

An equity of redemption, and (since 1st January, 1926), the legal estate which a mortgagor of a legal estate in land retains, together with the equity of redemption, under the L. P. Act, 1925, so long as it subsists, may itself be mortgaged, and before 1926, each incumbrancer of the equity of redemption had preference according to his priority in time.

Before 1926, the following dangers and disadvantages attended this species of security:—

A prior mortgagee might be postponed to a subsequent mortgagee, who, having advanced his money without notice of such prior mortgage, afterwards acquired the legal estate. See TACKING, which, though abolished by the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 7, was revived by the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), s. 129, and since 1st January, 1926, has again been abolished (L. P. Act, 1925, s. 94 (3)), except in the case of a security for further advances.

If the subsequent mortgage has not been registered and is not secured by possession of the documents.

Before 1926, the first mortgagee might either before or after the mortgage of the equity of redemption, in the absence of any notice of it, make further advances and tack them to his first security, to the displacement of the mesne mortgage. In order to guard against this, the mortgagee of an equity of redemption inquired of the first mortgagee the amount of his loan and gave him notice of his own advance. And notice of it would be put on the principal title-deed, in order to avoid the risk of the mortgagor redeeming the first mortgage, and handing over the title-deeds to a person without notice of the mesne mortgage, who would thus have gained priority.

The right of a prior mortgagee to make further advances to rank in priority to subsequent mortgages (whether legal or equitable) has been preserved by s. 94 of the L. P. Act, 1925. See FURTHER ADVANCES.

Before 1926 the mortgagee of an equity of redemption of a legal estate had no legal remedy against the estate itself but could only apply for equitable relief; this is still the case in regard to mortgagees of equitable interests. The following changes, however, have been introduced. Mortgages affecting a legal estate created or transferred after 1925, if not protected by possession of documents and not registrable entirely in a local registry, now rank in priority, according to the date of registration under the Land Charges Act, 1925 (see s. 97, L. P. Act, 1925), and not of their creation, and similar mortgages of an equitable interest now rank according to the date of registration under the L. C. Act, 1925, or failing such registration or subject to avoidance as against purchasers for value if unregistered, according to the date of notice to the trustee or trustees and not according to date of creation (s. 137, L. P. Act, 1925).

For the penalties imposed upon a fraudulent concealment of documents, see Law of Property Act, 1925, s. 183. As to priorities and registration of legal or equitable mortgages, see MORTGAGES, LAND CHARGES, NOTICE, REGISTRATION OF LAND, FORECLOSURE.

Equity to a Settlement (Wife's). Prior to

the Married Women's Property Acts (see MARRIED WOMEN'S PROPERTY), the law permitted a husband to possess himself absolutely of the whole of his wife's personal property and the rents and profits, during the coverture, of her realty; the consequence of which was that the wife, however great her fortune, might be left destitute. Whenever, therefore, he or any person claiming in his right was obliged to come into a Court of Equity for the recovery of the wife's property, the Court, as the price of its assistance, required him to make a settlement of some portion of it in favour of the wife and her children, the rule being to settle one-half in ordinary cases, but the whole if the husband were insolvent or had deserted his wife or there had been a dissolution of marriage on the ground of his adultery (*Barrow* v. *Barrow*, (1854) 5 De G. M. & G. 782; *Morgan* v. *Morgan*, (1854) 2 Eq. Rep. 1270). The Married Women's Property Act, 1882, by leaving a wife's property unaffected by her marriage, has rendered the exercise of this jurisdiction unnecessary.

Equus coopertus. A horse equipped with saddle and furniture. See *Du Cange.*

Era. See ÆRA.

Ernes, the loose scattered ears of corn that are left on the ground after the binding. —*Kennet's Glos.*

Errant [itinerant], applied to justices on circuit, and bailiffs at large, etc. See EYRE.

Erraticum, a waif or stray.

Error. The name for recourse to the Court of Exchequer Chamber from any of the inferior tribunals, by reason of defects in the record, or to the House of Lords from the Exchequer Chamber; or to the King's Bench Division of the High Court in criminal cases. Proceedings in error were abolished by the Jud. Act, 1875, Order LVIII., r. 1, except in criminal cases, appeal being substituted in civil cases.

In criminal cases also writs of error are now abolished by s. 20 (1) of the Criminal Appeal Act, 1907. See, for the procedure, Rules 173–205 of the Crown Office Rules of 1906.

Error nominis, a mistake of detail in the name of a person; used in contradistinction to error *de personâ*, a mistake as to identity. See *Reg.* v. *Mellor*, (1858) Dears. & B. 468.

Errors excepted, a phrase appended to an account stated, in order to excuse slight mistakes or oversights. Accounts are commonly signed with the addition E. and O. E. —'Errors and omissions excepted.'

Erthmlotum, a meeting of the neighbourhood to compromise differences amongst themselves; a Court held on the boundary of two lands.—*Leg. Hen.* 1, c. 57.

Esbrancatura, cutting off branches or boughs in forests, etc.—*Hov.* 784.

Escaldare, to scald. It is said that to *scald hogs* was one of our ancient tenures in serjeanty.—*Lib. Rub. Scaccar. MS.* 137.

Escambio [fr. *cambier*, Span., to change]. A licence granted to make over bills of exchange to another beyond the sea. Abolished by 59 Geo. 3, c. 49, s. 11.

Escape [fr. *échapper*, Fr., to fly from], a violent or private evasion out of some lawful restraint; as where a man is arrested or imprisoned, and gets away before he is delivered by due course of law. Escapes are either in civil or criminal cases.

(1) *Civil.* The abolition of imprisonment for debt has rendered this all but obsolete, and the sheriff is expressly discharged from any liability by s. 31 of the Prison Act, 1877, repealed and re-enacted by s. 16, sub-s. 2, and s. 39 of the Sheriffs Act, 1887. Escapes are either *voluntary*, by the express consent of the keeper, after which he never can take his prisoner again (though the plaintiff may retake him at any time), but the sheriff had to answer for the debt, and he had no remedy over against the person escaping; or, *negligent*, where a prisoner escapes without his keeper's knowledge or consent, and then upon fresh pursuit the defendant may be retaken, even on a Sunday, and the sheriff was excused, if he had him again, before any action brought against himself for the escape.

(2) *Criminal.* See the Prison Acts and Rules, especially s. 37 of the Prison Act, 1865 (28 & 29 Vict. c. 126), by which it is felony, punishable by imprisonment with hard labour, to aid a prisoner to escape. Rescue or conniving at the escape of a criminal lunatic is penalised by 23 & 24 Vict. c. 75, ss. 11 and 13, and 47 & 48 Vict. c. 54, s. 11. As to persons of unsound mind, see Lunacy Act, 1890, ss. 85–89. See RESCUE.

Escape-warrant, a process addressed to all sheriffs, etc., throughout England, to retake an escaped prisoner, even on a Sunday, and commit him to proper custody.—1 Anne, c. 16.

Escapio quietus, delivered from that punishment which by the laws of the forest lay upon those whose beasts were found upon forbidden land.—*Jac. Law Dict.*

Escapium, that which comes by chance or accident.—*Cowel.*

Esceppa, a measure of corn.—*Dugd. Mon.* tom. 1, p. 283.

Escheat [*eschet* or *échet*, formed from the word *eschoir* or *échoir*, Fr., to happen], a species of reversion; it is a fruit of seigniory, the Crown or lord of the fee, from whom or from whose ancestor the estate was originally derived, taking it as *ultimus hæres* upon the failure, natural or legal, of the intestate tenant's family.

Escheat to the Crown, the Duchy of Lancaster, the Duke of Cornwall and to mesne lords has been abolished by Administration of Estates Act, 1925, s. 45 (1). The right of the Crown to '*bona vacantia*' now includes real property under A. E. Act, 1925, s. 46. See BONA VACANTIA.

The title of the Crown was ascertained by inquiry regulated by rules under the Escheat Procedure Act, 1887 (50 & 51 Vict. c. 53), which repealed, as practically inoperative, the numerous statutes from 29 Edw. 1, by which officers called 'escheators' were authorized to hold such inquiries.

It differed from a forfeiture (now abolished for treason or felony by the Forfeiture Act, 1870 (33 & 34 Vict. c. 23)), in that the latter is a penalty for a crime personal to the offender, of which the Crown is entitled to take advantage by virtue of its prerogative; while an escheat results from tenure only, and arises from an obstruction in the course of descent; it originates in feudalism, and respects the intestate's succession. So, while forfeiture affects the rents and profits only, escheat operates on the inheritance.

Escheat arose then, from default of heirs, when the tenant died without any lawful and natural-born relations on the part of any of his ancestors, or when he died without any lawful and natural-born relations on the part of those ancestors from whom the estate descended, or where the intestate tenant, having been a bastard, did not leave any lineal descendants, since he cannot have any collateral descendants.

By the Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), s. 4, now repealed in regard to successions after 1925 by the A. E. Act, 1925, s. 56, it was provided that equitable estates and estates in incorporeal hereditaments (which prior to that Act did not escheat) shall be subject to the same law of escheat as legal estates in corporeal hereditaments.

The Intestates Estates Act, 1884, also, by s. 6, now repealed by the A. E. Act, 1925, provided for the waiver by the Crown of its right by escheat in favour of the family of the intestate, or of any person considered or adopted as part of his family, as pointed out by 59 Geo. 4, c. 94. See *Hubback on Succession*, ch. iv.

The Land Transfer Act, 1897 (60 & 61 Vict. c. 65), did not bind the Crown (*Re Hartley*, 1899, P. 40); nor were the rights of the Crown affected by a sale under the powers of the Settled Land Acts (*Re Bond*, 1901, 1 Ch. 15). But the Crown, the Duchy of Lancaster and the Duke of Cornwall are now bound by the A. E. Act, 1925, s. 57, without altering any period of limitation and preserving the rights by descent of his Majesty in right of the Crown, of the Duchy of Lancaster, or belonging to the Duchy of Cornwall.

Eschaeta derivatur à verbo Gallico eschoir, quod est accidere, quia accidit domino ex eventu et ex insperato. Co. Litt. 93.—(Escheat is derived from the French word *eschoir*, which signifies 'to happen,' because it falls to the lord from an event and from an unforeseen circumstance.)

Escheator [fr. *escaetor*, Lat.], an officer anciently appointed by the lord treasurer, etc., in every county, to make inquests of titles by escheat, which inquests were to be taken by good and lawful men of the county, impannelled by the sheriff.—4 *Inst.* 225. See ESCHEAT.

Escheccum, a jury or inquisition.—*Mat. Par. Anno.* 1240.

Eschipare, to build or equip.—*Du Cange.*

Escot [Fr.], a tax formerly paid in boroughs and corporations towards the support of the community, which is called *scot and lot.*

Escrow, a writing under seal delivered to a third person, to be delivered by him to the person whom it purports to benefit upon some condition. Upon the performance of the condition it becomes an absolute deed; but if the condition be not performed, it never becomes a deed. It is not delivered as a deed, but as an escrow, i.e. a scrowl, or writing which is not to take effect as a deed till the condition be performed.—*Co. Litt.* 36 *a*; *Shep. Touch.* p. 58; *London Property Co.* v. *Suffield*, 1897, 2 Ch. 608. Subject to agreement or instructions, an escrow, if released as operative, takes effect from date of the original execution and delivery (*Graham* v. *Graham*, (1791) 1 Ves. Jun. 274). See DELIVERY OF DEED.

Escuage [fr. *escu*, Fr., a shield], a money payment, assessed on the tenants by knight's service from time to time, first at the discretion of the Crown, and afterwards by authority of Parliament; and this com-

mutation appears to have generally prevailed from so early a period as the time of Henry II.—*Williams on Real Property.* Escuage is called in Latin *scutagium*, that is, service of the shield; and that tenant which holdeth his land by escuage, holdeth by knight's service.—*Co. Litt.* 68 *b.* See SERJEANTY.

Escurare, to scour or cleanse.

Esketores, robbers or destroyers of other men's lands or fortunes.

Eskippamentum, skippage; tackle or ship furniture.—*Cowel.*

Eskipper, to ship.—*Jac. Law Dict.*

Eskippeson, shipping or passage by sea.

Esne, a hireling of servile condition.

Esnecy [fr. *æsnesia*, Lat.], a private prerogative allowed to the eldest coparcener, where an estate descended to daughters for want of an heir male, to choose first after the inheritance is divided.—*Fleta*, l. 5, c. x.

Esperons. Spurs.—7 *Rep.* 13.

Esplees [fr. *expletiæ*, Lat.], the products of land; as the hay of meadows, herbage of pasture, corn of arable land, rents, services, etc.; also the lands, etc., themselves.—*Termes de la Ley.*

Espousals [fr. *sponsalia*, Lat.; *espouse*, Fr.], the act of contracting or affiancing a man and woman to each other; the ceremony of betrothing.

Esquire [fr. *escuyer*, Fr.; *scutum*, Lat.; σκίτος, Gk., hide of which shields were made and afterwards covered], he who attended a knight in time of war, and carried his shield; whence he was called *escuyer*, in French, and *scutifer* or *armiger*, i.e., armour-bearer, in Latin. No estate, however large, conferred this rank upon its owner.

Esquires may be divided into five classes:

(I.) The younger sons of peers and their eldest sons in perpetual succession.

(II.) The eldest sons of knights and their eldest sons in like succession.

(III.) The chiefs of ancient families are esquires by prescription.

(IV.) Esquires by creation or office. Such are the heralds and serjeants-at-arms, and some others, who are constituted esquires by receiving a collar of S.S. Judges and other officers of state, justices of the peace, and the higher naval and military officers are designated esquires in their patents and commissions. Doctors in the several faculties, and barristers-at-law, are also esquires. None of these offices convey gentility to the posterity of the holders.

(V.) The last kind of esquires are those of Knights of the Bath, each of whom appoints three to attend upon him at his installation, and at coronations. See *Jac. Law Dict.*

Essartum, woodlands turned into tillage by uprooting the trees and removing the underwood.—*Old Records.*

Essence, that which is indispensable to the existence of any thing or matter. As to the construction of stipulations which according to the rules of equity are not deemed of the essence of a contract, see Law of Property Act, 1925, s. 41, replacing Jud. Act, 1873, s. 25, sub-s. 7; *Stickney* v. *Keeble*, 1915, A. C. 386. And see TIME.

Essendi quietum de tolonio, a writ to be quit of toll; it lies for citizens and burgesses of any city or town, who, by charter or prescription, ought to be exempted from toll, where the same is exacted of them.—*Reg. Brev.* 258.

Essoin, Essoigne, Assoign [fr. *essonium*, Lat.; *essoine*, Fr.; *ex*, priv., and *soing*, *cura*; *ab angustâ curâ, vel labore liberare*, which is a more probable derivation than ἐξομνύοθαι, Gk.; though it signifies to excuse by means of an oath, which is the precise nature of an essoin. See *Spelman*, voc., '*Essoniare*'], an excuse for him who is summoned to appear and answer to an action, or to perform suit to a court-baron, etc., by reason of sickness or infirmity or other just cause of absence.

The causes of excuse called *essoins* allowed in the King's Court were many. The principal essoin was that *de infirmitate*, which was of two kinds: 1. *De infirmitate veniendi*; 2. *De infirmitate resiantiæ*—of which the first was afterwards called *de malo veniendi*, the latter *de malo lecti.* See 1 *Reeves*, 115 and 405, for other essoins.

Formerly the first general return day of the term was called the essoin day, because the Court sat to receive essoins; but when essoins were no longer allowed to be cast, i.e., obtained, in personal actions, the Court discontinued such sittings. Still it was considered the essoin day for many purposes, until the Law Terms Act, 1830 (11 Geo. 4 & 1 Wm. 4, c. 70), s. 6, did away with the essoin day for all purposes, as part of the term.

Essoinlator, a person who made an essoin.

Essoins, Statute of, 12 Edw. 2, st. 2. See 2 *Reeves*, 303.

Estache [fr. *estacher*, *attacher*, Fr., to fasten], a bridge or stank of stone and timber.—*Cowel.*

Estanques, weirs or kiddles in rivers.

Estate [fr. *status*, Lat.; *état*, Fr.], the

condition and circumstance in which an owner stands with regard to his property. The word is used in several senses and may denote either an estate in land; or an estate in property other than land; a legal estate or an equitable estate, land being an immovable is capable of being the subject of many estates existing concurrently with each other, thus the absolute ownership or fee simple may be leased and sub-leased, mortgaged and charged, each of the holders of these estates having a good legal or equitable estate at the same time; again, estates may be in possession, or *in futuro;* personal property may also be subject concurrently to a variety of ownerships, according to its nature; technically, in regard to land, the word is used to denote the quantity of interest, e.g., estate in fee simple, for life, for years, etc., in either legal or equitable estates. In practice its most important division is into real estate and personal estate, although the consequences of that division have lost much of their importance since 1925, when a new system of conveyancing was introduced by the Real Property legislation of that year. L. P. Act, 1925, s. 1 (1), declares that the only estates in land (see definition, s. 205 (ix.), *ibid.*) which are capable of subsisting or of being conveyed or created at law are: (*a*) an estate in fee simple absolute in possession; (*b*) a term of years absolute and certain rights conterminous with those estates (see LEGAL ESTATE). In regard to the law as it existed before 1926 and as it is still applicable subject to statutory enactment to equitable interests under sub-s. (3) of s. 1 of the L. P. Act, 1925, see s. 4, (*ibid.*). Blackstone considered legal estates in a threefold view, thus:—

(1) The quantity of interest or duration, divided into—
  (A) Freeholds of inheritance, which are subdivided into—
    (α) Absolute or fee simple.
    (β) Limited fees; which are (a) qualified or base fees, and (b) fees conditional at the Common Law, afterwards called fees-tail in consequence of the Statute *De Donis*, which may be (i.) general or special, (ii.) male or female, (iii.) given in frank-marriage.
  (B) Freeholds not of inheritance, subdivided into —
    (α) Conventional, or created by the act of the parties; they are (a) estates for one's own life, (b) estates *pur autre vie*, (c) general grant, without expressing any term at all.
    (β) Legal, or created by operation of law; they are (a) tenancy in tail after possibility of issue extinct, (b) tenancy by the courtesy of England, (c) tenancy in dower.
  (C) Estates less than freehold, subdivided into—
    (α) Estates for years.
    (β) Estates at will.
    (γ) Estates at sufferance.
  (D) Estates upon condition, subdivided into—
    (α) Estates upon condition implied.
    (β) Estates upon condition expressed, and these are either precedent, or subsequent; (a) precedent, which must be performed before an estate can vest or be enlarged; (b) subsequent, by the failure or non-performance of which an estate already vested is defeated; such are (i.) estates held *in vadio*, gage, or pledge, which are of two kinds: *vivum vadium*, living pledge or vifgage, and *mortuum vadium*, dead pledge or mortgage; (ii.) estates by statute merchant or statute staple; (iii.) estates by *elegit*.
(2) The time of enjoyment, either—
  (A) In possession, or
  (B) In expectancy, subdivided into—
    (α) Remainders created by convention of parties, which are (a) vested, (b) contingent or executory, (c) cross.
    (β) Reversions arising by operation of law.
(3) The number and connection of the tenants; either
  (A) Severalty.
  (B) Joint-tenancy.
  (C) Coparceny.
  (D) Tenancy in common.
  (E) Entireties.

2 *Bl. Com.* cc. vii.–xii.

Estate ad remanentiam, an estate in fee simple.—*Glanv.* l. 7, c. 1.

Estate Clause, an *express* clause in conveyances, passing all the estate, right, title, etc., in the property conveyed: now *implied* by virtue of s. 63 of the Law of Property Act, 1925.

Estate Duty. A duty first levied by the Finance Act, 1894 (57 & 58 Vict. c. 30), upon the principal value of all property, real or

personal, settled or not settled, which passes or is deemed to pass on the death of a person after 1st August, 1894. Property 'passing' on death includes gifts or dispositions by the deceased to another person within three years of death, the estate duty taking the place of the 'account duty,' leviable on such gifts within twelve months of death, by virtue of s. 38 of the Customs and Inland Revenue Act, 1881, as amended by s. 11 of the Customs and Inland Revenue Act, 1889. Property 'passing' on death includes also settled property, in which the life interest is surrendered to the remainderman by the tenant for life within the three years before the death of the tenant for life, by virtue of s. 11 of the Finance Act, 1900 (62 & 63 Vict. c. 7), passed to alter the law as laid down by the Court of Appeal in *Attorney-General* v. *de Préville*, 1900, 1 Q. B. 223, but does not include property in which the life interest is so surrendered more than that time before the death of the tenant for life (*Attorney-General* v. *Beech*, 1899, A. C. 53).

Securities physically situate in the United Kingdom and marketable there at the death of a person are liable for estate duty even though the deceased is not a domiciled Englishman (*Winans* v. *R.*, 1910, A. C. 27).

The duty was originally levied on a graduated scale from 1 per cent. on property not exceeding 500*l.* in value (but over 100*l.*) up to 8 per cent. on property exceeding 1,000,000*l.* Since the Finance Act, 1894, no less than six scales have been introduced in Finance Acts from 1907 to 1930, each increasing the rates of Estate Duty; 8 per cent. is now the rate on property between 18,000*l.* and 21,000*l.*, whilst between 100,000*l.* and 120,000*l.* the rate is 20 per cent., between 1,000,000*l.* and 1,250,000*l.* 40 per cent., and over 2,000,000, 50 per cent. See *Chitty's Statutes*, tit. '*Revenue*,' or amendments, and consult *Hanson* or *Dymond's Death Duties*.

As to SETTLEMENT ESTATE DUTY, now abolished, see that title.

Estate Owner. Under the L. P. Act, 1925, ss. 1 (4) and 205 (v.), means the owner of a legal estate (*q.v.*) in land, but an infant is not capable of being an estate owner. Estate owners include the owners of any legal estate such as tenants in fee simple, lessees, mortgagees having a legal estate, trustees for sale, tenants for life, if of full age, including statutory owners and all persons having the powers of a tenant for life under S. L. Act, 1925, s. 20, personal representatives until they have conveyed the legal estate (*Re Bridgett and Hayes*, 1928, Ch. 163), statutory owners (*q.v.*). See INFANT; LEGAL ESTATE.

Estates of the Realm, the three branches of the Legislature—the Lords Spiritual, the Lords Temporal, and the Commons. The notion entertained by many, that the three estates of the realm are the King, the Lords, and the Commons, is an error. See *Hallam, Middle Ages*, vol. iii. c. viii. part 3.

Estoppel, a conclusive admission, which cannot be denied. It is of three kinds:—

(1) By matter of record, which imports such absolute and incontrovertible verity, that no person against whom it is producible shall be permitted to aver against it. A record concludes the parties thereto, and their privies, whether in blood, in law, or by estate, upon the point adjudged, but not upon any matter collateral or adjudged by inference.—A judgment in an action *in rem* is absolutely binding upon all the world.

A conviction on the same facts is no estoppel in a civil action because the parties are not the same (*Palace Shipping Co.* v. *Caine*, 1907, A. C. 386).

(2) By deed. No person can be allowed to dispute his own solemn deed, which is therefore conclusive against him, and those claiming under him, even as to the facts recited in it. The general rule is that an indenture estops all who are parties to it, while a deed-poll only estops the party who executes it, since it is his sole language and act.—*Shep. Touch.* 53.

(3) *In pais*, i.e., by conduct or representation, as that a tenant cannot dispute his landlord's title; bringing an action of ejectment is an unequivocal act (*Serjeant* v. *Nash*, 1903, 2 K. B. 304). A false representation to create an estoppel must be a representation of an existing fact and must be acted on before it is corrected (*Vagliano* v. *Bank of England*, 1891, A. C. 107; *Chadwick* v. *Manning*, 1896, A. C. 231. The representation must be made by a principal or some one authorized to bind him, consequently the certification of shares which is not a company's certificate that the person named therein is registered as the holder of the shares in the register of the company, but a mere statement or receipt that the certificates referred to in a transfer have been lodged with a company; the statement being by the company's secretary does not estop the company from setting up the true facts. The secretary's authority is simply to give receipts for lodged certificates, and being a mere servant it cannot be assumed that he

has any authority at all (see *Whitechurch (George) Ltd.* v. *Cavanagh*, 1902, A. C. 117). A company is estopped by its certificate as against any one who purchased on the faith of it (*Bloomenthal* v. *Ford*, 1897, A. C. 156). As to estoppel by signing a promissory note in blank, see *Lloyds Bank* v. *Cooke*, 1907, 1 K. B. 794, and by certifying identity of a stockholder, *Bank of England* v. *Cutler*, 1907, 1 K. B. 889. See also generally *Duchess of Kingston's case*, (1766) 2 *Sm. L. C.*, and *Everest on Estoppel*, 3rd ed.—See FEED.

Estoverils habendis, a writ for a wife judicially separated to recover her alimony or estovers. Obsolete.

Estovers, or **Estouviers** [fr. *estoffer*, Fr., to furnish, or *festover*, Fr., i.e., *fovere*, Lat., to keep warm, cherish, sustain, or defend]. Bote, any kind of sustenance ; also a wife's alimony.

Estoveria sunt ardendi, arandi, construendi et claudendi. 13 *Rep.* 68.—(Estovers are of firebote, ploughbote, housebote, and hedgebote.)

Estrays, such valuable animals as are found wandering in a manor or lordship, the owner whereof is not known ; in which case the law gives them to the Sovereign, and they now most commonly belong to the lord of the manor by special grant from the Crown. But they must be proclaimed in the church and two market towns next adjoining to the place where they are found ; and then, if no person claim them, after proclamation and a year and a day passed, they belong to the Sovereign or his substitute, without a redemption, even though the owner was a minor or under any other legal incapacity. The doctrine of estrays is only applicable to animals *domitæ naturæ*.—2 *Steph. Com.*

Estreat, (1) the true extract, copy, or note of some original writing or record, and especially of recognizances, fines, amercements, etc., entered on the rolls of a Court to be levied by the bailiff or other officer.—*Fitz. N. B.* 57 ; also (2) to forfeit. See RECOGNIZANCE.

Estreclatus, straightened, applied to roads.

Estrepe, to make spoils in lands to the damage of another, as of a reversioner, etc.

Estrepement [fr. *estropier*, Fr., to lame ; *extirpare*, Lat.], any spoil or waste made by tenant for life upon any lands or woods to the prejudice of him in reversion ; also making land barren by continual ploughing. The writ of estrepement was abolished by the Real Property Limitation Act, 1883 (3 & 4 Wm. 4, c. 27).

Ethelling, or **Ætheling.** See ADELING.

Etiquette of the Profession. See BAR COUNCIL.

Eundo, morando, et redeundo (in going, remaining, and returning).

Eunomy [fr. *εὐνομία*, Gk.], a constitution of good laws.

Evasion, the act of escaping by means of artifice ; a trick or subterfuge.

Eviction [fr. *evinco*, Lat., to overcome], dispossession ; also a recovery of land, etc., by form of law. See EJECTMENT.

Evidence, proof, either written or unwritten, of allegations in issue between parties.

The leading rules of evidence are the following :—

(1) The sole object and end of evidence is to ascertain the truth of the several disputed facts or points in issue ; and no evidence ought to be admitted which is not relevant to the issues. As to when evidence of collateral facts is admissible, see *Hales* v. *Kerr*, 1908, 2 K. B. 601 ; *Butterley Co.* v. *New Hucknall Colliery Co.*, 1909, 1 Ch. 37. As to acts showing a continuous course of conduct, see *R.* v. *Mortimer*, 25 Cr. App. C. 150.

(2) The point in issue is to be proved by the party who asserts the affirmative ; according to the maxim *affirmanti non neganti incumbit probatio.* See BURDEN OF PROOF.

(3) It will be sufficient to prove the substance of the issue.

(4) The best evidence must be given of which the nature of the thing is capable.

(5) Hearsay evidence of a fact is not admissible, with some exceptions. See HEARSAY EVIDENCE.

(6) No person is bound to incriminate himself. See CRIMINAL EVIDENCE ACT.

The mode of taking evidence on a trial in the Common Law Courts differed from that which was usual in the Court of Chancery. It was oral in the former, and by affidavit in the latter. Now, however, that there is one Supreme Court, the ordinary mode of taking evidence is by oral examination of witnesses ; but by agreement, or by leave of the Court or a judge, affidavits or depositions may be used (R. S. C. 1883, Ord. XXXVII.) ; they are always used in the Chancery Division on applications by motion or summons. See *Best*, or *Roscoe*, or *Taylor*, or *Powell on Evidence* ; Evidence (Amendment) Act, 1915 ; and for other statutes

on the subject, see *Chitty's Statutes*, tit. '*Evidence*.'

Evocation, withdrawing a case from the cognizance of an inferior court.—*Fr. Law.*

Ewage [fr. *eau*, Fr., water], toll paid for water-passage.—*Jac. Law Dict.* See AQUAGE.

Ewbrice [fr. *ew*, Sax., marriage, and *bryce*, breaking], adultery.—*Ibid.*

Ewry, an office in the royal household where the table linen, etc., is taken care of.

Ex abundanti cautelâ (to make assurance doubly sure).

Exaction, a wrong done by an officer, or one in pretended authority, by taking a reward or fee for what which the law allows not, whereas *extortion* is where an officer takes more than is due, when something is due to him. The punishment is fine and imprisonment.—*Co. Litt.* 368 *b*. See also Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 29.

Exactor regis, the King's collector of taxes; also a sheriff.

Ex æquo et bono (in equity and good conscience).

Examination, the act of eliciting by questions a person's knowledge of facts or science. A witness undergoes three examinations: (1) *Examination-in-chief*, which is made by the party calling him; (2) *Cross-examination* (see that title) by the opposite party; and (3) *Re-examination*, by the party who called the witness, which is confined to matters arising out of the cross-examination.

Examiners, or **Examiners of the Court.** A sufficient number of barristers of not less than three years' standing appointed by the Lord Chancellor to act for a period not exceeding five years in examining out of Court witnesses in any cause whose evidence shall be directed by the Court to be taken before one of such examiners. See R. S. C. Ord. XXXVI., rr. 39–53.

Exannual Roll. In the old way of exhibiting sheriff's accounts, the illeviable fines and desperate debts were transcribed into this roll, which was yearly read, to see what might be recovered.—*Jac. Law Dict.*

Ex antecedentibus et consequentibus fit optima interpretatio. 2 *Inst.* 317.—(The best interpretation is made from the context.) See *Broom's Leg. Max.*; *Coles* v. *Hulme*, (1828) 8 B. & C. 568.

Excambiator, a broker; one employed to exchange lands.

Excambion, a contract whereby one piece of land is exchanged for another.—*Scots Law.*

Excambium, an exchange; a place where merchants meet to transact their business; also an equivalent in recompense; a recompense in lieu of dower *ad ostium ecclesiæ*.—1 *Reeves*, 101 and 103.

Ex cathedrâ, with the weight of one in authority; originally applied to the decisions of the Popes from their *cathedra*, or chair.

Excellency, the title of a Viceroy, Governor-general, Ambassador, or Commander-in-Chief.

Exceptio, the designation for the defendant's plea.—*Civil Law.*

Exceptio probat regulam de rebus non exceptis. 11 *Rep.* 41.—(An exception shows the rule concerning things not excepted.)

Exceptio rei judicatæ, a defence that the matter has been already adjudged in another Court between the parties.—*Scots Law.*

Exception, exclusion of any thing or person; a stop or stay to an action; also the particular point of law stated in the margin of a demurrer. In Chancery, exceptions might be taken to pleadings if scandalous, and if a defendant's answer were insufficient, the plaintiff might file exceptions to it.—*Sm. Ch. Pr.* 344, 786.

An exception, in a conveyance, must be of part of the thing granted and of a thing *in esse* at the time of the grant; whereas a reservation must be of some new thing issuing out of the thing granted; see *Co. Litt.* 47 *a*; *Shep. Touch.* 80; *Savill Bros., Ltd.* v. *Bethell*, 1902, 2 Ch. 523, and see RESERVATION.

Under s. 162 (1) (d) of the L. P. Act, 1925, the rule of law relating to perpetuities does not apply to any exception of any right of entry or user of the surface of land, or to easements, rights and privileges in relation to mines and minerals as set out in the section.

In summary proceedings upon an Act of Parliament, an exception in the Act 'may by proved by the defendant, but need not be negatived or specified in the information or complaint'; and if so specified or negatived need not be proved by the informant or complainant: Summary Jurisdiction Act, 1879, s. 39 (2), extending the proviso of the Summary Jurisdiction Act, 1848, s. 14.

In the Scots Law, as in the Roman, *exception* is synonymous with *defence*.

Exceptions, Bill of. See BILL OF EXCEPTIONS.

Exceptis excipiendis, with all necessary exceptions.

Excerpta, or **Excerpts.** Extracts.

Excess. When a defendant pleaded to an action of assault that the plaintiff trespassed on his land and would not depart when ordered, whereupon he *molliter manus im-*

posuit, gently laid hands on him, the replication of excess was to the effect that the defendant used more force than necessary. See PLEADING.

Excess Profits Duty. A duty imposed by the Finance (No. 2) Act, 1915 (ss. 38–45), on such profits as a business made in a year which were more than 200*l.* in excess of those made prior to 4th August, 1914, or, in the case of a business established since that date, on profits which exceeded a percentage on the capital employed. The duty was abolished by the Finance Act, 1921.

Exchange, often contracted into *change*, a building or other place in considerable trading cities, where merchants, agents, bankers, brokers, and other persons concerned in commerce, meet at certain times to confer and treat together of matters relating to exchanges, remittances, payments, adventures, assurances, freights, and other mercantile negotiations, both by sea and land.

Also used to designate that species of mercantile transactions by which the debts of individuals residing at a distance from their creditors are satisfied without the transmission of actual money. Also the value of the currency of one country in the terms of another.

Par of Exchange. The *par* of the currency of any two countries meant, among merchants, the equivalency of a certain amount of the currency of the one in the currency of the other, supposing the currencies of both to be of the precise weight and purity fixed by their respective mints. It now may be assumed to mean the hypothetical equivalent in terms of the currency of any country of a definite amount of gold or other commodity, subject to statutory direction.

Circumstances which determine the course of exchange. The exchange is affected, or made to diverge from par, by circumstances among which may be mentioned *first*, any discrepancy between the actual weight and fineness of the coins, or of the bullion for which the substitutes used in their place will exchange, and their weight or fineness, as fixed by the mint regulations; and, *secondly*, any sudden increase or diminution of the bills drawn in one country upon another.—See *McCull. Com. Dict.*

Exchange, Bill of. See BILL OF EXCHANGE.

Exchange [fr. *excambium*, Lat.], **Deed of,** an original Common Law conveyance, for the reciprocal transfer of interests *ejusdem generis*, as fee simple for fee simple, legal estate for legal estate, copyhold for copyhold of the same manor, and the like, the one in consideration of the other. It takes place between two distinct contracting parties only, although several persons may compose each party. The operative and indispensable verb was 'exchange,' which no longer implies a general warranty or right of re-entry (L. P. Act, 1925, s. 59, replacing Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 4). An actual entry upon the property exchanged by the parties themselves to the deed was essential. The exchange was void if either party died before entry, for, under such circumstances, the parties had no freehold in them, for the heir could not enter and take as a purchaser, because he took under the deed, only by way of limitation in course of descent, but by the L. P. Act, 1925, s. 57, the conveyance of the interest is sufficient without entry. An exchange of corporeal hereditaments lying in the same county could be made by parol perfected by entry; but under L. P. Act, 1925, s. 52, replacing with amendment Real Property Act, 1845, s. 3, an exchange of hereditaments is void at law unless made by deed; see, however, s. 55 (d), L. P. Act, 1925, and *K. & E.*, tit. '*Exchanges*,' in regard to the effect in equity of an exchange by parol, followed by part performance.

In consequence of the inconvenience arising from the implied warranty and re-entry, exchange fell into disuse, and mutual conveyances, the one in consideration of the other, were resorted to. In modern practice no exchange is ever made without either a deed or (under conditions in regard to equality of value) a Statutory Order of the Ministry of Agriculture. Registration of an exchange is not compulsory under the Land Registration Act, 1925, unless money is paid for equality of exchange.

The General Inclosure Act (8 & 9 Vict. c. 118, s. 92) provides for the allotment and award of any land to be inclosed in exchange for any other land within the parish in which the land to be inclosed shall be situate. Consult *Cooke on Inclosures.*

The Settled Land Act, 1925, ss. 38 and 40, replacing the S. L. Act, 1882 (45 & 46 Vict. c. 38), allows a tenant for life and limited owners included in that term (see s. 20, S. L. Act, 1925), to make an exchange of settled land for other land. As to power of local authorities to exchange lands for statutory purposes, see, e.g., Housing Act, 1936.

Exchange of Livings, effected by resigning them into the bishop's hands, and each party being inducted into the other's benefice; if

either die before both are inducted, the exchange is void.—31 Eliz. c. 6, s. 8.

Exchanges, Regimental. The Sovereign may from time to time by regulation authorize exchanges by officers from one regiment to another (Regimental Exchanges Act, 1875). Under the Army Act, s. 155 (3), any person who negotiates, acts as agent for, or otherwise aids or connives at any exchange, not so authorized, in respect of which any sum of money or other consideration is given or received, is liable on conviction to a fine of 100*l.*, or to imprisonment, and if an officer, on conviction by court-martial, to be dismissed the service.

Excheat. See ESCHEAT.

Exchequer Bills, bills of credit issued by the Government under authority of Parliament, and forming part of the 'Unfunded Debt' of the country. They are for various sums, and bear interest according to the usual rate at the time. The advances of the Bank to Government are made upon Exchequer bills; and the daily transactions between the Bank and Government are principally carried on through their intervention. See Exchequer Bills and Bonds Act, 1866 (29 Vict. c. 25), consolidating and amending the Acts dating from 48 Geo. 3, c. 1, which regulated the preparation, issue, and payment of Exchequer bills and bonds. See also 52 Vict. c. 6; 5 & 6 Geo. 5, c. 55, and subsequent Acts. Their place has now largely been taken by Treasury bills. See that title.

Exchequer Bonds, with coupons for interest, forming another part of the 'Unfunded Debt' of the country, first issued in 1853. Authorized up to ten millions by the Finance Act, 1905, and repayable by annual drawings at par in ten years.

Exchequer, Court of [fr. *eschequier*, Nor.-Fr.; *scaccarium*, Low Lat.; a treasure], consisted of two divisions, a Court of Revenue, and a Court of Common Law, having also an equitable jurisdiction, which, except when it sat as a Court of Revenue, was transferred to the Court of Chancery by 5 Vict. c. 5. See *A.-G.* v. *Halling*, (1846) 15 M. & W. 687. As a Court of Revenue it ascertained, and enforced by proceedings appropriate to the case, the proprietary rights of the Crown against the subjects of the realm. To proceed against a person in this department of the Court was called to *exchequer* him. As a Court of Common Law (after having obtained jurisdiction by the fiction of *quominus* (see QUOMINUS)), it administered redress between subject and subject in all actions whatever, except real action. It was a Court of Record, and its judges were six (formerly five) in number, consisting of one chief and five (formerly four) *puisne* barons. This Court was made a Division of the High Court of Justice (Jud. Act, 1873, ss. 31, 34). See EXCHEQUER DIVISION.

Exchequer Chamber, Court of, a tribunal of error and appeal.

First, it existed in former times as a Court of mere debate, such causes from the other Courts being sometimes adjourned into it as the judges upon argument found to be of great weight and difficulty, before any judgment was given upon them in the Court below. It then consisted of all the judges of the three Superior Courts of Common Law, and at times the Lord Chancellor also.

Second, it existed as a Court of Error, where the judgments of each of the Superior Courts of Common Law, in all actions whatever, were subject to revision by the judges of the other two, sitting collectively. See 27 Eliz. c. 8 (error from Queen's Bench), and 11 Geo. 4 & 1 Wm. 4, c. 70, s. 8 (error from the three Courts). The composition of this Court consequently admitted of three different combinations, consisting of any two of the Courts below which were not parties to the judgment appealed against. There was no given number required to constitute the Exchequer Chamber, but the Court never consisted of less than five. One counsel only was heard on each side. Error lay from this Court to the House of Lords. The Court is abolished, and its jurisdiction in appeals (proceedings in error in civil cases and bills of exceptions being abolished) is transferred to the Court of Appeal (Jud. Act, 1873, s. 18 (4)); see now Jud. Act, 1925, s. 26. See APPEAL, COURT OF.

Exchequer Division. A division of the High Court of Justice, to which the special business of the Court of Exchequer was specially assigned by s. 34 of the Judicature Act, 1873. Merged in the King's Bench Division by Order in Council under s. 31 of that Act, made in February, 1881. See now Jud. Act, 1925, s. 4.

Excise [fr. *accis*, Dut.; *excisum*, Lat.], the name given to the duties or taxes laid on certain articles produced and consumed at home, amongst which spirits have always been the most important; but, exclusive of these, the duties on the licences of auctioneers, brewers, etc., and on the licences

to keep dogs, kill game, etc., are included in the excise duties.

Excise duties were introduced into England by the Long Parliament in 1643, being then laid on the makers and vendors of ale, beer, cider, and perry. The management of the excise, originally and for a long time entrusted to special commissioners (as to whom see the Excise Management Act, 1827 (7 & 8 Geo. 4, c. 53), was, in 1849, by 12 Vict. c. 1, transferred to the Board of Inland Revenue, and in 1909 to the Board of Customs and Excise.

Consult *Bell and Dwelly's Excise Acts*, published in 1873; *Halsbury's Laws of England*, tit. '*Revenue*'; and *Chitty's Statutes*, tit. '*Revenue*.'

Exclusa, Exclusagium, a sluice to carry off water; the payment to the lord for the benefit of such a sluice.

Excommencement, excommunication.—*Law French.* See 23 Hen. 8, c. 3.

Excommunication, an ecclesiastical interdict or censure, divided into the greater and the lesser; by the greater a person was excluded from the communion of the church and the company of the faithful, and was rendered incapable of any legal act; by the lesser he was merely debarred from participation in the Sacraments.

See No. 33 of the Thirty-nine Articles of Religion as to avoiding an excommunicated person 'until he be openly reconciled by penance, and received into the church by a judge that hath authority thereto'; Canon 112, to the effect that the minister and churchwardens shall yearly within 40 days after Easter exhibit to the Bishop or his Chancellor the names and surnames of all the parishioners, as well men as women, which being of the age of sixteen years received not the Communion at Easter before; and *Jenkins* v. *Cook*, (1876) 1 P. D. 80, in which the Judicial Committee of the Privy Council admonished a vicar to refrain from refusing to administer the Communion to a parishioner.

The old law was thus put:—*Excommunicato interdicitur omnis actus legitimus, ita quod agere non potest, nec aliquem convenire, licet ipse ab aliis possit conveniri. Co. Litt.* 133.—(Every legal act is forbidden an excommunicated person, so that he cannot act, nor sue any person, but he may be sued by others.)

Excommunication was formerly the process by which the decrees and orders of the Ecclesiastical Courts were enforced; but in all cases of contempt of Court it has now been abolished, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the judge has power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the Court of Chancery; whereupon a writ *de contumace capiendo* shall issue having the same force as formerly belonged, in case of contempt, to a writ *de excommunicato capiendo*.—53 Geo. 3, c. 127, s. 2.

Excommunicato deliberando, a writ to the sheriff for delivery of an excommunicated person out of prison, upon certificate from the ordinary of his conformity to the ecclesiastical jurisdiction.—*Fitz. N. B.* 63.

Excommunicato recapiendo, a writ commanding that persons excommunicated, who for their obstinacy had been committed to prison, but were unlawfully set free before they had given caution to obey the authority of the church, should be sought after, retaken, and imprisoned again.—*Reg. Brev.* 67.

Ex concessis, from things already conceded.

Ex contractu (from a contract). One of the greatest classes of obligation from which a right of action accrues. The actions were: (1) account; (2) *assumpsit*, or promises; (3) covenant; (4) debt; (5) and perhaps, detinue; (6) *scire facias*, or revivor. See now ACTION.

Exculpation, Letters of, a warrant granted at the suit of a prisoner for citing witnesses in his own defence.—*Scots Law.*

Excusable Homicide. See HOMICIDE.

Excusat aut extenuat delictum in capitalibus quod non operatur idem in civilibus. *Bac. Max.* r. 15.—(That may excuse or palliate a wrongful act in capital cases which would not have the same effect in civil injuries.)

Excussion, seizure by law.

Ex debito justitiæ. From what is owed by justice, or of right. Said of a remedy which the Court has no discretion to refuse.

Ex delicto (from a tort or offence). The actions which arose from torts were: (1) trespass on the case; (2) trespass; (3) trover; (4) replevin. Consult *Addison*, or *Clerk and Lindsell*, or *Pollock on Torts*.

Ex dolo malo non oritur actio. *Cowp.* 343.—(From a fraud an action does not arise.) See *Collins* v. *Blantern*, (1767) 2 Wils. 341; 1 *Sm. L. C.*, where it was held that a bond given to induce the prosecutor of an indictment for perjury to withhold his evidence could not be recovered upon. Consult *Broom's Leg. Max.*

Exeat, a permission which a bishop grants

to a priest to go out of his diocese; also leave to go out generally.

Executed, something done or completed.

Executed Consideration, a consideration which is executed before the promise upon which it is founded is made, as where A. bails a man's servant, and the master afterwards promises to indemnify A.; but if a man promise to indemnify A. in the event of his bailing his servant, the consideration is then executory. With respect to an executed consideration, the rule is, that if it were not at the precedent request, express or implied, of the promiser, but a merely voluntary courtesy, it will not suffice to support a promise; therefore, in the first example, the promise would not be binding unless the bailing were at the master's precedent request. See notes to *Lampleigh* v. *Brathwait*, (1616), 1 *Sm. L. C.*, and CONSIDERATION; CONTRACT.

Executed Contract, where nothing remains to be done by either party, and where the transaction is completed at the moment that the agreement is made, as where an article is sold and delivered, and payment therefor is made on the spot. A contract is said to be executory where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time.

Executed Fine, the fine *sur cognizance de droit come ceo que il a de son done*; or a fine upon acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. Abolished by the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74).

Executed Trust. When an estate is conveyed to the use of A. and his heirs, with a simple declaration of trust for B. and his heirs, or the heirs of his body, the trust is perfect; and it is said to be executed, because no further act is necessary to be done by the trustee to raise and give effect to it; because there is no ground for the interference of a Court of Equity to affix a meaning to the words declaratory of the trust which they do not legally import.—1 *Sand. Uses and Trusts*, 335, and see EQUITABLE ESTATE.

As all trusts are executory in this sense, that the trustee is bound to dispose of the estate according to the tenure of his trust, it would be more accurate to substitute the terms 'passive' or 'active' for *executed* and *executory* trusts.

Executed Use, the first use in a conveyance upon which the Statute of Uses (see USES) operated by bringing the possession to it, the combination of which, i.e., the use and the possession, formed the legal estate, so that the statute executed the use.

Execution, the last state of a suit whereby possession is obtained of anything recovered by a judgment. It is styled *final process*, and is regulated by R. S. C. 1883, Ord. XLII., r. 17, of which allows immediate execution in ordinary cases. See PRÆCIPE.

The ordinary writs of execution are *capia ad satisfaciendum; fieri facias; elegit;* and *habere facias possessionem.* See these titles respectively, especially FIERI FACIAS.

As to the protection of vendor or purchaser on a sale under an execution, see Bankruptcy and Deeds of Arrangement Act, 1913, s. 15.

As to the writ of *capias ad satisfaciendum*, see *Hulbert* v. *Cathcart*, 1896, A. C. 470; and it is to be borne in mind that by the Debtors Act, 1869 (32 & 33 Vict. c. 62), imprisonment for debt has been abolished, except as specified in s. 4. See IMPRISONMENT.

By R. S. C. 1883, Ord. XLII., r. 17 (*b*), the Court or a judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit.

As to registration of writs and orders, see Land Charges Act, 1925, and as to equitable charges on land in right of judgment debt, etc., see Law of Property Act, 1925, s. 195. Registration is effected in the Register of Writs and Orders at the Land Registry under the Land Charges Act, 1925. In regard to registered land, however, registration must be effected under the Land Registration Act, 1924, s. 59.

See also JUDGMENTS EXTENSION ACT, 1868; EQUITABLE EXECUTION.

Execution of Criminals must be performed by the legal officer—the sheriff, or his deputy. The Common Law mode of execution is by hanging, which until 1868 took place in public; but in that year the Capital Punishment Amendment Act (31 & 32 Vict. c. 24), prescribed that the execution must take place within the walls of the prison, in presence of the sheriff, gaoler, chaplain, and surgeon of the prison, and such other officers of the prison as the sheriff requires, or allows. Public execution is, however, still necessary in the case of piracy with attempted murder. See PIRACY.

Execution of Deeds, the signing, sealing, and delivery of them by the parties, as their

own acts and deeds, in the presence of witnesses. By s. 73, L. P. Act, 1925, sealing alone is not sufficient; an individual must sign or mark the deed. Sect. 74, *ibid.*, provides for the execution of deeds by companies and other corporations. See CORPORATION; DEED. As to compulsory executions, s. 47 of the Judicature Act, 1925, replacing the 14th section of the Judicature Act, 1854, enacts, that when any person fails to comply with a judgment directing him to execute any conveyance, etc., the Court may order that the conveyance, etc., may be executed by such person as the Court may nominate to execute the deed instead, and that such execution shall have the same validity as if the conveyance, etc., had been executed by the party himself.

The rule that a purchaser was entitled to have the conveyance executed in his presence is abrogated by L. P. Act, 1925, s. 75, replacing the Conveyancing Act, 1881, s. 8, which, however, preserves the rule that the purchaser may have at his own cost the execution of the conveyance attested by some person appointed by him. The section is applied by Land Registration Act, 1925, s. 38 (1) to transfers of registered land.

Execution of Wills. By the Wills Act, 1837 (7 Wm. 4 & 1 Vict. c. 26), s. 9 :—

> No will shall be valid unless it be in writing and executed in manner hereinafter mentioned; (that is to say) it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation clause shall be necessary.

The Wills Act Amendment Act, 1852 (15 & 16 Vict. c. 24), contains most elaborate saving allowances for the *position* of the signature. Thus, the signature of the testator may be placed 'at, or after, or following, or under, or beside, or opposite to, the end of the will'; 'a blank space may intervene between the concluding word of the will and the signature'; the signature may be 'on a side, or page, or other portion of the paper or papers containing the will, whereon no clause, or paragraph, or disposing part of the will may be written above the signature,' etc., the only restriction being that 'no signature is to be operative to give effect to any disposition or direction which is underneath or which follows it; nor to give effect to any disposition or direction inserted after the signature is made.'

Obliterations, interlineations, or other alterations must, by s. 21 of the Wills Act, be executed in the same manner as a will. See *Jarman on Wills* and *Williams on Executors*, and WILLS; ATTESTATION CLAUSE.

Executione faciendâ in withernamium, a writ that lay for taking cattle of one who has conveyed the cattle of another out of the county, so that the sheriff cannot replevy them.—*Reg. Brev.* 82.

Executione judicii, a writ directed to the judge of an Inferior Court to do execution upon a judgment therein, or to return some reasonable cause wherefore he delays the execution.—*Fitz. N. B.* 20.

Executive, that branch of the government which puts the laws into execution, as distinguished from the legislative and judicial branches. The body that deliberates and enacts laws is legislative; the body that judges and applies the laws in particular cases is judicial; and the body that carries the laws into effect, or superintends the enforcement of them, is executive. The executive authority, in all monarchies, is vested in the sovereign.

Executor. A person appointed by a testator to carry out the directions and requests in his will, and to dispose of the property according to his testamentary provisions after his decease.

The leading duties and responsibilities of an executor may be thus classed :—

(1) He will not be allowed as against creditors extravagant funeral expenses if the testator died insolvent; and if he neglects to secure the property, and loss ensue, he will be personally liable for a devastavit, but will not be responsible for mere neglect to take out probate (*Re Stevens*, 1898, 1 Ch. 162). See DEVASTAVIT.

(2) By operation of law by virtue of his office he takes a title to the personal property of the testator which vests him with full power over the testator's chattels (*Attenborough* v. *Solomon*, 1913, A. C. 76), and by Administration of Estates Act, 1925, s. 1, extending and amending the Land Transfer Act, 1897, real property devolves in the same manner as personal property, with some exceptions, e.g., an entailed interest not disposed of by the will, and property held in joint tenancy, and he can sell or mortgage that property for purposes of administration, and no purchaser or mortgagee dealing with him is concerned to inquire for what purpose the money is required. Even if a later will subsequently comes to light appointing a different person executor, the acts of the former executor so long as his title existed

are good (*Hewson* v. *Shelley*, 1914, 2 Ch. 13). Probate of the will, when obtained, is only evidence of his title; as a rule it relates back to the time of the testator' death, and as the executor derives full power from the will he can act as executor before probate obtained. He may even commence an action before probate, and it is usually sufficient if he obtain probate in time to prove his title if it should be disputed; see, however, *Tarn* v. *Commercial Banking Co.*, (1884) 12 Q. B. D. 294. But he must be prepared either to act wholly or not at all, for probate cannot be renounced partially (*Re Smith*, 1904, 1 Ch. 139), except in regard to land settled otherwise than by the will of the testator of the settlement of which the executor has not been appointed a trustee Administration of Estates Act, 1925, s. 23 (1).

(3) Under the Trustee Act, 1925, s. 7, replacing and amending s. 29 of the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35) and 1860 (23 & 24 Vict. c. 38), the executor may and should shortly after the funeral publish an advertisement in *The London Gazette*, a London daily newspaper and, if necessary, a local newspaper, for debtors to pay their debts, and for claimants to send in the particulars of their claims to a named person within the time (not being as a rule less than two months) fixed by the notice and he may at the expiration of the time distribute the estate, having regard to the replies to the advertisement or any other claim of which he may have notice; see *Re Bracken*, (1889) 43 Ch. D. 1.

Under s. 26 of the Trustee Act, 1925, and the L. P. Amendment Act, 1926 (Sched.), reproducing and extending to trustees the Law of Property Amendment Acts, 1859 (22 & 23 Vict. c. 35), ss. 27–29, and 1860 (23 & 24 Vict. c. 38), s. 8, a sum may be set apart to meet future claims upon the estate in respect of the covenants in a lease assigned to a purchaser, etc.

(4) Probate should be obtained within six calendar months after death of testator, and if delayed after that time a penalty of 100*l.* and 10*l.* per cent. on the property would be incurred; and if there be a suit or dispute relative to the will or administration, the probate or letters of administration should be obtained within two calendar months after it is ended (Stamp Act, 1815 (55 Geo 3. c. 184, s. 37)). The probate should be obtained to the extend of the sum really expected to be received.

(5) It is the duty of the executor to collect and speedily reduce into money the personal assets, when not otherwise directed, especially if they be of a perishable nature.

(6) As an executor cannot sue himself, the law now allows him, when he has been legally invested with his representative character, to retain out of any assets (either legal or equitable (A. E. Act, 1925, s. 34 (2)), see *O'Grady* v. *Wilmot*, 1916, 2 A. C. 231, for the previous law), that may have come to his hands money to the extent of all funeral and testamentary expenses and debts legally paid by him out of his own pocket, and also any debt due to himself, before he pays any other creditor in equal degree, and he may retain his own debt notwithstanding a decree has been made for administration of the estate and notwithstanding the assets out of which he seeks to retain his debt came to his hands after decree, and even though the debt be statute-barred. Before 1926 an executor could retain a debt due to himself as trustee, but by A. E. Act, 1925, s. 34, the right is now exercisable only in respect of debts due to him in his own right. The degree of debts is now regulated in the case of insolvent estates by the rules of bankruptcy, s. 34 and Sched. I., Part I., A. E. Act, 1925. See RETAINER OF DEBTS.

(7) The executor may, even after action commenced by an adverse creditor and at any time before judgment therein, pay one creditor in preference to another of equal degree. After an order for administration has been made, however, the power to prefer no longer exists.

(8) In general, legacies ought not to be paid within a year after the death of the testator, and not even then without an indemnity, if there be the least reason to apprehend that there are debts or claims outstanding. This year is allowed in analogy to the Statute of Distribution, which enacts 'that no distribution of the goods of any person dying intestate be made till after one year after the intestate's death'; and in order that the executor may have full opportunity to obtain information of the state of the property he cannot be compelled to pay a legacy within that period, even in a case where the testator directed it to be discharged within six months after his death.

(9) An executor is not entitled to any remuneration for his own personal trouble or loss of time, unless it be expressed in the will: on which account the law formerly gave to the executor the whole residue

undisposed of, unless, by some expression, to be collected from the will, a contrary intention was to be collected. But the next of kin became entitled to the unbequeathed residue by the Executors Act, 1830 (11 Geo. 4 & 1 Wm. 4, c. 40), now replaced with modifications by s. 49 (b), A. E. Act, 1925; see *A.-G.* v. *Jefferys*, 1908, A. C. 411. In many of the colonies, e.g., New Zealand, where not more than 5 per cent. can be allowed by the Administration Act, 1879 [1879, No. 49, s. 20], the executor has a percentage by statute on the net amount realized.

Executors are accountable for estate duty on property which comes to them as such (Finance Act, 1894), see *O'Grady* v. *Wilmot*, 1916, 2 A. C. 231 (57 & 58 Vict. c. 30). ss. 6, 8; Law of Property Act, 1925, s. 16; and for legacy duty with the exception of annuities, and the executor must deduct the duty before transferring the legacy; see Legacy Duty Act, 1796 (36 Geo. 3, c. 52), ss. 8, 9.

When an executor or administrator sues, his representative character must appear on the writ (R. S. C. 1883, Ord. III., r. 4); and he may sue or be sued without joining the parties beneficially interested in the estate (Ord. XVI., r. 8). Consult *Williams* or *Ingpen on Executors*, and *Chitty's Statutes*, tit. '*Executors and Administrators*,' and see titles PROBATE; REAL REPRESENTATIVE; WILL. In Scotland an executor appointed by the deceased is called an 'Executor-nominate'; when the deceased makes no appointment an 'executor-dative' is appointed by the Court.

Executor de son tort. See A. E. Act, 1925, ss. 28, 29, and s. 55 (1) (xi.). If a stranger take upon himself to act as executor or administrator (see 14 *Halsbury's L. of E.*, 2nd edn., para. 282), without any just authority (as by intermeddling with the goods of the deceased, and any other transactions), he is called in Law an executor of his own wrong, *de son tort*, and is liable to the extent of the assets which have come to him and to all the trouble of an executorship without any of the profits or advantages; but the doing of acts of necessity or humanity, as locking up the goods or burying the corpse of the deceased, will not amount to such an intermeddling as will charge a man as executor of his own wrong. Such an one cannot bring an action himself in right of the deceased; but actions may be brought against him.—1 *Wms. Exors.*; and see *Peters* v. *Leeder*, (1878) 47 L. J. Q. B. 573; *A.-G.* v. *New York Breweries Co.*, 1899, A. C. 62. As to his liability in respect of a term of years of which the deceased was assignee, see *Stratford-upon-Avon Corporation* v. *Parker*, 1914, 2 K. B. 562.

An executor *de son tort* can discharge his liability by obtaining probate if he is entitled, or by accounting to the personal representative, or to the Court, in an administration by the Court.

Executor of an Executor. The interest in a testator's estate and effects, vested in his executor, at the decease of the executor, devolves upon such executor's executor; but in the case of the decease of an administrator, a fresh administration must be granted; for this reason, that, whereas an executor is appointed by the testator, an administrator merely derives his authority from the Court of Probate. See *In the Goods of Reid*, 1896, P. 129; and A. E. Act, 1925, s. 7.

Executor Lucratus, an executor who has assets in his hands; it includes the case of an executor of a testator who in his lifetime made himself liable by a wrongful interference with the property of another; see *Davidson* v. *Tulloch*, (1860) 6 Jur. (N. S.) 543, H. L. 3 Macq.

Executory, performing official duties; contingent; also personal estate of a deceased; whatever may be executed.

Executory Consideration. A consideration which is to be performed after the contract for which it is a consideration is made. See CONSIDERATION.

Executory Contract. See EXECUTED CONTRACT.

Executory Devise. Mr. Fearne (*Cont. Rem.* 386) defines an executory devise to be, strictly, such a limitation of a future estate or interest in lands or chattels (though, in the case of chattels personal, it is more properly an executory bequest) as the law admits in the case of a will, though contrary to the rules of limitation in conveyances at Common Law. It is only an indulgence allowed to a man's last will and testament, where otherwise the words of the will would be void; for wherever a future interest is so limited by devise as to operate as a contingent remainder, such an interest is not an executory devise, but a contingent remainder.

Executory Devises have been divided into three kinds, two relative to real, and the third to personal estate only, viz.:—

(1) Where a testator devises his whole fee-simple, but upon some contingency qualifies

such devise, and limits an estate on the contingency; e.g., a devise of land to the testator's wife for life, remainder to C., his second son in fee, provided if D. his third son should within three months after the wife's death pay 500*l.* to C. or his executors, then to D. and his heirs: this is an executory devise to D.

(2) Where a testator, without disposing of the immediate fee, gives a future estate to arise, either upon a contingency, or at a period certain, unpreceded by, or not having the requisite connection with, any immediate freehold, to give it effect as a remainder.

The case of a devise to one, to take effect six months after the testator's decease, is an instance of the first class in this description.

And the case of a limitation to one for life, and from and after the expiration of one day (or any other period, not exceeding twenty-one years, we may suppose) next ensuing his decease, then over to another, may be adduced as an instance of the latter part of this description.

(3) The third sort of executory devises, comprising all that relates to chattels, is where a term or any personal estate is bequeathed to one for life, or otherwise, and after the decease of the devisee or legatee for life, or some other contingency or period, is given over to another person.

It is to be remarked that a remainder could only be limited in freehold estates. In personal property, under which both chattels real and chattels personal are included, there could not be a remainder in the strict sense of that word, and therefore every future bequest of personal property, whether it be preceded or not preceded by a prior bequest, or limited on a certain or an uncertain event, is an executory bequest, and falls under the rules by which that mode of limitation is regulated.

The great and essential difference between the nature of a contingent remainder and that of an executory devise consists in this, that the first could be barred and destroyed or prevented from taking effect by several different means, although the stringency of this rule was mitigated by the R. P. Act, 1845 (8 & 9 Vict. c. 106), s. 8, which provided against failure upon premature determination of any preceding estate of freehold by forfeiture, surrender or merger, and the Contingent Remainders Act, 1877 (40 & 41 Vict. c. 33), which provided that every contingent remainder created after 2nd August, 1877, which would have been valid as an executory limitation including an executory devise should be capable of taking effect as an executory limitation. These statutory provisions have been repealed by the Law of Property Act, 1924, Sched. 10, and future legal estates in land under executory devises have been changed to equitable interests by the L. P. Act, 1925, s. 1, and by s. 4 (2) of that Act, after 1925 equitable interests in land shall only be capable of being validly created in any case in which an equivalent interest in property real or personal could have been validly created before 1926. And it is a rule that an executory devise cannot be prevented or destroyed by any alteration whatsoever, in the estate out of which or after which it is limited.

If the executory devise be limited to take effect on an estate-tail, then the tenant-in-tail may, by a deed of disposition in conformity with the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), and s. 130, L. P. Act, 1925 (see TAIL), bar the entail, and all remainders, executory devises, and conditional limitations dependent thereupon. See EXECUTORY LIMITATION and CONTINGENT REMAINDER.

Executory Estates, interests which depend for their enjoyment on some subsequent event or contingency. These are assignable by the L. P. Act, 1925, s. 4 (2), re-enacting the Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 6.

Executory Fines, the fines *sur cognizance de droit tantum; sur concessit;* and *sur done grant en render.* Abolished by 3 & 4 Wm. 4, c. 74.

Executory Limitation. A limitation of a future interest by deed or will; if by will, it is also called an executory devise. The Conveyancing Act, 1882 (45 & 46 Vict. c. 39), s. 10, restricted executory limitations of land contained in an instrument coming into operation after 1st January, 1883, by the enactment:

'Where there is a person entitled to land for an estate in fee, or for a term of years absolute or determinable on life, or for term of life, with an executory limitation over on default or failure of all or any of his issue whether within or at any specified period of time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of 21 years, of the class on default or failure whereof the limitation over was to take effect.' See *Re Booth,* 1900, 1 Ch. 768; *Re Shrubb,* 1910, W. N. 143.

These provisions were re-enacted by s. 134 of the L. P. Act, 1925, and extended to include executory interests in any property and apply to all executory limitations in any instrument coming into operation after 1882 except that in instruments coming into operation after 1882 but before 1926, it only applies to limitations of land in fee simple or tail or for a term of years absolute or determinable on life or term of life.

Executory Remainder, a contingent remainder, because no present interest passes.

Executory Trusts. In the case of articles of agreement, made in contemplation of marriage, and which are consequently preparatory to a settlement, and in the case of those wills which are merely directory of a subsequent conveyance, the trusts declared by them are said to be executory or imperfect, because they require an ulterior act to raise and perfect them. They are rather considered as instructions for settlements than as instruments in themselves complete; and therefore Equity, in order to promote the presumed views of the parties in the one case and to support the manifest intention of the testator in the other, will attach to the words expressive of the trusts a more liberal and enlarged construction than they would admit if applied either to the limitation of a legal estate or a trust executed.—1 *Sand. Uses and Trusts*, 237. *Lord Glenorchy* v. *Bosville*, (1733) Cas. temp. Talb. 3; 1 *W. & T. L. C.*

Executory Uses, springing uses, which conferred a legal title answering to an executory devise; as when a limitation to the use of A. in fee is defeasible by a limitation to the use of B., to arise at a future period, or on a given event. After the repeal of the Statute of Uses, L. P. Act, 1925, s. 207 and Sched. VII., the limitations can only be created and take effect as equitable interests, L. P. Act, 1925, s. 4.

Executrix, a woman appointed by a testator to perform his will. By the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 18, a married woman appointed an executrix may sue and be sued, and may transfer stock independently of her husband 'as if she were a *feme sole*'; and see the further provision made by the Married Women's Property Act, 1907 (7 Edw. 7, c. 18), s. 1, replaced and extended by the L. P. Act, 1925, s. 170, by which a married woman is able to acquire and hold any interest in property real or personal either alone or jointly as a trustee or personal representative as if she were a *feme sole*.

Exemplary Damages, damages on an unsparing scale, given in respect of tortious acts, committed through malice or other circumstances of aggravation. In *Belt* v. *Lawes*, (1884) 2 Q. B. D. 356, an action by a sculptor for libellously styling him an impostor, the jury awarded 5,000*l.* damages, and a rule for a new trial on the ground (amongst others) of excessive damages was discharged by the High Court. The Court of Appeal affirmed this judgment, but laid it down that the Court had power to refuse a new trial on the plaintiff alone, and without the defendant consenting to the damages being reduced to such an amount as the Court would not consider excessive had they been given by the jury.

Where a cause of action survives against or for the benefit of a deceased person's estate, the damages recoverable shall not include any exemplary damages (Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41)).

Exemplification, a copy; a certified transcript either under the great seal or under the seal of a particular Court.—1 *Stark. Evid.* 224.

Exemplificatione, a writ granted for the exemplification or transcript of an original record.—*Reg. Brev.* 290.

Exempli gratiâ [abbrev. ex. gr., or e.g., Lat.], for the purpose of example, or for instance.

Exemption, immunity; freedom from imposts; a privilege to be free from service or appearance.

Exennium, or **Exhenium,** a gift; a new year's gift.

Exequatur, an official recognition of a person in the character of consul or commercial agent, authorizing him to exercise his power, and given by the government of the country in which it is to be exercised.

Exercitorial Power, the trust given to a shipmaster.

Exercitor navis, the temporary owner or charterer of a ship.

Exercituale, a heriot paid only in arms, horses, or military accoutrements.—*Jac. Law Dict.*

Exeter, or **Exon, Domesday,** the name given to a record preserved among the muniments and charters belonging to the dean and chapter of Exeter Cathedral, which contains a description of the western parts of the kingdom, comprising the counties of Wilts, Dorset, Somerset, Devon, and Cornwall. The Exeter Domesday was published with several other surveys nearly contem-

porary, by order of the Commissioners of the Public Records, under the direction of Sir Henry Ellis, in a volume supplementary to the Great Domesday, folio, London, 1816.

Exfrediare, to break the peace ; to commit open violence.—*Jac. Law Dict.*

Ex gravi querelâ, a writ that lay for him to whom any lands or tenements in fee were devised (within any city, town, or borough wherein lands were devisable by custom), against the heir of the devisor when he entered and detained them from him.—*Reg. Brev.* 224. Abolished by 3 & 4 Wm. 4, c. 27, s. 36.

Exheredatio [Lat.], the act of disinheriting. The exclusion of a child by his father from the inheritance of any part of the estate.—*Civil Law.* See *Sand. Just.*

Exhibit, a document or other thing shown to a witness when giving evidence, and referred to by him in his evidence. The term is usually applied to a document referred to in, but not annexed to, an affidavit, and shown to the witness when the affidavit is sworn. A certificate, signed by the person before whom the affidavit is sworn, identifying the document, is indorsed upon the exhibit, and the deponent merely refers to it in the affidavit as ' the [document] now produced and shown to me marked A,' or as the case may be. The fee of the Commissioner for Oaths in respect of each exhibit is one shilling. See R. S. C., Ord. XXXVIII., rr. 23 and 24.

Exhibitant, a person who exhibits anything, as a complainant in articles of the peace.

Exhibition, an allowance for meat and drink, usually made by religious appropriators of churches to the vicar. Also, the benefaction settled for the maintaining of scholars in the universities, not depending on the foundation.—*Paroch. Antiq.* 304.

In Scots law it is an action for compelling the production of writings.

Exhumation, the disinterring of an interred corpse. To disinter a dead body without lawful authority is a common law misdemeanour. Unless a body is removed from one consecrated burial place to another by faculty, it is unlawful to remove any body or the remains unless by licence from the Secretary of State (Burial Act, 1857 (c. 81), s. 25 ; Fees (Increase) Act, 1923 (c. 4), s. 7 ; Cemeteries Clauses Act, 1847 (c. 65), s. 26). A coroner may by common law order disinterment within a reasonable time for taking an original inquisition or a fee for the inquisition. For the purpose of cremating bodies already buried, an exhumation licence must be obtained from the Secretary of State.

Exigence, or **Exigency** [probably a corruption of *exigents*, vitiated by an unskilful pronunciation], demand, want, need.

Exigendaries. See EXIGENTER.

Exigent, or **Exigi facias** (that you cause to be demanded), judicial writ commanding the sheriff to demand the defendant from county court to county court, or, if in London, from husting to husting, until he be outlawed ; or if he appear, then to take and have him before the court on a day certain to answer to the plaintiff in an action of, etc. See OUTLAW.

Exigenter [fr. *exigendarius*, Lat.], an officer of the Court of Common Pleas, who makes all exigents, proclamations, etc.—*Cowel.*

Exigible, demandable, requirable.

Exile [fr. *exilium*, Lat.], banishment ; the person banished.

Exilium, spoiling. The author of *Fleta* distinguishes between *vastum*, *destructio*, and *exilium* ; for he tells us that *vastum* and *destructio* are almost the same, and are properly applied to houses, gardens, or woods ; but *exilium* is where servants are enfranchised, and afterwards unlawfully turned out of their tenements.—*Fleta*, l. 1, c. xi.

Exitus, (1) children, offspring ; (2) the rents, issues, and profits of land and tenements ; (3) the conclusion of the pleadings. See ISSUE.

Exlegalitus, he who is prosecuted as an outlaw.—*Jac. Law Dict.*

Ex-lex, an outlaw.

Ex mero motu (of his own accord). See OFFICE OF A JUDGE.

Ex necessitate legis (from the necessity of law).

Ex necessitate rei (from the necessity of the case).

Ex nudo pacto non oritur actio. *Noy, Max.* 24.—(An action does not arise from a bare promise.) See CONSIDERATION.

Ex officio (officially ; by virtue of office) ; e.g., justices of the peace were *ex officio* guardians of the poor.

Ex officio informations, proceedings filed in the King's Bench Division by the Attorney-General, at the direct and proper instance of the Crown, in cases of such enormous misdemeanours as peculiarly tend to disturb or endanger the government, or to molest or affront the sovereign in discharging the royal functions. The information is tried by a jury of the county where

the offence arose, and for that purpose, unless the case be of such importance as to be tried at bar, it is sent down by writ of *nisi prius* into that county, and tried either by a common or special jury, like a civil action.—4 *Steph. Com.* See *Archbold's. Cr. Pl.*

Ex officio oath, an oath taken by offending priests; abolished by 13 Car. 2, st. 1, c. 12.

Exoine, Essoigne [Fr.], the excuse for not appearing in court when cited. See ESSOIN.

Exoneratione sectæ, a writ that lay for the Crown's ward to be free from all suit to the county court, hundred court, leet, etc., during wardship.—*Fitz. N. B.* 158.

Exoneratione sectâ ad curiam baron, a writ of the same nature, issued by the guardian of the Crown's ward, and addressed to the sheriff or stewards of the court, forbidding them to distrain him, etc., for not doing suit of court, etc.—*Ibid.*

Exoneretur (that he be discharged), an entry made upon the bail-piece upon render of a defendant to prison in discharge of his bail.

Exordium, the beginning or introductory part of a speech.

Ex parte (on behalf of), a proceeding by one party in the absence of the other.

Ex parte talis, a writ that lay for a bailiff or receiver, who, having auditors appointed to take his accounts, cannot obtain of them reasonable allowance, but is cast into prison. —*Fitz. N. B.* 129.

Expatriation, the forsaking one's own country, and renouncing allegiance, with the intention of becoming a permanent resident and citizen in another country. See British Nationality aud Status of Aliens Act, 1914 (4 & 5 Geo. 5, c. 17), ss. 13–16.

Expectancy, in, executory; relating to something *in futuro*. As to dealings with interests in expectancy, see *Re Mudge*, 1914, 1 Ch. 115, and cases there referred to.

Expectant, having relation to, or dependent upon.

Expectant Estates, interests to come into possession and be enjoyed *in futuro*; they are of two sorts at Common Law—reversions and remainders.—2 *Bl. Com.* 163.

Expectant Heir. A person to whom property will accrue on the death of another person. Expectant heirs wishing to anticipate this property have frequently borrowed money, to be repaid when the expected property shall devolve upon them. From the uncertainty of this period, the unsoundness of the security which the expectant heir can offer, and from the pressing character of his immediate necessities, the rate of interest is necessarily higher than that upon an ordinary loan, and is frequently very much higher than the risk run by the lender requires. At Common Law all such loans are good, and the interest upon them, however high, recoverable. By the Usury Acts, indeed—which, however, did not apply to loans to expectant heirs with any greater rigour than to loans to other persons—they were for a long period of years subject to the restriction that only a fixed maximum rate of interest could be exacted, but the Usury Acts were repealed in 1854 by 17 & 18 Vict. c. 90. See USURY.

From very early times, however, Courts of Equity have been accustomed to interfere between lender and borrower in these cases, and to set aside as 'unconscionable bargains' those mortgages of reversionary interests or other contracts of sale or loan in which the distress of the expectant heir is taken advantage of. See the leading case of *Earl of Chesterfield* v. *Janssen*, (1750) 2 Ves. Sen. 125; 1 *W. & T. L. C.*; and *Earl of Aylesford* v. *Morris*, (1873) L. R. 8 Ch. 484, which latter case decided that the Sales of Reversions Act, 1867 (30 & 31 Vict. c. 4), repealed and extended by the L. P. Act, 1925, s. 174, providing that no *bonâ fide* purchase of a reversion (including an expectancy or possibility) shall be set aside 'merely on the ground of undervalue,' leaves unaffected the jurisdiction of Courts of Equity to set aside these unconscionable bargains. The onus is on the buyer of a reversionary interest, including an expectancy or possibility to show that the transaction was in good faith under independent advice as a fair valuation, and if made in secret, or confidentially, that it was otherwise unobjectionable. See REVERSION.

The practice of the Court in setting aside the bargain is to direct the reversion charged to stand as security for the money actually advanced and interest at the rate of five per cent. upon such actual advance. See MONEY LENDERS ACT.

Expectation of Life, in the doctrine of life annuities, is the share or number of years of life which a person of a given age may, upon an equality of chance, expect to enjoy. Consult *Inwood's Tables; Jenkins' Life Interests.*

Expediment, the whole of a person's goods and chattels, bag and baggage.

Expedit reipublicæ ne quis sua ne male utatur.—(The good of the state requires a man not to injure his own property.)

Expedit or Interest reipublicæ ut sit finis

litium. *Co. Litt.* 303.—(It is for the public good that there be an end of litigation.) See LIMITATION.

Expeditatæ arbores, trees rooted up or cut down to the roots.—*Fleta*, l. 2, c. xli.

Expeditate, to cut out the ball of a dog's fore-feet, for the preservation of the Royal game.—*Manw.* c. xvi.

Expenditors, persons formerly appointed by commissioners of sewers to pay, disburse, or expend the money collected by the tax for the repairs of sewers, etc., when paid into their hands by the collectors, on the reparations, amendments, and reformations ordered by the commissioners, for which they are to render accounts when thereunto required. See Statute of Sewers, 23 Hen. 8, c. 5.

Expensæ litis (costs of suit). See COSTS.

Expensis militum non levandis, etc., an ancient writ to prohibit the sheriff from levying any allowance for knights of the shire upon those who held lands in ancient demesne.—*Reg. Brev.* 261.

Experts, witnesses who give evidence upon matters of their own professional knowledge, as distinguished from particular matters of fact, e.g., professed judges of handwriting, foreign lawyers as to foreign law (see *Re Turner*, 1906, W. N. 27), or doctors as to the effects of drugs or poisons. The admissibility of such evidence rests upon the maxim *cuilibet in suâ arte est credendum.*

Regarding Court Experts, see R. S. C. Ord. XXXVIIa. An arbitrator under the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), cannot by virtue of Schedule I. (5) of that Act hear expert witnesses except by direction of the Minister of Agriculture and Fisheries. See *Best on Evidence;* as to privilege of expert on handwriting, see *Seaman* v. *Netherclift*, (1876) 2 C. P. D. 53; and as to the caution with which well-paid expert evidence is to be accepted as proof, see per Jessel, M.R., in *Lord Abinger* v. *Ashton*, (1873) L. R. 17 Eq. 358.

Expilation, robbery; the act of committing waste upon land.

Expiring Laws Continuance Acts. Acts so called and continuing, generally until the end of the year following that in which they are passed, temporary Acts which would otherwise expire have for many years been passed at the end of each session of parliament. The practice of passing temporary Acts and continuing them by annual continuance Acts is a very old one, which has frequently caused complaint in the House of Commons (see *Solicitors' Journal*, April 18th, 1903). The Ballot Act, 1872 (35 & 36 Vict. c. 33), was, for example, kept in force by annual inclusion in successive Expiring Laws Continuance Acts until 1908, when it was made permanent. The Expiring Laws Act, 1922, made nineteen Acts permanent, thus effecting a simplification long overdue, and the Expiring Laws Acts of 1925 and 1932 made permanent several other statutes.

Explees. See ESPLEES.

Expleta, Expletia, or **Explecia,** the rents and profits of an estate.—*Old Records.*

Explosives, as to injuries by, see the Malicious Damage Act, 1861, ss. 9, 10; the Offences against the Person Act, 1861, ss. 28–30, 64, 65; *Chitty's Statutes*, tit. '*Criminal Law.*'

The Explosives Act, 1875 (38 Vict. c. 17), as amended and extended by the Explosives Act, 1923 (13 & 14 Geo. 5, c. 17), regulates the manufacture, keeping, sale, and conveyance of gunpowder and other explosives, and the licensing and management of stores, defining 'explosive' in that Act as meaning:

> gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires, and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect;

and as including:

> fog-signals, fireworks, fuses, rockets, percussion caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

The Explosive Substances Act, 1883 (46 Vict. c. 3), greatly increases the punishment for causing or attempting to cause dangerous explosions, and allows an inquiry to be instituted before a justice of the peace by order of the Attorney-General if he has ground for believing an offence against the Act to have been committed, although no particular person may be charged with such offence. As to sending explosives through the post, see Post Office Protection Act, 1884 (47 & 48 Vict. c. 76). Coal Mines Act, 1911 (1 & 2 Geo. 5, c. 50), s. 61, regulates the use of explosives in coal mines, see also the Explosives in Coal Mines (Horse Killers) Order, 1931 (S. R. & O. 1931, No. 521); Explosives in Coal Mines Order, 1934 (S. R. & O. 1934, No. 6); Explosives in Coal Mines (Condor) Order, 1934 (S. R. & O. 1934, No. 152). See *Chit. Stat.*, tit. '*Explosives.*'

Exposing in a public thoroughfare a person infected with a contagious disease is a

common nuisance, and punishable accordingly.—4 *Steph. Com.* If the disease is notifiable, it is also punishable on summary conviction under the Public Health Act, 1936, ss. 148–151.

Exposing Child under the age of two years. See Offences against the Person Act, 1861, s. 27. See also Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 4 (exposing for purpose of begging); s. 11 exposing to risk of fire, and generally Part I. of the Act.

Exposing Person wilfully and in any public place, with intent to insult any female, is an offence under the Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4, punishable by imprisonment with hard labour up to three months. See also Town Police Clauses Act, 1847, s. 28.

Expositio, explanation.

Ex post facto [jure] (from a law made after); i.e., the law is retrospective, being passed only after the thing prohibited was done.

Express, that which is not left to implication; as express promise, express covenant.

Express Colour, in pleading. An evasive form of special pleading in a case where the defendant ought to plead the general issue. Abolished by the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 64.

Expressio eorum quæ tacitè insunt nihil operatur. *Co. Litt.* 210.—(The expression of those things which are tacitly implied has no effect.) See *Broom's Max.*, citing *Doe* v. *Alexander*, (1814) 2 M. & S. 525, where the maxim was applied by Dampier, J., and other cases.

Expressio unius est exclusio alterius. *Co. Litt.* 210 *a.*—(The mention of one thing is the exclusion of another.) See *Broom's Leg. Max.*

Expressum facit cessare tacitum. *Co. Litt.* 210 *a.*—(What is expressed makes what is implied to cease.) See *Broom's Max.* Where a deed contains express covenants, no implication of any other covenants on the same subject-matter can be raised.—*Nokes's Case*, (1599) 4 Rep. 80 *b*; *Stephens* v. *Junior Army and Navy Stores*, 1914, 2 Ch. 526.

Expromission, a species of novation, as a creditor's acceptance of a new debtor, who takes the place of the old debtor, who is discharged.

Expromissor, a surety; bail.—*Civil Law.*

Expropriation, the surrender of a claim to exclusive property; also, dispossessing an owner of his property, wholly or partially. See Housing Acts.

Ex provisione mariti (from the provision of the husband).

Expurgation, the act of purging or cleansing, as where a book is published without its obscene passages.

Ex relatione, on the report of: an expression affixed to cases which the reporter gives on the authority of another; as *ex relatione amici.*

Extend, to value the lands, etc., of one bound by a statute, who has forfeited his bond, at their yearly value, so that it may be known when the creditor will be paid his debt. See EXTENT.

Extension, an indulgence by giving time to pay a debt or perform an obligation.

Extenso manerii, 4 Edw. 1, s. 1. It was a direction for the making of a survey of buildings, lands, commons, parks, woods, etc.

Extent, the peculiar remedy to recover debts of record due to the Crown; it differs from an ordinary writ of execution at the suit of a subject, because under it the body, lands, and goods of the debtor may all be taken at once, in order to compel the payment of the debt. It is not usual, however, to seize the body.

There are two kinds of Extent—*in chief* and *in aid.* (1) Extent in chief. It issues from the Exchequer, and may bear *teste* and be made returnable on any day certain in term or vacation (5 & 6 Vict. c. 86, s. 8). It directs the sheriff to take an inquisition or inquest of office, on the oaths of lawful men, to ascertain the lands, etc., of the debtor, and seize the same into the King's hands. The writ should be preceded by a *scire facias* in order to bring the debtor into court, and afford him an opportunity to show cause against it; but where the debt is in danger of being lost, the extent will be issued without a *scire facias* upon an affidavit of circumstances; and after the sheriff's return, the debtor, if he dispute the debt, or a third person, if he claim the property set forth in the inquisition, may enter an appearance and plead to the extent; issue is then joined, and it is decided either on demurrer or by a trial before a jury. If judgment be given for the Crown, it is that the subject take nothing by his traverse or plea; if given for the defendant or claimant, it is an award of *amoveas manus.* Error will lie upon the judgment provided the Attorney-General consent to the proceeding. Where there was no judgment it was the rule to issue a commission to ascertain what debt was due to the Crown; but by the

Crown Suits Act, 1865 (28 & 29 Vict. c. 104), s. 47, a commission to find a debt due to the Crown shall not be necessary for authorizing the issue of an immediate extent, or of a writ of *diem clausit extremum*, and an immediate extent may be issued on an affidavit of debt and danger, and a writ of *diem clausit extremum* may be issued on an affidavit of debt and death, and on a fiat, as hereby provided. It was enacted by the Judgments Act, 1839 (2 & 3 Vict. c. 11), that no debt due to the Crown on Judgment, statute or recognizance, inquisition of debt, obligation, or specialty, or acceptance of office, shall affect any lands, tenements, or hereditaments as to purchasers or mortgagees, unless and until such memorandum or minute thereof, as in the Act provided, shall be registered as is therein provided; and provision is made in regard to the registration of a *quietus* for any Crown debt, and for Treasury certificates being granted exonerating lands from any further claim of the Crown. By the Crown Suits Act, 1865 (28 & 29 Vict. c. 104), s. 48, it was provided that any Crown judgment, etc., or specialty, shall not affect any land, as to a *bonâ fide* purchaser for valuable consideration, or as to a mortgagee (with or without notice of such judgment, etc.), unless a writ of extent, or of *diem clausit extremum*, or other writ or process of execution, has been issued and registered before the execution of the conveyance or mortgage; see now Land Charges Act, 1925, s. 6, and Land Charges.

There is also an *extent in chief in the second degree*, which is a proceeding by the Crown against the debtor of a Crown-debtor, against whom also an extent in chief has issued.

(2) Extent in aid. It issues, not at the suit of the Crown, like an extent in chief, but at the suit of the Crown-debtor against a person indebted to himself; and it is grounded on the Statute of Extent (33 Hen. 4, c. 39), and on the principle that the Crown is entitled to the debts due to the debtor. The practice is governed by the Extents in Aid Act, 1817 (57 Geo. 3, c. 117), and by a rule of the Court of Exchequer, June 22, 1822, that the Crown-debtor must make oath that otherwise the debt will be lost; see *R.* v. *Pridgeon*, 1910, 2 K. B. 543.

There is a special writ of extent, which is issued in the event of the death of a Crown-debtor, and is called a *diem clausit extremum*, because it recites the death of the party. The sheriff is commanded to inquire, by a jury, concerning the chattels and lands of the deceased debtor, and seize them into the Crown's hands.

See generally the cases in *Mews's Digest*, tit. '*Crown (Execution by Extent)*'; *West on Extents*; *Robertson on the Crown*, ch. iii.

Exterritoriality, the condition of being considered outside the territory of the state in which a person resides and therefore not amenable to its laws. The most marked instance is that of an ambassador. See *Oxf. Dict.*; *Dicey's Conflict of Laws*; *Westlake's International Law.*

Extinguishment, the annihilation of a collateral interest, or the supersedure of one interest by another and greater interest in that out of which it is derived. It is of various natures as applied to various rights.

(1) Extinguishment of common. If he who is entitled to common appurtenant purchase any part of the land which is subject to his right of common, that right is extinguished for the whole; and so, if he release his right over any part of the land. But it has been justly doubted whether in any case, and especially if all persons who have common appurtenant in the same land concur in discharging some part of it, this legal trap should be allowed to operate.—*Burton's Comp.*, 8th ed. 352. If one of the tenants of a manor purchase any part of the land over which he has a right of common appendant, his right over the rest will continue. So, on the alienation of any part of land to which common is appendant or appurtenant (though the latter is less favoured by the old law), the right of common is preserved and apportioned.—1 *Bac. Ab.* 628.

(2) Extinguishment of Easement. By statute, release, non-user, unity of seisin, or alteration of the dominant tenement; the term is sometimes used to denote the interruption but for which an inchoate right would become established by prescription.

(3) Extinguishment of copyhold. When a tenant conveyed to his lord, or did an act denoting his intention of not holding of his lord any longer, his copyhold was extinguished. When the lord did an act inconsistent with the nature of the tenure, e.g., conveyed to the tenant the freehold, or released to him his seignorial rights, an enfranchisement was effected.

(4) Extinguishment of Manorial incidents: and enfranchisement of customary suits and services. See Copyhold.

(5) Extinguishment of debt. A creditor, by accepting a higher security than he had before, extinguishes the first debt. And

when judgment is given for a debt, it supersedes or extinguishes the previous obligation (*Plowd.* 184; 1 *Salk.* 304); though it does not prejudice a security given for the debt (*Economic Life Assurance Society* v. *Usborne*, 1902, A. C. 147).

(6) Extinguishment of estates. If a person have a yearly rent out of lands, and afterwards purchase those lands, so that he has as good an estate in the land as in the rent, the rent is extinguished; for no one can have a rent issuing out of his own land, though a person must have as high an estate in the land as in the rent, or the rent will not be extinct.—*Co. Litt.* 147. It appears that an estate by statute, recognizance, or *elegit* may be extinguished by any act (as a deed of defeazance or of release), which extinguished the debt.—*Burt. Comp.* 373. Sect. 185, L. P. Act, 1925, replacing the Judicature Act, 1873, s. 25 (4), provides that there shall not, after commencement of that Act, be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity.

(7) Extinguishment of *interesse termini*. A mere *interesse termini* could neither promote nor hinder the merger of any estate, nor could itself, properly speaking, be surrendered; but it might have been extinguished by surrender in law, or by assignment or release.—*Burt. Comp.* 364. The doctrine of *interesse termini* has been abolished by s. 149, L. P. Act, 1925. See INTERESSE TERMINI.

(8) Release by way of extinguishment. If my tenant for life make a greater estate than he is warranted in granting, as a lease to A. for life, remainder to B. and his heirs, and I release to A., this extinguishes my right to the reversion, and shall enure to the advantage of B.'s remainder as well as of A.'s particular estate.—2 *Bl. Com.* 325.

(9) Extinguishment of Power. A power which is ancillary to the performance of a trust or duty cannot be extinguished. In regard to other cases, the Law of Property Act, 1925, s. 155, replacing the Conveyancing Act, 1881, s. 52, provides that all powers, whether coupled with an interest or not, may be released. Until 1882 collateral powers over property without any estate or interest in it could not be released or extinguished. The powers of a tenant for life under the S. L. Act, 1925, cannot be extinguished (*ibid.*, s. 104), except by surrender of the life estate to the remainderman (s. 105).

Extirpatione, a judicial writ, either before or after judgment, that lay against a person who, when a verdict was found against him for land, etc., maliciously overthrew any house or extirpated any trees upon it.—*Reg. Jud.* 13, 56.

Extocare, to grub up lands, and reduce them to arable or meadow.—*Dugd. Mon.*, tom. 2, p. 71.

Extorting Money, etc., by Menaces. See 24 & 25 Vict. c. 96, ss. 44, 45; BLACKMAIL; and THREATS.

Extortion [fr. *extorqueo*, Lat., to wrest away], any oppression under colour of right, as the demanding of a more than legal fee by colour of office. See the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 29 (2), (6).

Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum. 10 *Rep.* 102.—(Extortion is that crime when, by colour of office, any person extorts that which is not due, or more than is due, or before the time when it is due.)

Extra Costs, those charges which do not appear upon the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court-fees, etc., an affidavit of which must be made, to warrant the master in allowing them upon taxation of costs. See INCREASE.

Extracta Curiæ, the issues or profits of holding a court, arising from the customary fees, etc.—*Paroch. Antiq.* 572.

Extradition, the surrender by a foreign state of a person accused of a crime to the state where it was committed, in order that he may be tried there. It is recognized as a duty, independent of treaty, by international law, but is usually the subject of treaty terminable at one year's notice. The Extradition Act, 1870 (33 & 34 Vict. c. 52), 'as to the whole of His Majesty's dominions' provides (s. 2) that where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals, his Majesty may, by Order in Council, direct that this Act shall apply in the case of such foreign state. The Act, as amended by the Extradition Acts, 1873, 1895, and 1906, provides for the arrangements and procedure regarding extradition (see *R.* v. *Daye*, 1908, 2 K. B. 333), and imposes various restrictions thereon, e.g., in regard to political offences. The Extradition Act, 1932 (22 & 23 Geo. 5, c. 39), adds offences in connection with dangerous drugs to the scheduled list of offences, and 1935 (25 & 26 Vict. Geo. 5, c. 25), for currency offences. The Extradi-

tion Acts, 1870–1935, have been applied to the suppression of the White Slave traffic (see S. R. & O. 1931, No. 718; 1934, No. 310; 1934, No. 500, and many others). Consult *Clarke on Extradition*, and *Chitty's Statutes*, tit. '*Extradition*,' where a list of numerous extradition treaties between this country and foreign states is given.

Extrajudicial [fr. *extra* and *judicium*, Lat.], out of the regular course of legal procedure. An extrajudicial dictum is the same as an obiter dictum. See DICTUM.

Extraordinary Traffic means the carriage of articles over a road which is so exceptional in the quality or quantity of the articles carried, or in the mode of user of the road, as substantially to increase the burden imposed by ordinary traffic on the road and to cause damage and expense beyond what is common. The road authority has power to recover expenses caused by extraordinary traffic under s. 23 of the Highways and Locomotives Amendment Act, 1878, now replaced by the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 54. See *Hill* v. *Thomas*, 1893, 2 Q. B. 333; *Barnsley, etc., Society* v. *Worsborough U.D.C.*, 1916, A. C. 291; *Butt* v. *Weston-super-Mare U.D.C.*, 1921, A. C. 340.

Extra-parochial [fr. *extra* and *parochia*, Lat.], outside of any parish. The Extra-parochial Places Act, 1857 (20 Vict. c. 19), provides for extra-parochial places being annexed to their adjoining parishes.

Extra-territoriality. See EXTERRITORIALITY.

Extra territorium jus dicenti non paretur impune. 10 *Rep.* 77.—(The decision of one adjudicating beyond his territory cannot be obeyed with impunity.)

Extravagantes, those decretal epistles which were published after the Clementines. They were so called because at first they were not digested or arranged with the other papal constitutions, but seemed to be, as it were, detached from the canon law. They continued to be called by the same name when they were afterwards inserted in the body of the canon law. The first extravagantes are those of Pope John XXII., successor of Clement V. The last collection was brought down to the year 1843, and was called the *common extravagantes*, notwithstanding that they were likewise incorporated with the rest of the canon law.

Extra viam, out of the way.

Extra vires, beyond powers. See ULTRA VIRES.

Extumæ, reliques in churches and tombs.

Ex turpi causâ non oritur actio.—(No right of action arises from a base cause.) See EX DOLO MALO, etc. There are also maxims, *Ex maleficio non oritur contractus* and *Ex facto illicito non oritur actio*, to the same effect.

Ex visitatione Dei (by the visitation of God).

Ex vi termini (from the force or meaning of the expression).

Ey, ea, or **ee,** an island.

Eye-witness, one who gives testimony to facts seen by himself..

Eyre, Justices in [fr. *eyre*, Fr.; *iter*, Lat.], the court of justices itinerant, whom Bracton in many places calls *justiciarios itinerantes*; called in modern times the judges of assize, who have travelled on their several circuits since their first appointment by the statute of *nisi prius*, 13 Edw. 1, st. 1, c. 30. The eyre of the forest is nothing but the justice-seat, which is, or should by ancient custom be, held every three years by the justices of the forest, journeying up and down for such purpose.

Ezardar, a farmer or renter of land in Hindostan.—*Indian.*

F.

F, a stigma put upon felons with a hot iron on being admitted to the benefit of clergy, which was abolished by the Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 6.

F. A. A., 'free of all average,' denoting in marine insurance that the insurance is against total loss only.

F. C. S.—In documents relating to policies of marine insurance these letters stand for the words 'free of capture and seizure.'

F. G. A.—These letters in connection with marine insurance mean 'free from general average.' They sometimes mean 'foreign general average,' and the precise meaning they denote must be gathered from the context. See AVERAGE (2).

F. O. B., free on board, a term frequently inserted in contracts for the sale of goods to be conveyed by ship, meaning that the cost of shipping will be paid by the buyer. When goods are so sold in London the buyer is considered as the shipper, and the goods when shipped are at his risk. See *Green* v. *Sichel*, (1860) 29 L. J. C. P. 213.

F. O. W.—These letters used in a charter-party mean 'first open water,' that is, immediately after the ice breaks up sufficiently to allow of safe navigation.

F. P. A.—These letters in connection with marine policies mean 'free from particular average.' See AVERAGE.

Fabric lands [*ad fabricam reparandam*, Lat.], land given to provide for the rebuilding or repair of cathedrals and churches. Anciently, almost every person gave something by his will to be applied in repairing the fabric of the cathedral or parish church where he lived.

Fabrics (Misdescription) Act, 1913 (3 & 4 Geo. 5, c. 17), an Act prohibiting the sale of textile fabrics with a misleading description as to inflammability.

Facio ut des (I do that you may give).

Facio ut facias (I do that you may do).

Fac simile (make it like). An exact copy, preserving all the marks of the original.

Fac simile Probate, where the construction of the will may be affected by the appearance of the original paper, the Court will order the probate to pass in *fac simile*, as it may possibly help to show the meaning of the testator.

Fact, question of. See QUESTIONS OF FACT.

Facta armorum, feats of arms, jousts, tournaments, etc.

Facto, in fact; as where anything is actually done.—*Jac. Law Dict.* And see DE FACTO.

Factor [fr. *facteur*, Fr.], a substitute in mercantile affairs; an agent employed to sell goods or merchandise consigned or delivered to him by or for his principal, for a compensation commonly called factorage or commission. Hence he is often called a commission-merchant or consignee; and the goods received by him for sale are called a consignment. He is a home factor when he resides in the same state or country with his principal, and a foreign factor when he resides in a different state or country. He differs from a broker in this, and he may buy and sell in his own name, and is entrusted with the possession and disposal of the goods, and has a special property in, and a lien on, them; yet neither can delegate his authority, unless conferred by usages of trade or the assent of his principal. Factors have no incidental authority to barter goods, or to pledge them for advances made to them on their own account, or debts due by themselves; but they may pledge them for advances made on account of their principal, or for advances to themselves to the extent of their own lien on their goods. And they may pledge their principal's goods for the duties and other charges due thereon.

The Factors Acts of 1823, of 1825, of 1842, and of 1877, passed with the object of facilitating commerce by enabling factors to sell or pledge goods entrusted to them for sale, were amended and consolidated by the Factors Act, 1889 (52 & 53 Vict. c. 45), extended to Scotland by the Factors (Scotland) Act, 1890 (53 & 54 Vict. c. 40) (see *Chitty's Statutes*, tit. '*Factors*').

Factorage, the wages, commission, or allowance made to a factor by a merchant.

Factory, a place where a number of traders reside in a foreign country for the convenience of trade; also a building in which goods are manufactured.

In the Factory and Workshop Act, 1901, 'Factory' means by s. 149 'textile factory and non-textile factory, or either of those descriptions of factories.'

The expression 'textile factory' means any premises wherein or within the close or curtilage of which steam, water or other mechanical power is used to move or work any machinery employed in preparing, manufacturing or finishing or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, cocoanut fibre or other like material, either separately or mixed together or mixed with any other material, or any fabric made thereof:

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works and hat works shall not be deemed to be textile factories.

'Tenement factory' means a factory when mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft, in such manner that those parts constitute in law separate factories; and for the purpose of the provisions of this Act with respect to tenement factories, all buildings situate within the same close or curtilage shall be treated as one building. See *Mumby* v. *Valp*, 1930, 1 K. B. 460 (power supplied by third person).

The expression 'non-textile factory' means, by the same section, print works, bleaching and dyeing works, foundries, paper mills, glass works and any other of the twenty kinds of works described in Part I. of Schedule VI. of the Act.

The Factory and Workshop Act, 1878, which contained 107 sections and 6 schedules, consolidated, with a few amendments, the 17 Acts from that of 1802 (42 Geo. 3, c. 73), to 37 & 38 Vict. c. 44 (the Factory Act, 1874), by which the labour of women, young persons, and children had been from time to time regulated, the education of children indirectly attained, and the fencing of

machinery prescribed. The Act of 1878 was amended, as to White Lead Factories and Bakehouses, by the Factory and Workshop Act, 1883, as to Cotton Cloth and like humid factories, by the Cotton Cloth Factories Act, 1889, and generally by the Factory and Workshop Act, 1891, which increased the powers of factory inspectors, directed means of escape from fire to be provided, prohibited the employment of children under eleven, and of women within four weeks after childbirth, and enacted that weavers in the cotton, worsted, or woollen, or linen, or jute trade, if paid by the piece, should be entitled to have supplied to them with their work ' sufficient particulars of the rate of wages at which they are entitled to be paid ' ; and by the Factory and Workshop Act, 1895, which constituted laundries and docks factories for most purposes.

The Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), has effected a second consolidation with further amendments, prohibiting the employment of children under twelve, directing the periodical examination of steam boilers, enabling district councils to make bye-laws as to escape from fire, increasing the powers of the Home Secretary for the regulation of dangerous trades, and conferring on county councils many of the powers which only district councils had before. This Act, which codifies the law on the subject up to 1901, must, however, be read in conjunction with the legislation since that date ; reference should therefore be made to the Factory and Workshop Act, 1907 (extending to laundries, and charitable and reformatory institutions), the Police, Factories, etc. (Miscellaneous Provisions), Act, 1916, Part II., and the Education Acts, 1918, s. 14, and 1921, s. 170 (13). The Women and Young Persons (Employment in Lead Processes) Act, 1890 ; Employment of Women, Young Persons, and Children Act, 1920 ; Lead Paint (Protection against Poisoning) Act, 1926 ; Factory and Workshop (Cotton Cloth) Factories Act, 1929 ; Employment of Women and Young Persons Act, 1936. But see now Consolidating Factories Act, 1937.

The use of steam whistles for summoning or dismissing factory hands requires the sanction of local authorities, by the Steam Whistles Act, 1872 (35 & 36 Vict. c. 61).

Factum, a person's act or deed ; anything stated or made certain. As to the plea of ' *non est factum,*' i.e. ' I never made the deed,' see *Howatson* v. *Webb*, 1907, 1 Ch. 537, affd. 1908, 1 Ch. 1, and the cases there cited.

Faculties, Court of, a jurisdiction or tribunal belonging to the archbishop. It does not hold pleas in any suits, but creates rights to pews, monuments, and particular places and modes of burial. It has also various powers under 25 Hen. 8, c. 21, in granting licences of different descriptions, as a licence to marry, a faculty to erect an organ in a parish church, to level a churchyard, to remove bodies previously buried.—4 *Inst.* 337. The Master of the Faculties (*Magister ad facultates*) appoints Ecclesiastical notaries, and under the Public Notaries Acts, general notaries are appointed from his office. He has inherent jurisdiction to strike the name of any notary public off the roll of notaries public for misconduct (*Re Champion*, 1906, P. 86). See *Phillimore's Eccl. Law*, and see NOTARY.

Faculty [fr. *facultas*, Lat., power], a licence or authority ; in Ecclesiastical Law a privilege granted by the ordinary to a man by favour and indulgence to do that which by law he may not do, e.g., to marry without banns, to erect a monument in a church, to construct a church window (*Egerton* v. *All of Odd Rode*, 1894, P. 15), or to remove what has been put up under a previous faculty (*Re St. Margaret's, Westminster*, 1905, P. 286), and see NOTARY and previous title.

Faculty of Advocates, the college or society of advocates in Scotland. See ADVOCATE.

Fæder-feoh, the portion brought by a wife to her husband, and which reverted to a widow, in case the heir of her deceased husband refused his consent to her second marriage : i.e., it reverted to her family in case she returned to them.—*Anc. Inst. Eng.*

Faggot Votes. A faggot vote is where a man is formally possessed of a right to vote for a member of parliament, without possessing the substance which the vote should represent ; as if he is enabled to buy a property, and at the same moment mortgage it to its full value for the mere sake of the vote ; such a vote is called a faggot vote. The Reform Bill of 1832 contained provisions which were directed against faggot voters. The Representation of the People Act, 1884, carried such provisions still further. Since the Representation of the People Act, 1918, the subject of faggot votes has become a matter of historical interest only.

Faida, malice or deadly feud.

Failing of Record, when an action is brought against a person who alleges in his plea matters of record in bar of the action,

and avers to prove it by the record; but the plaintiff saith *nul tiel record*, viz., denies there is any such record; upon which the defendant has a day given him by the Court to bring it in; if he fail to do it, then he is said to fail of his own record, and the plaintiff is entitled to sign judgment.—*Termes de la Ley.*

Faint Action, a feigned action.—*Co. Litt.* 361.

Faint Pleader, a fraudulent, false, or collusive manner of pleading to the deception of a third person.—3 Edw. 1, c. 19.

Fair Comment. Fair comment on a matter of public interest is a good defence to an action of libel for words *primâ facie* defamatory; but the defence will be of no avail if *express* malice is established (*Thomas* v. *Bradbury, Agnew & Co.*, 1906, 2 K. B. 627). When the defence is one of fair comment the plaintiff is not entitled to particulars (*Digby* v. *Financial News, Ltd.*, 1907, 1 K. B. 502); but the defendant can administer interrogatories to the plaintiff (*Walker* v. *Hodgson*, 1909, 1 K. B. 239). Whether words exceed the limit of 'fair comment' or not is a question for the jury (*Dakhyl* v. *Labouchere*, 1908, 2 K. B. 325 *n.*). Consult *Odgers on Libel.*

Fair Pleader. See BEAU-PLEADER.

Fairs [fr. *foire*, Fr.; *forum nundinæ*, Lat.]. These institutions are very closely allied to markets. A fair is a greater species of market, recurring at more distant intervals. No fair can be held without a grant from the Crown, or a prescription which supposes such grant. Before a patent is granted it is usual to have a writ of *ad quod damnum* executed and returned, that it may not be issued to the prejudice of another fair or market already existing. The grant usually contains a clause that it shall not be to the hurt of another fair or market; but this clause, if omitted, would be implied; for if the franchise occasion damage, either to the Crown or a subject, in any respect, it will be revoked; and a person whose ancient title is prejudiced is entitled to have a *scire facias* in the King's name to repeal the letters-patent. If His Majesty grant power to hold a fair or market in a particular place, the lieges can resort to no other, even though it be inconvenient. But if no place be appointed, the grantees may keep the fair or market where they please, or where they can most conveniently. Notwithstanding enfranchisement of copyholds under the Law of Property Act, 1922, the land formerly copyhold remains subject to the lord's right (if any) to markets and fairs (see COPYHOLDS). Times of holding fairs and markets are either determined by the letters-patent appointing the fair or market, or by usage, or under the Fairs Act, 1873 (36 & 37 Vict. c. 37) (repealing 31 & 32 Vict. c. 51), by the Secretary of State. See the Markets and Fairs Clauses Act (10 & 11 Vict. c. 14). The Metropolitan Fairs Act, 1868 (31 & 32 Vict. c. 106), was passed for the prevention of the holding of unlawful fairs within the limits of the Metropolitan Police District.

As to the powers of local authorities with reference to fairs, see Public Health Act, 1875, s. 167, and as to the weighing of cattle, see Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891.

The Fairs Act, 1871 (34 & 35 Vict. c. 12), proceeding on the preamble that 'certain of the fairs held in England and Wales are unnecessary, are the cause of grievous immorality, and are very injurious to the inhabitants of the town in which such fairs are held,' gives power to the Home Secretary to abolish any fair on representation of the magistrates, and with consent of the owner; and many fairs have been abolished under the powers of the Act. The holding of fairs on Sunday, except the four Sundays of harvest, is prohibited by an Act of 1448 (27 Hen. 6, c. 5). Consult *Pease and Chitty on Markets and Fairs.*

Fait [fr. *factum*, Lat.], a deed or writing.

Fait enrolle, a deed enrolled, as a bargain and sale of freeholds.—1 *Keb.* 568.

Faitours, evil-doers; idle livers; vagabonds.—*Termes de la Ley.*

Falang, jacket or close coat.—*Blount.*

Falcatura, one day's mowing of grass, a customary service to the lord by his inferior tenants. *Falcata*, the fresh grass mowed and laid in swathes. *Falcator*, the tenant-mower. —*Ken Glos.*

Fald, or **Falda,** a sheepfold.—*Cowel.*

Faldage [fr. *faldagium*, Lat.], a fold-course, i.e., common of pasture for sheep.

Faldæ Cursus, a sheep-walk.—2 *Vent.* 139.

Fald-fee, a composition paid anciently by tenants for the privilege of faldage.—*Cowel.*

Faldisdory [fr. *falde*, Sax., a hedge, and *stop*, a place], the bishop's seat or throne within the chancel.

Faldstool, or **Foldstool,** a place at the south side of the altar, at which the sovereign kneels at his coronation.

Faldworth, a person of age, that he may be reckoned of some decennary.—*Du Fresne.* See DECENNARY.

Falesia [fr. *falaise*, a cliff], a hill or down by the seaside.—*Old Records.*

Falk-land. See FOLKLAND.

Falkland Islands. See 6 & 7 Vict. c. 13, amended by 23 & 24 Vict. c. 121 ; both Acts were repealed by the British Settlements Act, 1887 (50 & 51 Vict. c. 54) (*q.v.*).

Fall of Land, a quantity of land six ells square superficial measure.

Fallow-land, land ploughed, but not sown, and left uncultivated for a time after successive crops.

Fallum, an unexplained term for some particular kind of land.—*Cowel.*

Falmotum. See FOLKEMOTE.

Falsa demonstratio non nocet.—(False description does not vitiate.) See *Smith* v. *Ridgway*, (1866) L. R. 1 Ex. 331, Ex. Ch.

Falsa orthographia, sive falsa grammatica, non vitiat concessionem. 9 *Rep.* 48.—(Bad spelling or bad grammar does not vitiate a grant.) See MALA GRAMMATICA.

False Imprisonment, restraining personal liberty without lawful authority, for which offence the law has not only decreed a punishment as a public crime, but has also given a private reparation to the party as well by removing the actual confinement for the present by *habeas corpus*, as by subjecting the wrongdoer to an action of trespass, etc., usually called an action of false imprisonment, on account of the damage sustained by the loss of time and liberty. It must amount to a total restraint of the plaintiff's liberty for some period, however short ; see *Bird* v. *Jones*, (1845) 7 Q. B. 742. As to the persons liable, see *Walters* v. *W. H. Smith & Son, Ltd.*, 1914, 1 K. B. 595 ; *Herd* v. *Weardale Steel Co.*, 1915, A. C. 67. The onus of proving the defence of reasonable or probable cause lies on the defendant. An action for false imprisonment must not be confused with one for malicious prosecution where the onus of proving absence of reasonable and probable cause lies on the plaintiff (*Sewell* v. *National Telephone Co.*, 1907, 1 K. B. 557). Consult *Addison on Torts, Clerk and Lindsell on Torts ;* and see *Warner* v. *Riddiford*, (1858) 4 C. B. N. S. 180, 204 ; *Brown* v. *Chapman*, (1848) 6 C. B. 365 ; *Lambert* v. *G. E. Ry.*, 1909, 2 K. B. 776 (arrest by railway police).

False Latin. When law proceedings were written in Latin, if a word were significant though not good Latin, yet an indictment, declaration, or fine should not be made void by it ; but if the word were not Latin, nor allowed by the law, and it were in a material point, it made the whole vicious.—5 *Rep.* 121 ; 2 *Nels.* 830.

False Lights. Section 667 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 667, imposes a penalty upon any person who after receiving notice fails to extinguish or screen any fire or light that may be mistaken for a lighthouse. See FALSE SIGNAL.

False News, Spreading, to make discord between the sovereign and nobility, or concerning any great man of the realm, was a misdemeanour, punishable at Common Law by fine and imprisonment ; which was confirmed by 3 Edw. 1 (*Stat. West. prim.*), c. 34 ; 2 Rich. 2, st. 1, c. 5 ; and 12 Rich. 2, c. 11, all repealed by the Statute Law Revision Act, 1887 (50 & 51 Vict. c. 59). See SEDITION, and also Public Order Act, 1936.

False Personation, to obtain property. See PERSONATION.

False Pretence, obtaining property by. This offence, though allied to larceny, is distinguishable from it, as being perpetrated through the medium of a mere fraud ; it is a misdemeanour at Common Law. By the Larceny Act, 1916, s. 32 :—

> Every person who, by any false pretence—
> (1) with intent to defraud, obtains from any other person any chattel, money or valuable security, or causes or procures any money to be paid or any chattel or valuable security to be delivered to himself or to any other person for the use or benefit or on account of himself or any other person ; or
> (2) with intent to defraud or injure any other person fraudulently causes or induces any other person—
> (*a*) to execute, make, accept, endorse or destroy the whole or any part of any valuable security ; or
> (*b*) to write, impress or affix his name or the name of any other person, or the seal of any corporate body or society, upon any paper or parchment in order that the same may be afterwards made or converted into, or used or dealt with as, a valuable security ;
> shall be guilty of a misdemeanour and on conviction thereof liable to penal servitude for any term not exceeding five years.

In order to be convicted under this section the accused must have made a false pretence of the existence of a non-existing fact, and the money, etc., must have been obtained by means of such false pretence.

The false pretence may be by giving a cheque which the pretender has no authority to draw, but to give a cheque on an account on which the drawer has no balance is not necessarily an offence (*Reg.* v. *Hazleton*, (1874) 2 C. C. R. 134). As to guilty knowledge, see *R.* v. *Ollis*, 1900, 2 Q. B. 758.

Cheating at cards, etc., is punishable as obtaining by false pretence, by the Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 47.

Obtaining credit, in incurring debt, under false pretences is a misdemeanour punishable by imprisonment, with hard labour up to 12 months, by s. 13 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), and to order and consume a meal at a restaurant without having the means to pay for it is within this section, but was held not within s. 88 of the Larceny Act, 1861 (24 & 25 Vict. c. 96) (*Reg.* v. *Jones*, 1898, 1 Q. B. 119).

Although a prisoner charged with obtaining by false pretences may now be convicted though larceny is proved, and a prisoner charged with larceny may be convicted of obtaining by false pretences if that offence be proved (Larceny Act, 1916, s. 44 (3), (4)), the distinction between larceny by trick and false pretences is of importance in that a person who obtains goods by false pretences can convey a good title to them, whereas a person guilty of larceny by trick can pass no such title (*Heap* v. *Motor Advisory Agency, Ltd.*, 1922, 1 K. B. 583; *Folkes* v. *King*, 1922, 1 K. B. 282). The distinction is that in false pretences the owner intends to divest himself of the property in the goods, whereas in larceny he does not intend to pass the property (*Whitehorn Bros.* v. *Davison*, 1911, 1 K. B. 463).

Young Persons and Adults pleading guilty. —Obtaining by false pretences, money, etc., to any amount, in the case of young persons between 12 and 16, or adults pleading guilty, and obtaining by false pretences money, etc., not exceeding forty shillings, in the case of adults consenting to the jurisdiction, may be dealt with summarily by justices of the peace under the Summary Jurisdiction Act, 1899 (62 & 63 Vict. c. 22); but where justices propose so to deal, they must by s. 3 of that Act 'state in effect that a false pretence means a false representation by words, writing, or conduct that some fact exists or existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence,' and 'may add any such further explanation as the Court may deem suitable to the circumstances.'

False Prophecies, with intent to disturb the peace, were unlawful, as raising enthusiastic jealousies in the people and terrifying them with imaginary fears. They were punishable as misdemeanours by 5 Eliz. c. 15, repealed by the Statute Law Revision Act, 1863.

False Representation. See DECEIT and REPRESENTATION.

False Return by sheriff of *nulla bona* to writ of *fi. fa*, after levying is actionable; for form of claim, see *Bullen and Leake, Prec. of Pl.*

False Signal, or **Lights,** exhibited with intent to bring ships into danger is a felony punishable with penal servitude for life by the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 47. See FALSE LIGHTS.

False Swearing. See PERJURY.

False Trade Description means, for the purposes of the Merchandise Marks Acts, 1887 and 1926, a Trade Description (*q.v.*) which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description. See TRADE DESCRIPTION.

False Verdict. Formerly, if a jury gave a false verdict, the party injured by it might sue out a writ of attain against them, either at Common Law or on 11 Hen. 7, c. 24, at his election, for the purpose of reversing the judgment and punishing the jury for their verdict; but not where the jury erred merely in point of law, if they found according to the judge's direction. The practice of setting aside verdicts and granting new trials, however, so superseded the use of attains that there is no instance of one to be found in our books of reports later than in the time of Elizabeth, and it was altogether abolished by the County Juries Act, 1825 (6 Geo. 4, c. 50), s. 60.

Falsi crimen, fraudulent subornation or concealment, with design to darken or hide the truth, and make things appear otherwise than they are. It is committed:—(1) By words, as when a witness swears falsely; (2) by writing, as when a person antedates a contract; (3) by deed, as selling by false weights and measures.

Falsification.

1. *Pedigree.*—For a vendor or mortgagor or other person disposing of property or any interest therein for money or money's worth to a purchaser of land or chattels real or personal, or for his solicitor or other agent to conceal from the purchaser any instrument or incumbrance material to the title or to falsify any pedigree upon which the title may depend, in order to induce a purchaser

or mortgagee or his solicitor to accept the title offered, is a misdemeanour punishable by fine or imprisonment with or without hard labour, or both, for not more than two years, by the Law of Property Act, 1925, s. 183, extending the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 24 (*Chitty's Statutes*, tit. '*Conveyancing*'), and the falsifier is also liable to an action for damages by the same enactment. The fiat of the Attorney-General is required before commencing a prosecution (L. P. Act, 1925, s. 183).

2. *Official Documents.*—Making any material alteration in any official document or in any copy thereof, with intent to defraud or deceive, is felony punishable by penal servitude up to seven years by s. 3 (3) of the Forgery Act, 1913 (3 & 4 Geo. 5, c. 27); and see the Act generally.

3. *Books or Accounts by Clerks.*—The Falsification of Accounts Act, 1875 (38 & 39 Vict. c. 24), which applies only to clerks, officers, etc., enacts that:—

if any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, shall wilfully and with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud make or concur in making any false entry in, or omit or alter, or concur in omitting or altering, any material particular from or in any such book, or any document, or account, then in every such case the person so offending shall be guilty of a misdemeanour, and be liable to be kept in penal servitude for a term not exceeding seven years, or to be imprisoned, with or without hard labour, for any term not exceeding two years.

See as to falsification of accounts, *Re Arton*, 1896, 1 Q. B. 509; *R.* v. *Palin*, 1906, 1 K. B. 7.

4. *Falsification by Director or other Officer of a Company.*—The Companies Act, 1929, by s. 272 makes this a misdemeanour on the part of a director, officer, or contributory of a company, and see also ss. 82–84 of the Larceny Act, 1861. S. 217, Comp. Act, 1908 (as to which see *Re London and Globe Financial Corporation*, 1903, 1 Ch. 728), authorized liquidators to prosecute by direction of the High Court in the event of a winding-up. This section has been repealed, replaced and extended by the Companies Act, 1929, s. 277, and see s. 362. See generally *Arch. Cr. Pl.*

Falsonarius, a forger.—*Hov.* 424.

Falso retorno brevium, a writ that lay against a sheriff, who had execution of process for a false return.—*Reg. Jud.* 43.

Famacide [fr. *fama*, Lat., reputation, and *cædo*, to kill], a slanderer.—*Scots Law.*

Famosus libellus, an infamous libel.

Fanatic. See FENCE-MONTH.

Faqueer, or **Fakir,** a poor man, mendicant; a religious beggar.—*Indian.*

Farandman, a traveller or merchant stranger.—*Skene.*

Fardel of Land, the fourth part of a yardland. Noy, in the *Complete Lawyer*, p. 57, says an eighth only, because according to him two fardels make a nook and four nooks a yardland. See YARDLAND.

Fardingdeal, Farthing or **Farundel of Land,** the fourth part of an acre of land.—*Spelm.*

Fare, a voyage or passage by water; also the money paid for a passage either by land or by water.

Railway fares must be published at stations, by the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 16. Travelling without prepayment and *with intent* to avoid payment is punishable by fine up to 40*s.*, and on second or subsequent offence either by fine up to 20*l.* or in the discretion of the Court by imprisonment up to one month on summary conviction, by the Regulation of Railways Act, 1889, superseding but not repealing s. 103 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20).

Tramway fares must be published inside and outside each of the carriages used, and avoiding payment of them is punishable by fine up to 40*s.* with liability to arrest.

As to fares on public service vehicles, see Traffic Acts, 1930, s. 72, and 1934, s. 40.

Farinagium, toll of meal or flour.—*Jac. Law Dict.*

Farleu, money paid by tenants in lieu of a heriot. It is often applied to the best chattel, as distinguished from *heriot*, the best beast.

Farlingarli, whoremongers and adulterers.

Farm, or **Ferm** [fr. *firma*, Lat.; *feorme*, Sax., food, and *feorman*, to feed], land taken upon lease under a rent, generally annual, payable by the tenant. It is a collective word, consisting of many things, as a messuage, land, meadow, pasture, wood, common, etc. In Lancashire a farm was called *fermholt*; in the north, *a tack*; and in Essex, *a wike.*—*Termes de la Ley.*

Farm Let, to let to be farmed: the full phrase is '*demise, sett, and to farm let.*'

Farmer, one who cultivates hired land, also the lessee of taxes or tolls.

Faro, a game of chance in vogue in the

eighteenth century; an unlawful game by 12 Geo. 2, c. 28, where it is spelt 'Pharaoh.'

Farriers. As to the duties of common farriers, see *Raym.* 654, and *Oliphant on Horses.*

Farthing [fr. *feowen*, Sax., four], the fourth part of a penny.

Farthing of Gold, an ancient coin, containing in value the fourth part of a noble.—9 Hen. 5, c. 7.

Farundel of Land. See FARDINGDEAL.

Faryndon Inn, the ancient appellation of Serjeants' Inn, Chancery Lane.

Fasius, a faggot of wood.—*Dugd. Mon.* tom. ii. 238.

Fast-day, a day of mortification by religious abstinence. See a list of Church of England Fast-days in the Prayer-book Calendar scheduled to the Calendar (New Style) Act, 1750 (24 Geo. 3, c. 23), and see also the still unrepealed 5 & 6 Edw. 6, c. 3 (printed in the second revised edition of the statutes published by authority in 1888), by which the eves of Christmas Day and other holy days are 'commanded to be fasted,' and archbishops, bishops and others are authorized to inquire of every person offending in the premises, and to punish offenders by the censures of the Church, and to enjoin them such penance as shall be to the spiritual judge by his discretion thought meet and convenient. 2 & 3 Edw. 6, c. 19, however, providing for abstinence from flesh in Lent or on Fridays or Saturdays, which was expressly saved by s. 4 of this Act, has been repealed by 19 & 20 Vict. c. 64, with many other disused Acts.

Fast-days may also be appointed on special occasions by royal proclamation, e.g., ss. 14 and 92 of the Bills of Exchange Act, 1882, recognize such days. The last fast-day so appointed was on account of the Indian Mutiny in 1857, enjoined by proclamation published in the *Gazette* of September 25th. Consult *Phillimore, Ecc. Law,* ch. XII.

Fastens or **Fastern's E'en,** or **Even** [fr. *vastal-abend,* low Sax.], Shrove-Tuesday, the succeeding day being Ash-Wednesday, the first of the Lenten fast.

Fastermans, or **Fasting-men** [*homines habentes,* Lat.], men in repute and substance; pledges, sureties, or bondsmen, who, according to the Saxon policy, were *fast* bound to answer for each other's peaceable behaviour.

Fasti, *fas* signifies divine law; the epithet *fastus* is properly applied to anything in accordance with divine law, and hence those days upon which legal business might without impiety (*sine piaculo*) be transacted before the prætor were technically denominated *fasti dies,* i.e., lawful days. Consult *Smith's Dict. of Antiq.*

Fatetur facinus qui judicium fugit. 3 *Inst.* 14.—(He who flees judgment confesses his guilt.) See ABSCOND, FLY FOR IT.

Fatua mulier, a whore.—*Du Fresne.*

Fatuous persons, idiots.

Fautors, favourers or supporters of others; abettors of crimes, etc.

Favour, challenge to. See CHALLENGE.

Feal, tenants by knight-service, who swore to their lords to be *feal* and *leal,* i.e., faithful and loyal.

Feal and Divot, a right in Scotland, similar to the right of turbary in England for fuel, etc.

Fealty [fr. *fidelitas,* Lat.; *fealté,* Fr.], the special oath of fidelity or mutual bond of obligation between a lord and his tenant; the general oath being the allegiance performed by every subject to his sovereign, but this is better known by its more significant appellation of the oath of allegiance. Although foreign jurists consider fealty and homage as convertible terms, because in some continental countries they are blended so as to form one engagement, yet they are not to be confounded in our country, for they do not imply the same thing, *homage* being the acknowledgment of tenure, and *fealty,* the vassal oath of fidelity, being the essential feudal bond, and the animating principle of a feud, without which it could not subsist. Fealty comprehends the following obligations, viz.: (1) *Incolume,* that the tenant do no bodily harm to his lord; (2) *Tutum,* that he do no secret damage to him in his house; (3) *Honestum,* that he damage not his reputation; (4) *Utile,* that he do no damage to him in his possessions; (5) *Facile* and (6) *Possible,* that he render it easy for the lord to do any good, and not make that impossible to be done which was before in his power to do.—*Leg. Hen.* 1, c. 5.

Feasts, anniversary days of rejoicing, either on a civil or religious occasion; opposed to fasts. Our feasts are either (1) *immovable,* such as Christmas-day, the Circumcision, Epiphany, Candlemas-day, Lady-day, All Saints, and All Souls, besides the days of the several apostles, St. Peter, St. Thomas, etc.: these are always celebrated on the same day of the year; or (2) *movable,* such as Easter, which fixes all the rest, as Palm Sunday, Good Friday, Ash Wednesday, Sexagesima, Ascension-day, Pentecost, Trinity Sunday, etc. The four

principal immovable feasts of the year, which are commonly assigned in England for the payment of rents on leases, are the Annunciation of the Blessed Virgin Mary, or Lady-day, being the 25th of March; the Nativity of St. John the Baptist, held on the 24th of June; the feast of St. Michael on the 29th of September; and Christmas-day on the 25th of December.

A still unrepealed Act of 1551–2 (5 & 6 Edw. 6, c. 3), directs certain days therein mentioned (being all Sundays, and the Saints' Days printed in black letter in the Calendar scheduled to the Calendar (New Style) Act, 1750 (24 Geo. 2, c. 23) 'to be kepte hollie days and none other,' and the Calendar (New Style) Act by s. 3 directs the observation of such Saints' Days as altered by such Calendar. The Calendar prefixed to the First Prayer Book of Edw. 6 (which derived statutory authority from the First Act of Uniformity (2 & 3 Edw. 6, c. 1)) also marks such Saints' Days, and no others except St. Mary Magdalen's Day (July 22nd); but the Calendar scheduled to the Calendar (New Style) Act and printed in the Prayer Book now in force, additionally to, and in different type from such Saints' Days, marks other days, including Invention of Cross Day (May 3rd), Bishop Swithin's Day (July 15th), St. Mary Magdalen's Day (July 22nd), Holy Cross Day (September 14th), and O Sapientia Day (December 16th). Consult *Phillimore, Ecc. Law*, ch. XII.

Federal Government. When two or more sovereign or independent states mutually agree not to exercise certain powers incident to their several sovereignties, but to delegate the exercise of those powers to some person or body chosen by them jointly, there is said to be a federal union of those states, and the person or body to whom the exercise of such powers is delegated is called the Federal Government. The Swiss Confederation, and the United States of North America, are instances of Federal Governments.

A Federal Council of Australasia Act (48 & 49 Vict. c. 60), passed in 1885 (see AUSTRALASIA), is now superseded by the federating Commonwealth of Australia Constitution Act (63 & 64 Vict. c. 12) (see AUSTRALIA), which has repealed it.

An effective federation of the British North American Colonies was provided in 1867 by the British North America Act, 1867 (30 & 31 Vict. c. 3) (see BRITISH AMERICA), and in 1909 of the Colonies of Cape of Good Hope, Natal, Transvaal, and Orange Free State, by the South Africa Act, 1909 (9 Edw. 7, c. 9). The preambles of the three Acts—1867 (North America), 1885 (Australasia), and 1900 (Australia)—may be studied with advantage, and so may the 91st section of the Act of 1867, and the 51st section of the Act of 1900, which sections contain the matters (ordinarily similar) on which the Federal Parliament may legislate, amongst them being:—

Trade and Commerce.
Taxation.
Quarantine.
Marriage and Divorce.
Weights and Measures.
Legal Tender.
Copyrights and Patents.
Naturalization and Aliens.
Bills of Exchange and Promissory Notes.
The Criminal Law.

The main distinction between Canadian and Australian Federation is that the Dominion Parliament of Canada, under the Act of 1867, has jurisdiction over all matters not specially assigned to the local legislatures; but that the Commonwealth Parliament of Australia has only such jurisdiction as is expressly vested in it or is not expressly withdrawn from the Parliaments of the states. As to South Africa, see s. 85 of the Act, defining the powers of the Provincial Councils. By the Government of India Act, 1936, His Majesty may upon Address of each House of Parliament proclaim a federation under the name of the Federation of India consisting of:—

(*a*) The Governor's Provinces,
(*b*) India States acceding to the Federation as provided,

to include the Chief Commissioners' Provinces as provided by the Act which regulates the constitution of the Government of India in detail, and see DOMINIONS and STATUTE OF WESTMINSTER. See *Journal of Society of Comparative Legislation for* April and July, 1900.

Fee [fr. *feoh*, Sax.; *fee*, Dan., cattle; *feudum*, Med. Lat.; *feu*, Scot.], property peculiar; reward or recompense for services. See FEES. Also an estate of inheritance divided into three species: (1) fee-simple absolute; (2) qualified or conditional or base fee, including (3) fee-tail, formerly fee-conditional. By the L. P. Act, 1925, s. 1, a fee-simple absolute in possession and a term of years absolute are the only estates in land capable of being conveyed or created at law. All other estates in land take effect as

equitable interests (*ibid.*, s. 1 (4)). See FEE-SIMPLE.

Fee-base. See BASE FEE.

Feeble-minded persons are one of the four classes of 'defectives' for dealing with whom elaborate provision is made by the Mental Treatment Act, 1927 (18 & 18 Geo. 5, c. 33), s. 1; see IDIOT. As to Scotland, see the Mental Deficiency and Lunacy (Scotland) Act, 1913 (3 & 4 Geo. 5, c. 38).

Fee-conditional. See CONDITIONAL FEE.

Feed, to lend additional support; to strengthen *ex post facto*. A subsequently acquired interest is said to 'feed an estoppel. Thus, if A., not having the legal estate, but being estopped from denying that he has it, convey property to B., then A.'s subsequent acquisition of the legal estate 'feeds the estoppel' and the legal estate vests in B.; see *General Finance Co.* v. *Liberator Building Society*, (1878) 10 Ch. D. p. 20; *Doe* v. *Oliver*, (1829) 5 Man. & Ry. 202.

Feeding Stuffs. The purity of feeding stuffs for cattle or poultry is protected, in the same way as that of artificial manures, by the Fertilisers and Feeding Stuffs Act, 1925. See FERTILISERS.

Fee-expectant. If lands are given to a man and his wife in tail, *habendum* to them and their heirs, they had an estate tail and a fee-expectant.—*Kitchin, Court Leete*, p. 153. For the effect of this limitation created by instruments coming into operation after 1925, see Law of Property Act, 1925, ss. 130 *et seq.*, and s. 60, UNDIVIDED SHARES, and Law of Property Amendment Act, 1932, s. 1.

Fee-farm rent, where an estate in fee is granted in perpetuity, subject to a rent in fee for so much as it is reasonably worth, not being less than one-fourth of the value of the lands at the time of its reservation; and such rent appears to be called fee-farm, because a grant of land reserving so considerable a rent is indeed only letting lands to farm in fee-simple, instead of the usual method of life or years.—1 *Steph. Com.*, 13th ed. at p. 480. If the rent be in arrear for two years the feoffor or his heirs may have an action to recover the lands as his demesnes. *Cowel's Law Dict.*, citing *Britton*, cap. 66, num. 4. Formerly it was said that these rents could not be distrained for, but the Landlord and Tenant Act, 1730 (4 Geo. 2, c. 28), s. 5, allowed distress, impounding and sale for the rents if the rents had been paid for three years. For the remedies in case of non-payment of these rents if created after 1881, see s. 121, Law of Property Act, 1925, and for relief against forfeiture, see L. P. Act, 1925, s. 146 (5) (a).

Fee-simple, a freehold estate of inheritance, absolute and unqualified. It stands at the head of estates as the highest in dignity and the most ample in extent; since every other kind of estate is derivable thereout, and mergeable therein, for *omne majus continet in se minus*. It may be enjoyed not only in land, but also in advowsons, commons, estovers, and other hereditaments as well as in personalty, as an annuity or dignity, and also in an upper chamber, though the lower buildings and soil belong to another.

Littleton, in his *Tenures* (l. i., c. 1, s. 1), gives a description of this estate, which appears to have been adopted by every subsequent writer. His language is this:—

A person who holds 'in fee-simple is he which hath lands or tenements to hold to him and his heirs for ever. And it is called in Latin *feodum simplex*, for *feodum* is the same that inheritance is, and *simplex* is as much as to say lawful or pure. And so *feodum simplex* signifies a lawful or pure inheritance. For if a man would purchase lands or tenements in fee-simple it behoveth him to have these words in his purchase, to have and to hold to him and to his heires; for these words (his heires) make the estate of inheritance. For if a man purchase lands to have and to hold to him for ever; or by these words, to have and to hold to him and his assignees for ever: in these two cases he hath but an estate for term of life, for that there lack these words (his heires), which words only make an estate of inheritance in all feoffments and grants.'

Prior to the Conveyancing Act, 1881, the phrase universally adopted in deeds, in order to transfer a fee-simple absolute, was 'to A., his heirs and assigns for ever.' The word 'assigns,' however, was not material and might have been omitted, for it gave no other privilege to the owner than that which the law confers upon him by virtue of his estate, as entitling him to alien or transfer it; and the phrase 'for ever' not being limitary but simply declaratory of the time during which the property shall be enjoyed, might also have been omitted.

The Conveyancing Act, 1881, s. 51, provided that in a deed it should be sufficient in the limitation of an estate in fee-simple to use the words 'in fee-simple' without the word 'heirs,' but this section applies only to conveyances made after the commencement of the Act, i.e., on or after the 1st January, 1882. The actual words of limitation given

in the Act were required, for a conveyance 'in fee' without the addition of the word 'simple' will not pass the estate (*Re Ethel*, 1901, 1 Ch. 945). Even in conveying an equitable fee-simple, words of limitation were essential (*Re Monckton*, 1913, 2 Ch. 636).

The Law of Property Act, 1925, s. 60, effected another change upon the model, it is said, of the Wills Act, 1837, s. 28, since an estate for life is no longer a legal estate no ambiguity arises by the absence of words of limitation, accordingly s. 60, L. P. Act, 1925, enacts that a conveyance of freehold land to any person without words of limitation or equivalent expression shall pass to the grantee the fee-simple or other the whole interest which the grantor had power to convey in such land unless a contrary intention appears in the conveyance. It is, however, usual to add the words 'in fee simple' to express the intention of the grant. Sect. 60 only applies to conveyances and deeds executed after 1925, and see ss. 130 *et seq.*, *ibid.*

The incidents of a fee-simple are: a power of management and of alienation, whether by gift, sale, or will; and until 1926 were descent to the heirs of an intestate owner; and escheat (see ESCHEAT) for want of heirs.

By the Administration of Estates Act, 1925, s. 45, all the then existing rules of descent except in regard to entailed interests were abolished in the case of persons dying after 1925, with a few exceptions, and escheat was replaced by certain rights conferred on the Crown, the Duchy of Lancaster or the Duke of Cornwall to the exclusion of the rights (if any) of mesne lords (A. E. Act, 1925, s. 46).

The L. P. Act, 1925, s. 7, includes in the term, a fee-simple absolute, fee-simples which are liable to be divested under certain statutory provisions and (as amended by the L. P. Amendment Act, 1926) fee-simples subject to a legal or equitable right of re-entry. All other estates over land which are determinable by limitation or condition have become equitable interests (L. P. Act, 1925, 1st Sched., Part I.).

Fee-tail. See TAIL.

Fees, perquisites allowed to officers in the administration of justice, as a recompense for their labour and trouble, ascertained either by Acts of Parliament, by rule or order of Court, or by ancient usage; in modern times frequently commuted for a salary, e.g., by the Justices Clerks Act, 1877.

Although, however, the officers of a court may be paid by salary instead of by fees, the obligation of suitors to pay fees usually remains, these fees being paid into the fund out of which the salaries of the officers are defrayed. In the Supreme Court they are collected by means of stamps under s. 26 of the Judicature Act, 1875, and a Treasury Order of July, 1884, a judicial Order of the same year fixing the amount, and see Supreme Court Fees Rules, 1930.

The mode of collecting fees in a public office is under the Public Office Fees Act, 1879 (42 & 43 Vict. c. 58) (repealing and replacing the Public Office Fees Act, 1866), by stamps or money, as the Treasury may direct.

The fees of the steward of a manor were regulated entirely by custom, and a customal or list of fees to be taken, under every circumstance, was generally handed down from steward to steward. When the steward made excessive charges, the copyholder might have brought an action on the case to recover the excess, and it has been suggested that an indictment would lie for extortion *colore officii*. The fees of the steward of a manor who is a solicitor, but acts in the character of a steward only, were not taxable under the Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37, replaced by Solicitors Act, 1932 (c. 37), s. 64. In transactions where these fees are large or numerous a special agreement was generally made.—*Allen* v. *Aldridge*, (1843) 5 Beav. 401.

The Copyhold Act, 1894 (57 & 58 Vict. c. 46), by s. 9 and Sched. II., provides a scale of compensation to stewards in case of compulsory enfranchisements of copyholds.

Copyholds were enfranchised by the L. P. Act, 1922, s. 128, and by s. 131 of that Act stewards became entitled only to statutorily prescribed fees in respect of transactions effected after 1925. *Inter alia*, where the fee was customary, the customary fee is payable until the manorial incidents have been extinguished under the Act. See COPYHOLDS.

As to barristers' fees, see BARRISTER; and as to solicitors' fees, see COSTS.

Feigned Issue, a proceeding whereby an action was supposed to be brought by consent of the parties to determine some disputed right without the formality of pleading, saving thereby both time and expense. It might be ordered either by a Court of Law or Equity, or by a judge under the repealed Interpleader Act (1 & 2 Wm. 4, c. 58). Before the Gaming Act, 1845 (8 & 9 Vict. c. 109), s. 19, questions of fact were often tried by

means of a pretended wager between the parties interested. But by the last-named Act, in every case, where any Court of Law or Equity desired to have any question of fact decided by a jury, the Court might direct a writ of summons to be sued out by such person as it thought ought to be plaintiff, against such person as it thought ought to be defendant, and thereupon proceedings went on as upon a feigned issue. Compare R. S. C. 1883, Ord. XXXIV., r. 9.

Felagus, a companion, but particularly a friend who was bound in the *decennary* for the good behaviour of another.

Feld, field; in a compound word, wild.—*Blount.*

Fellow-servant. At Common Law a master is not liable to his servant for injury caused by the negligence of a fellow-servant (*Priestly* v. *Fowler*, (1837) 3 M. & W. 1), but this state of the law was altered by the Employers Liability Act, 1880 (43 & 44 Vict. c. 42), at first limited to expire on the 31st December, 1887, but since continued by successive Expiring Laws Continuance Acts. See COMMON EMPLOYMENT; WORKMEN'S COMPENSATION ACT.

Felo de se (a felon with respect to himself); one who feloniously commits suicide. The barbarous mode of burying such persons, in a place where four roads met, with a stake driven through their bodies, was abolished by 4 Geo. 4, c. 52, which directed burial in the churchyard or other burial ground (without divine service) between the hours of nine and twelve at night. The Interments (Felo de se) Act, 1882 (45 & 46 Vict. c. 19), repealed and re-enacted the above Act, omitting the provisions as to the hours of burial, and allowing, by permission of the ordinary, a religious service, the Prayer Book expressly forbidding the use of the Burial Service therein contained in the case of those who die 'laying violent hands on themselves.' Escheat or forfeiture for felony is abolished by the Forfeiture Act, 1870 (33 & 34 Vict. c. 23). A coroner's inquest (see CORONER) must be held in every case of suicide, and in the absence of evidence of unsoundness of mind a verdict of *felo de se* must still be directed and returned.

To attempt to commit suicide is a misdemeanour at Common Law, and is triable at Quarter Sessions (*Reg.* v. *Burgess*, (1862) L & C. 258).

In the army, by s. 38 of the Army Act (44 & 45 Vict. c. 58), an officer is liable to be cashiered and a soldier to be imprisoned for attempted suicide.

Felon [fr. *felon*, Fr.; *felo*, Mod. Low Lat.; *fel*, Sax.], one who has been convicted of felony. See FELONY.

Felony [fr. *félonie*, Fr.; *felonia*, Lat.; some deduce it fr. φῆλος, Gk., a deceiver, and *fallo*, Lat., to deceive; *Spelman* derives it fr. the Teutonic or German *fee*, a fieu or fief, and *lon*, price or value; Coke says, '*Ex vi termini significat quodlibet capitale crimen felleo animo perpetratum*,' *Co. Litt.* 391 *a*], originally the state of having forfeited lands and goods to the Crown upon conviction for certain offences, and then, by transition, any offence upon conviction for which such forfeiture followed, in addition to any other punishment prescribed by law, as distinguished from misdemeanour, upon conviction for which no forfeiture followed. All indictable offences are either felonies or misdemeanours, but a material part of the distinction is taken away by the Forfeiture Act, 1870 (33 & 34 Vict. c. 23), which abolishes forfeiture for felony, and provides for the administration of the estates of felons while undergoing sentence; see *Carr* v. *Anderson*, 1903, 2 Ch. 279.

The only remaining distinctions between a felony and a misdemeanour appear to be that there are larger powers of arrest in the case of felony; that it is a crime to conceal a felony (see MISPRISION); that felony must be pleaded to personally; that a jury trying felony may not separate before verdict (this distinction has been done away with, except as to murder, treason, and treason felony, by the Juries Detention Act, 1897 (60 & 61 Vict. c. 18)); that a person indicted for murder or felony is entitled to peremptorily challenge twenty jurors on the panel (County Juries Act, 1825 (6 Geo. 4, c. 50), s. 29, as controlled by the Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 3), and the jurors are accordingly sworn singly; that the prisoner on conviction for felony has a right to be heard before judgment; and that peers accused of felony are entitled to be tried by their peers (*Earl Russell's case*, 1901, A. C. 446). Lord De Clifford was tried on 12th December, 1935, and on 4th February, 1936, a motion, by the Lord Chancellor, that the present system of trial of peers by peers has outlived its usefulness, was carried by a majority in the House of Lords.

Feme, or **Femme,** a woman. See WOMAN.

Feme-covert, a married woman. See MARRIED WOMAN. A woman who may be subject to the control or interference of her husband over herself or her property.

Feme-sole. A woman not subject to the

control or interference of a husband over herself or her property.

Fence, a hedge, ditch, or other inclosure of land for the better manurance and improvement of the same (*Jac. Law Dict.*). As to the larceny or malicious destruction of fences, see Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 34, 35; Larceny Act, 1916 (6 & 7 Geo. 5, c. 50), s. 8; and Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 25. See BARBED WIRE. The word is also used by criminals to denote a receiver of or dealer in stolen property.

Fence-month, or **Defence-month,** a time during which female deer in forests do fawn; when hunting them is unlawful. It begins fifteen days before Old Midsummer, and ends fifteen days after it.—*Manw.*, pt. 2, c. xiii.

Fencing Machinery. See MACHINERY.

Feneration [fr. *fœneratio*, Lat.], usury; the gain of interest; the practice of increasing money by lending.

Fengeld, a tax or imposition, exacted for the repelling of enemies.

Feod, or **Feud,** the right which the vassal had in land, or some immovable property of his lord, to use the same and take the profits thereof, rendering unto the lord such duties and services as belonged to the particular tenure; the actual property in the soil always remaining in the lord.—*Spelm., Feuds and Tenures.*

Feodal, of or belonging to the feod or feud.

Feodal System. See FEUDAL SYSTEM.

Feodality, fealty. See FEALTY.

Feodary, or **Feudary,** an officer of the Court of Wards, appointed by the master of that Court, under 32 Hen. 8, s. 26, whose business it was to be present with the escheator in every county at the finding of offices of lands, and to give evidence for the king as well concerning the value as the tenure; and his office was also to survey the land of the ward, after the office found, and to rate it. He also assigned the kings' widows their dower, and received all the rents, etc. Abolished by 12 Car. 2, c. 24.

Feodatory, or **Feudatory,** the tenant who held his estate by feudal service.

Feodum, or **Feudum antiquum,** a feud which devolved upon a vassal from his intestate ancestor.

Feodum laicum, a lay-fee.

Feodum militis, a knight's fee.

Feodum, or **Feudum novum,** a feud acquired by a vassal himself.

Feoffee, one enfeoffed or put in possession.

Feoffee to Uses, the person in whom, before the Statute of Uses, the legal seisin or feudal tenancy of the land was vested, the substantial and beneficial ownership or use being in the *cestui qui use*. The statute put an end to the estate of the feoffee to uses by transferring the possession from him to the *cestui que use*, who had now the legal estate, the use in his favour being executed by the statute. The Law of Property Act, 1925, s. 207, 7th Sched., has repealed the Statute of Uses in regard to dealings taking effect after 1925 and vests the legal ownership in the grantee, the beneficial owner (if another) becoming a mere *cestui que trust*; see also L. P. Act, 1925, 1st Sched., Part II., par. 3, and L. P. (Amendment) Act, 1926, Sched. See USE.

Feoffment [fr. *feoffare*, to give a feud,] the transfer of freehold land, in ancient times, by word of mouth and livery of seisin, i.e., by the delivery to the transferee of corporal possession of the land or tenement; see 2 *Bl. Com.* 310. Writing and deed (theretofore having become gradually more usual) were successively required by the Statute of Frauds (29 Car. 2, c. 3, s. 1), and the Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 3; and by s. 2 of the latter Act, all real property, as regards conveyance of the immediate freehold thereof, is transferable as well by grant as by livery, so that a transfer by deed alone is all that is necessary, and transfer by livery, though not in terms abolished, became obsolete before the Law of Property Act, 1925, s. 51, which declares that all lands and interests therein lie in grant and are incapable of being conveyed by livery or by livery and seisin, or by feoffment, and by s. 52 all conveyances of land or any interest therein are void in respect of the legal estate unless made by deed, except as set out in the section. See also REGISTRATION OF LAND.

A feoffment was a conveyance which might have had a tortious effect, and if a person attempted to convey by it a greater freehold than he had, he forfeited the estate of which he was seised; but it became a rightful (*droiturel*) or innocent conveyance, transferring only the estate which the feoffor could lawfully convey and so causing no forfeiture; see Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 4.

Feoffment to Uses. See FEOFFEE TO USES.

Feoffor, one who makes a feoffment.

Feoh, or **Fioh,** cattle, money.

Feorme, a certain portion of the produce of the land due by the grantee to the lord according to the terms of the charter.—*Spelman on Feuds*, c. 7.

Feræ Naturæ, Animals. Beasts and birds of a wild disposition, such as deer, hares, coneys in a warren, pheasants, partridges, etc., as distinguished from those *domitæ naturæ*, or tame, such as horses, sheep, poultry, etc. They are not whilst living the subjects of absolute property, so that they cannot be the subject of larceny, nor are they liable to distress for rent. But a man may acquire a qualified property in them, either (1) *Per industriam*, by his reclaiming and making them tame by art and industry, or by so confining them that they cannot escape, e.g., deer in a park, hares or rabbits in an enclosed warren, etc. The property in them only continues so long as they remain in a man's actual possession, but ceases if they regain their liberty, unless they have *animus revertendi*, as in the case of pigeons, tame hawks, etc. (2) *Ratione impotentiæ*, on account of their inability, as when birds, coneys, etc., make their nests or burrows on a man's land, then he has a qualified property in the young until they can fly or run away. (3) *Propter privilegium*, when a man has a privilege of hunting, taking, and killing certain wild animals, usually called game, in exclusion of other persons. He has a transient property in them so long as they continue within his liberty, and may prevent any stranger from taking them therein; but the instant they depart from his liberty his qualified property in them ceases.—2 *Bl. Com.* 391. See GAME.

Of animals *ferœ naturæ* when dead, reclaimed, or confined, if they are fit for food, larceny may be committed at Common Law; at Common Law it is not larceny to steal animals which do not serve for food, such as dogs and ferrets, but, if their flesh is fit for human consumption and, being *ferœ naturæ*, they are reclaimed or confined, they may be the subject of larceny. The Larceny Act, 1916, however, makes everything of value and the property of a person the subject of larceny (ss. 1 (3), (4)).

With regard to injuries inflicted by savage animals and the responsibility of their owner therefor, if a man be possessed of an animal absolutely *ferœ naturæ*, as the tiger, he is an insurer, and responsible for any damage done by it; but if there be an animal of a kind generally amenable, but the individual beast be accustomed to do mischief, it must be proved that it was known to be so by its master (*Filburn* v. *People's Palace and Aquarium Co.*, (1890) 25 Q. B. D. 258). By the Dogs Act, 1906, the owner of a dog is made liable for injuries to cattle, sheep, etc., even if unaware of the dog's tendency to do mischief.

For the protection of wild animals in captivity, see ANIMALS. See also Wild Birds Protection Acts, 1880 to 1908; and the Protection of Birds Act, 1933 (23 & 24 Geo. 5, c. 52).

Ferdella terræ, a fardel-land; ten acres; or perhaps a yard-land.

Ferdingus, apparently a freeman of the lowest class, being named after the *cotseti*.—*Anc. Inst. Eng.*

Ferdwit [fr. *ferd*, Sax., army, and *wite*, punishment], quit of manslaughter committed in the army; also a fine imposed on persons for not going forth on a military expedition.

Feriæ, holidays; generally speaking, days or seasons during which free-born Romans suspended their political transactions and their law-suits, and during which slaves enjoyed a cessation from labour.—*Cic. de Leg.* ii. 8, 12.

Ferling, the fourth part of a penny; also the quarter of a ward in a borough.—*Old Records.*

Ferlingata, a fourth part of a yard-land.

Ferlingus, or **Ferlingum**, a furlong, which see.—*Co. Litt.* 5 *b.*

Ferm, or **Fearm**, a house or land or both, let by lease.

Fermary, a hospital.—*Jac. Law Dict.*

Fermier, one who farms any public revenue in France.

Fermisona, the winter season for killing deer.

Fern. Unlawfully and maliciously setting fire to growing fern or a stack of fern is a felony. See Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 16, 17.

Fernigo, a piece of waste ground where fern grows.

Ferrets are not the subject of larceny at common law. See *R.* v. *Searing*, (1818) R. & R. 350. See FERÆ NATURÆ, ANIMALS.

Ferriage, the fare paid at a ferry.

Ferry, the right to carry persons and their goods in boats across a river, and to take toll for such carriage. It is a franchise, and can only be created by a grant from the Crown, prescription which presumes such a grant, or Act of Parliament; see *Simpson* v. *Att.-Gen.*, 1904, A. C. p. 490. The owner if he lose his traffic by the competition of a railway bridge can get no compensation under the Lands Clauses Act (*Hopkins* v. *Great Northern Railway Co.*, (1877) 2 Q. B. D. 224). See also *Cowes Urban District Council* v. *Southampton, etc., Co.*, 1905, 2 K. B. 287;

Hammerton v. *Dysart* (*Earl*), 1916, A. C. 57; *General Estates Co.* v. *Beaver*, 1914, 3 K. B. 918. As to the duties of common ferrymen, see 1 *Shower*, 140. As to the acquisition of ferries by local authorities, see the Ferries (Acquisition by Local Authorities) Act, 1919.

Ferspeken, to speak suddenly.—*Leg. H.* 1, c. 61.

Fertilisers of the Soil. The purity of artificial manures under the statutory title (without a statutory definition) of 'fertilisers of the soil' is protected by the Fertilisers and Feeding Stuffs Act, 1906 (6 Edw. 7, c. 27), repealing and re-enacting an Act of 1893. The Act requires sellers to give invoices, enables purchasers to have the fertilisers analysed by official analysts, and penalizes sellers for giving no invoices or false invoices. The Fertilisers and Feeding Stuffs Act, 1926 (16 & 17 Geo. 5, c. 45), now replaces the 1906 Act. See *Needham* v. *Worcestershire County Council*, (1909) 100 L. T. 901, and *Aggs on Agricultural Holdings*.

Fesance, an act.

Festa in cappis, grand holidays, on which choirs wore caps.—*Jac. Law Dict.*

Festing-men. See FASTING-MEN.

Festing-penny [fr. *festnian*, Sax., to confirm], earnest given to servants when hired or retained in service.

Festinum remedium, a prompt redress.

Festum, a feast.

Festum stultorum, the feast of fools, anciently observed on New Year's Day.

Feu, or **Few,** a free and gratuitous right to lands, made to one for service to be performed by him, according to the proper nature thereof. *Feu*, in Scotland, means vassal tenure, in contradistinction to ward-holding or military tenure, being that holding where the vassal, in place of military service, makes a return in money which is called the feu-duty or feu-annual. In Scotland it is believed that building land is generally granted on *feu*, not on lease, so that the landlord granting land for building has not, as in England, a reversion, but grants the land in perpetuity in consideration of a perpetual annual payment. As to the redemption and extinction of incidents to feus in Scotland, see the Feudal Casualties (Scotland) Act, 1914 (4 & 5 Geo. 5, c. 48).

Feudal System, the system of land tenure which William the Conqueror introduced into this country, thereby displacing the Saxon laws of property, and which was the chief civil institution of the Middle Ages. The system as introduced here, however, differed in some very important respects from that which prevailed abroad. See FEOD and TENURE, and *Craig de Feudis*, *passim*. The main incidents of the feudal system were not expressly abolished in England until 12 Car. 2, c. 24. See *Hall, Mid. Ages*.

Feud-bote, a recompense for engaging in a feud or quarrel.—*Cowel's Law Dict.*

Feudist, a writer on feuds, as Cujacius, Spelman, and others.

Feudum. Fidelis ero vere domino vero meo.—(A fee. I will be truly faithful to my true lord.)

Feuds, Book of, published during the reign of Henry III., about the year 1152. 'While most of the nations of Europe referred to the Book of Feuds as the grand code of law by which to correct and amend the imperfections in their own tenures, there is not in our law-books any allusion that intimates the existence of such a body of constitutions.'—2 *Reeves*, 55.

Fiar, opposed to life-renter. The person in whom the property of an estate is vested, subject to the life-renter's estate.—*Scots Law.*

Fiars Prices, the value of grain in the different counties of Scotland, fixed yearly by the respective sheriffs, in February, with the assistance of juries. These regulate the prices of grain stipulated to be sold at the fiars prices, or when no price has been stipulated.—*Erskine*, l. 1, tit. 4, s. 6.

Fiat (let it be done), a decree; a short order or warrant of some judge or public officer for making out and allowing certain processes. The fiat of the Attorney-General was required for a writ of error in any criminal case (see ERROR). The fiat of a law officer is also required by certain Acts before proceedings can be commenced: see *Castro* v. *Murray*, (1875) L. R. 10 Ex. 213. See PETITION OF RIGHT.

Fiat in Bankruptcy, the authority of the Lord Chancellor to a commissioner of bankrupts, which authorized him to proceed in the bankruptcy of a trader, mentioned therein. It was abolished by the Bankruptcy Act of 1849 (12 & 13 Vict. c. 106), and a petition for adjudication substituted.

Fiat justitia ruat cœlum.—(Let justice be done though the heavens should fall.)

Fiaunt [fr. *fiat*, Lat.], warrant.

Fiction. Fictions are 'those things that have no real essence in their own body but are so accepted in law for a special purpose.' '*Fictio*' in old Roman law was properly a term of pleading, and signified a false averment on the part of the plaintiff which the

defendant was not allowed to traverse; e.g., an averment that the plaintiff was a Roman citizen, when in truth he was a foreigner, the object of these '*fictiones*' being of course to give jurisdiction; see *Maine's Anc. Law*, ch. II.

The English law has always abounded in fictions, and there is a maxim that *in fictione juris semper æquitas existit*. See, e.g., EJECTMENT; FINE; FRACTION OF A DAY; LATITAT; QUOMINUS; TROVER.

Fictio legis inique operatur alicui damnum vel injuriam. 3 *Rep.* 36.—(A legal fiction does not properly work loss or injury to some one, i.e., *In fictione juris semper æquitas existit.*) See *Broom's Max.*

Fide-jussor, a surety, or one that obliges himself in the same contract with a principal, for the greater security of the creditor or stipulator.—*Civ. Law.*

Fidei-commissum, a testamentary disposition, by which a person who gives a thing to another imposes on him the obligation of transferring it to a third person. The obligation was not created by words of legal binding force (*civilia verba*), but by words of request (*precative*), such as '*fidei committo*,' '*peto*,' '*volo dari*,' and the like, which were the operative words (*verba utilia*). If the object of the fidei-commissum was the hæreditas, the whole or a part, it was called *fidei-commissaria hæreditas*, which is equivalent to a universal fidei-commissum; if it was a single thing, or a sum of money, it was called *fidei-commissum singulæ rei*. The obligation to transfer the former could only be imposed on the heirs; the obligation of transferring the latter might be imposed on a legatee. It appears that there were no legal means of enforcing the due discharge of the trust called fidei-commissum till the time of Augustus, who gave the consuls jurisdiction in the fidei-commissa. Fidei-commissa seem to have been introduced in order to evade the Civil Law, and to give the hæreditas, or a legacy, to a person who was either incapacitated from taking directly, or who could not take as much as the donor wished to give. Gaius, when observing that *peregrini* could take fidei-commissa, observes that 'this' (the object of evading the law) 'was probably the origin of fidei-commissa'; but by a senatus-consultum, made in the time of Hadrian, such fidei-commissa were claimed by the fiscus. Fidei-commissa were ultimately assimilated to legacies.—*Gaius*, ii. 247–289; *Ulp. Frag.* tit. 25; *Sand. Just.*

Fidem mentiri, when a tenant does not keep that fealty which he has sworn to the lord.—*Leg. Hen.* 1, c. 53.

Fiducia. If a man transferred his property to another, on condition that it should be restored to him, this contract was called *fiducia*, and the person to whom the property was so transferred was said *fiduciam accipere.*—*Cic. Top.* 10. A man might transfer his property to another for greater security in time of danger, or for other sufficient reasons.—*Gaius*, ii. 60.

Fiduciary [fr. *fiduciarius*, Lat.], one who holds anything in trust. See TRUST.

Fief, a fee; a manor, a possession held by some tenant of a superior.

Fiefs were originally called *terræ jure beneficii concessæ*; and it was not till under Charles *le Gros* the term *fief* began to be in use.—*Du Cange.*

Fief d'haubert, the Norman phrase for knight-service.

Fierding Courts, inferior ancient Gothic courts, so called because four were established within every superior district or hundred.

Fieri facias, usually abbreviated *fi. fa.* (that you cause to be made), a judicial writ of execution, the most commonly used that lies for him who has recovered any debt or damages in the King's Courts. It is a command to the sheriff, that of the goods and chattels of the party he 'cause to be made' the sum recovered by the judgment, with interest at 4*l.* per cent. from the time of entered-up judgment, to be rendered to the party who sued it out. If the sheriff return *nulla bona*, an *alias fi. fa.* may issue; and upon that being returned, a *pluries* or *testatum fi. fa.* may be issued into another county. The 12th section of the Judgments Act, 1838 (1 & 2 Vict. c. 110), authorizes the sheriff to seize money, bank notes, cheques, bills of exchange, etc., of the person against whose effects the writ is sued out; but he cannot seize money or bank notes after the death of the debtor (*Johnson* v. *Pickering*, 1908, 1 K. B. 1).

The sheriff cannot sell before actual seizure (*Ex parte Hall*, (1880) 14 Ch. D. 132).

The sheriff cannot break open the outer door of a dwelling-house to seize (*Semayne's case*, (1603) 5 Rep. 91; 1 Sm. L. C.); but he can break open that of a shop (*Hodder* v. *Williams*, 1895, 2 Q. B. 663).

The capital distinction between distress (see that title) and execution by *fi. fa.* is that on a distress for rent any person's goods, unless expressly exempted, which are on the tenant's premises, can be seized, whereas on

execution only the debtor's goods may be seized, but they may be seized wherever they can be found. As to the protection of the sheriff selling goods under an execution, see Bankruptcy Act, 1914, ss. 40 *et seq*, and as against the liquidator under a winding-up, see ss. 268 *et seq*., Companies Act, 1929.

The sheriff, however, must satisfy the landlord's claim for rent up to one year's arrears before removing the goods seized.—Landlord and Tenant Act, 1709 (8 Anne, c. 14 or 18), *Chit. Stat.*, tit. '*Landlord and Tenant*'; and compare s. 160 of the County Courts Act, 1888, now County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), s. 13; R. S. C., Ord. LXIII., r. 1.

If the claim for rent has not been served on the sheriff before the commencement of the debtor's bankruptcy, the landlord's right is reduced to six months (s. 35 of the Bankruptcy Act, 1914).

Fieri facias de bonis ecclesiasticis (that you cause to be made of the ecclesiastical goods). When a sheriff to a common *fi. fa.* returns *nulla bona*, and that the defendant is a beneficed clerk, not having any lay fee, a plaintiff may issue a *fi. fa. de bonis ecclesiasticis*, addressed to the bishop of the diocese, commanding him to make of the ecclesiastical goods and chattels belonging to the defendant within his diocese the sum therein mentioned.—R. S. C., Ord. XLIII., r. 5, and App. H., Form 5.

Fieri feci (I have caused to be made), a return made by the sheriff when he has executed a writ of execution.

Fifteenths, a tribute or imposition of money anciently laid generally upon cities, boroughs, etc., throughout the whole realm; it amounted to a fifteenth of that which each city or town was valued at, or of every man's personal estate.—*Cam. Brit.* 171.

Fight. See CHALLENGES TO FIGHT.

Fightwite, making a quarrel to the disturbance of the peace.—*Jac. Law Dict.*

Figures, the numerical characters by which numbers are expressed or written, as the ten digits, which are usually called the Arabic or Indian figures from their supposed origin. 6 Geo. 2, c. 14, allowed expressing numbers by figures in all writs, etc., pleadings, rules, orders, indictments, etc., in courts of justice, as had been commonly used, notwithstanding 4 Geo. 2, c. 26. Under the present system of pleading dates, sums and numbers must be expressed in figures (R. S. C., Ord. XIX., r. 4). See DATES.

Filacer, Filazer, or **Filizer** [fr. *filum*, Lat.; *file, filace*, Fr., a thread], an officer of the Superior Courts of Westminster, who filed original writs, etc., and issued processes thereon.—See the repealed 2 & 3 Wm. 4, c. 39, s. 4; 2 & 4 Wm. 4, c. 110, s. 2.

Fild-ale, or **Filk-ale** [fr. *fillen*, Sax., to fill, and *ale*], an ale-feast. A term applied to an extortionate practice of officers of the forest, and of bailiffs of hundreds, of compelling persons to contribute to the supplying them with drink, etc. Prohibited by the *Carta de Forestâ*.—4 *Inst.* 307.

File, a thread, string, or wire, upon which writs and other exhibits in courts or offices are fastened or filed, for the more safe keeping of, and ready reference to, the same; also, to deposit at an office.

Filiation [fr. *filius*, Lat.], the relation of a son to his father; correlative to paternity. See AFFILIATION.

Filicetum [fr. *filix*, Lat., fern-brake], brackie land, land where ferns grow.—*Co. Litt.* 4.

Filiolus, a little son; a godson.—*Jac. Law Dict.*

Filius mulieratus, the eldest legitimate son of a woman who was illicitly connected with his father before marriage.

Filius populi, a son of the people, a natural child. See *Cowel, Law Dict., voce Mulier.*

Filum aquæ, viæ, medium. See AD MEDIUM FILÆ (AQUÆ).

Final Decree or Judgment, a conclusive decision of the Court, as distinguished from interlocutory. An order upon an undertaking to lodge costs in Court is not a final order under the Bankruptcy Act, 1914, ss. 1, 4; *Re a Debtor*, 1929, 2 Ch. 146. See INTERLOCUTORY.

Final Process, a writ of execution on a judgment or decree.

Finance Acts. In and after 1894 the Annual Taxing Acts, which had for a long time borne the short titles of 'Customs and Inland Revenue Acts,' have borne the short titles of 'Finance Acts.' The Finance Act incorporates the Budget which is the Chancellor of the Exchequer's annual statement or report of the financial results of the past year, estimated expenditure and income of the coming year and proposals in regard to taxation. These proposals are passed into law by the Finance Act but are enforced as soon as a resolution of the Committee of Ways and Means agrees to them in order to prevent forestalling and anticipation in commodities. See *Halsb. L. E.*, title '*Parliament (Ways and Means)*.'

Financial Year: By s. 22 of the Interpretation Act, 1889 (52 & 53 Vict. c. 63):—

In this Act and in every Act passed after the commencement of this Act [Jan. 1, 1890] the expression 'financial year' shall, unless the contrary intention appears, mean as respects any matters relating to the Consolidated Fund, or moneys provided by Parliament, or to the Exchequer, or to Imperial taxes or finance, the 12 months ending the 31st day of March.

Finder, a searcher employed to discover goods imported or exported without paying custom.—*Jac. Law Dict.*

Finder of Goods, in a public place or shop, acquires a special property in them, available against all the world, except the true owner, who may recover them at any time within six years; the finder is bound, however, before appropriating them to his own use, to take all the means in his power to discover the owner. If the property had not been designedly abandoned, and the finder knew who the owner was, or with due exertion could have discovered him, he is guilty of larceny if he keep and appropriate the articles to his own use; see *R.* v. *Thurborn*, (1849) 1 Den. C. C. 387; *R.* v. *Ashwell*, (1886) 16 Q. B. D. 215.

Goods found on private property belong to the owner of such property; see *South Staffordshire Water Co.* v. *Sharman*, 1896, 2 Q. B. 44, where two rings found in the mud of a pool by a workman employed amongst others to clean the pool out were recovered from the workman by the owners of the pool; and goods found buried in the earth belong to the Crown as against the finder, but not as against the true owner (see TREASURE TROVE); and goods found in a shop, though given up by the finder to the shopkeeper to advertise them, may be recovered from the shopkeeper by the finder; see *Bridges* v. *Hawkesworth*, (1851) 21 L. J. Q. B. 75, where a bundle of bank notes so found was recovered.

The buyer at an auction of a bureau with a secret drawer in it containing money is in law in the position of a finder (*Merry* v. *Green*, (1841) 7 M. & W. 623).

Fine, a sum of money or mulct imposed upon an offender, also called a ransom. See PENALTY.

A sum of money paid by a tenant at his entrance into his land; or for the renewal of a lease; and see FINES IN COPYHOLDS.

An assurance by matter of record, founded on a supposed previously existing right, abolished by the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74). In every fine, which was the compromise of a fictitious suit and resembled the *transactio* of the Romans, there was a suit supposed, in which the person who was to recover the thing was called the plaintiff, conusee, or recognisee, and the person who parted with the thing the deforceant, conusor, or recognisor. It was termed a fine for its worthiness, and the peace and quiet it brought with it—*finis fructus exitus et effectus legis*. There are five essential parts to the levying of a fine:—(1) The original writ of right, usually of covenant, issued out of the Common Pleas against the conusor; and the præcipe, which was a summary of the writ and upon which the fine was levied; (2) the royal license (*licentia concordandi*) for the levying of the fine, for which the Crown was paid a sum of money called King's silver, which was the post-fine, as distinguished from the præ-fine, which was due on the writ; (3) the conusance or concord itself, which was the agreement expressing the terms of the assurance, and was indeed the conveyance; (4) the note of the fine, which was an abstract of the original contract or concord; (5) the foot of the fine, or the last part of it, which contained all the matter, the day, year, and place, and before what justices it had been levied. A fine was said to be engrossed when the chirographer made the indentures of the fine and delivered them to the party to whom the conusance was made. The chirograph, or indentures, was evidence of the fine.

A fine without proclamation was a fine at the Common Law, and a fine with proclamations (which was to be proclaimed openly in the Common Pleas once a term for four terms next after its engrossment) was a fine according to the statute 4 Hen. 7, c. 24, and of this sort were most fines. A fine was single when an estate was granted to the consignee, and nothing rendered to the cognisor; or double, when there was a render back again either of the land itself or something out of it, for some new estate. See RECOVERY.

Fine Arts. As to copyright in works of art, see the Copyright Act, 1911 (1 & 2 Geo. 5, c. 46). 'Artistic work' is defined by the Act as including 'works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs (s. 35). 'Work of sculpture' includes casts and models (*ib.*). 'Architectural work of art' is defined by the Act as 'any building or structure having an artistic character or design in respect of such character or design, or any model for such building or structure, provided that the protection afforded by the Act shall be

connned to the artistic character and design and shall not extend to processes or methods of construction'; 'engravings' include 'etchings, lithographs, wood-cuts, prints, and other similar works, not being photographs'; and 'photograph' includes photo-lithograph and any work produced by any process analogous to photography (*ib.*). As to what acts amount to an infringement of copyright, see s. 2 of the Act; and as to the ownership of the copyright in cases where the work has been executed to order, or the author was in the service of some other firm, see s. 5. As to cinematograph films, see *Barstow* v. *Terry*, 1924, 2 Ch. 316; *Nordisk Films Co.* v. *Onda*, 1922 (*Macq.*, '*Copyright Cases*,' 1917–1923, p. 337). The Act of 1911 repeals twenty former statutes either wholly or partially, but sections 7 and 8 of the Fine Arts Copyright Act, 1862 (25 & 26 Vict. c. 68), under which penalties are recoverable for infringements, are unrepealed.

Fine capiendo pro terris, etc., an obsolete writ which lay for a person who, upon conviction by a jury, had his lands and goods taken, and his body imprisoned, to be remitted his imprisonment, and have his land and goods redelivered to him on obtaining favour of a sum of money, etc.—*Reg. Brev.* 142.

Fine Force, where a person is compelled to do that which he cannot help.—*Old. N. B.* 63.

Fine non capiendo pro pulchre placitando, an obsolete writ to inhibit officers of courts to take fines for fair pleading.

Fine pro redisseisina capiendo, an old writ that lay for the release of one imprisoned for a redisseisin, on payment of a reasonable fine.—*Reg. Brev.* 222.

Fines for Alienation, one of the oppressions of the feudal system, abolished by 12 Car. 2, c. 24. See *Merttens* v. *Hill*, 1901, 1 Ch. 842.

Fines for Endowment, anciently paid to the lord when a married woman was endowed; they were grounded on the feudal exactions.

Fines in Copyholds. A fine which is preserved by 12 Car. 2, c. 24, s. 6, is a sum of money payable by custom to the lord. There are three classes of fines:—(1) those due on the change of the lord; (2) those on the change of the tenant; and (3) those for a licence to the tenant to do certain acts.

When the fine is due on the change of the lord, such change must be by the act of God, and not in consequence of any act of the party. It can therefore be only claimed on the death of the lord.

When it is due on the change of the tenant, it matters not whether that change is effected by the act of God, or by the tenant's own act. Whenever the tenancy is changed, a fine is payable.

Those fines which are due on licenses by the lord, to empower the tenant to do certain acts, as to demise, etc., are rare. There must be a special custom to support such fine, for, by general custom, fines are due only on admissions.

The admission fine is *primâ facie* uncertain and arbitrary, or rather arbitrable, unless a special custom fix it; it must, however, be reasonable, and not excessive, for *excessus in re quâlibet jure reprobatur communi*, and two years' improved value of the land, deducting quit rents, but not land-tax, is now the full extent which the Courts will allow the lord to take in the exercise of this arbitrary power, except on voluntary grants, for then it is altogether in the lord's option.

If the fine be certain, the tenant should come prepared to pay it, but the lord cannot refuse admittance because the fine is not tendered to him. When the fine is uncertain, the practice is to fix a reasonable day and place of payment.

Upon payment of a fine, the steward delivers a copy of the court-roll, which is the tenant's muniment of his title.

After 1925, in consequence of the enfranchisement of copyholds by the L. P. Act, 1922, s. 128, fines were included among the manorial incidents to which the enfranchised land remains subject until the manorial incidents have been extinguished as provided by the Act, and by s. 130 (5) of that Act fines are recoverable as simple contract debts and not otherwise. Part II. of the 13th Sched. of that Act sets out the scale of compensation payable upon extinguishment. See *Scriven* or *Elton on Copyholds*, *Chitty's Statutes*, tit. '*Copyholds*,' and COPYHOLD.

Finire, to fine, or pay a fine upon composition and making satisfaction.—*Old Records.*

Finis unius diei est principium alterius. 2 *Buls.* 305.—(The end of one day is the beginning of another.) See FULL AGE.

Finitio, death.—*Blount.*

Firdfare, and **Firdwite.** See FERDWIT.

Firdiringa, a preparation to go into the army.—*Leg. Hen.* 1.

Fire. No action for damages lies against any person in whose house, etc., a fire shall accidentally begin: Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78), s. 86, which section and s. 83 are the only unrepealed sections of the Act.

Fire Engines.—The maintenance of fire engines in urban sanitary districts is provided for by the Public Health Act, 1875, s. 171, which incorporates ss. 30–33 of the Town Police Clauses Act, 1847, in the Metropolis by the Fire Brigade Act, 1865, and in parishes by the Parish Fire Engines Act, 1898 (61 & 62 Vict. c. 38), and the Acts therein recited.

By s. 90 of the Public Health Acts Amendment Act, 1907, local authorities can agree for the common use of fire engines and appliances; ss. 87–89 of the same Act give the police certain powers of breaking into premises and regulating traffic upon the outbreak of a fire, but the captain of the fire brigade is to have control of the operations.

As to the appointment of firemen in mines, see Coal Mines Act, 1911, ss. 14, 15.

False Alarm.—The False Alarms of Fire Act, 1895 (58 & 59 Vict. c. 28), enacts by s. 1 that:—

> Any person knowingly giving or causing to be given a false alarm of fire to the fire brigade of any town or parish outside the metropolitan area [see as to London s. 16 of London County Council (General Powers) Act, 1893 (56 & 57 Vict. c. ccxxi.)], or to any officer thereof, whether by means of a street fire alarm, statement, message, or otherwise, shall be deemed to be guilty of an offence punishable on summary conviction, and shall, on conviction for such offence by a Court of Summary Jurisdiction, be liable for every such offence to a penalty not exceeding 20*l.*

If, after a contract for the sale or lease of a house, etc., the house, etc., be burnt down, the loss falls on the intending purchaser or tenant (*Paine* v. *Meller*, (1801) 6 Ves. 349; *Counter* v. *Macpherson*, (1845) 5 Moore, P. C. 83); and he cannot claim the benefit of any subsisting insurance that may have been effected by the vendor (*Rayner* v. *Preston*, (1881) 18 Ch. D. 1). See, now, however, s. 47 of the Law of Property Act, 1925, which provides in such case that the insurance money shall on completion of the purchase be receivable by the purchaser subject to consent of the insurers, and to payment of the proportionate part of the premium by the purchaser. This condition may be excluded or modified by agreement. In a lease, both the covenant to pay rent and the covenant to repair must be complied with by the tenant notwithstanding the destruction of the demised premises by fire, for which reason it is common to insert in each of these covenants an appropriate saving or exception. See also INSURANCE.

As to fires caused by sparks, etc., from railway engines, see the Railway Fires Act, 1905, and the Railway Fires Act (1905) Amendment Act, 1923.

Firearms. This word comprises all sorts of guns, fowling-pieces, blunderbusses, pistols, etc. Their discharge in a street is penal.

For the purposes of the Fire Arms Act, 1920 (10 & 11 Geo. 5, c. 43), 'firearm' means 'any lethal firearm or other weapon of any description from which any shot, bullet or other missile can be discharged, or any part thereof, and the expression "ammunition" means ammunition for any such firearms, and includes grenades, bombs, and other similar missiles, whether such missiles are capable of use with a firearm or not. The Firearms Act, 1934 (24 & 25 Geo. 5, c. 16), amends the definition by including smooth-bore shot gun, air gun, or air rifle and ammunition, if deemed a lethal weapon. A person under seventeen shall not purchase or hire, nor shall anyone sell to such person, a firearm or ammunition. A person under fourteen shall not have in his possession, use or carry, nor shall anyone lend to such person, a firearm or ammunition.

The manufacture, sale, etc., of weapons discharging noxious fluids is prohibited save by authority of Admiralty, Army or Air Council; see s. 6 of the 1920 Act, which Act also makes many more prohibitions and restrictions.

The Firearms and Imitation Firearms (Criminal Uses) Act, 1933 (23 & 24 Geo. 5, c. 50), makes the use or attempted use of firearms or imitation firearms to avoid arrest punishable with a maximum of fourteen years penal servitude, and also for being in possession of such firearms or imitation firearms when arrested for committing certain offences (as set out in the schedule) is liable to a maximum penalty of seven years penal servitude. Both penalties are in addition to any penalty which may be imposed for the other Act for which the person was apprehended. A firearm or imitation firearm is also deemed an 'offensive weapon' for the purpose of the Larceny Act, 1916.

The Firearms (Amendment) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 39), defines firearm as any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, and shall include any prohibited weapon, whether it is such a lethal weapon as aforesaid or not, any component part of any such lethal or prohibited weapon and any accessory to any such weapon designed or attempted to

diminish the noise or flash caused by firing the weapon. See *addenda;* GUN; and STREET OFFENCES.

Firebare, a beacon or high tower by the seaside, wherein are continual lights, either to direct sailors in the night, or to give warning of the approach of an enemy.

Firebote, fuel for necessary use, allowed to tenants out of the land granted to them.

Fire Brigade. The Metropolitan Fire Brigade Act, 1855 (28 & 29 Vict. c. 90), intrusts to the London County Council, which has superseded the Metropolitan Board of Works, the duty of extinguishing fires in the metropolis. On the occasion of a fire the chief officer of the fire brigade may take any measures that appear expedient for the protection of life and property by s. 12 of the Act; and in other districts by s. 89 of the Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53). Motors used for fire-brigade purposes are exempt from the duty on licences for motor-cars.

Fire Insurance. See INSURANCE.

Fire-ordeal. See ORDEAL.

Fire-plugs. As to the duty of urban authorities to provide fire-plugs, see Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 66, and Town Police Clauses Act, 1847 (10 & 11 Vict. c. 34), s. 124. As to the like duty of undertakers of waterworks, see Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), ss. 38–43. As to the metropolis, see 34 & 35 Vict. c. 113, s. 34.

Fire and Sword, Letters of, anciently issued from the Privy Council of Scotland, addressed to the sheriff of the county, authorizing him to call for the assistance of the county to dispossess a tenant unlawfully retaining possession.—*Bell's Scots Law Dict.*

Fire-resisting Materials are required by the London Building Acts; see a very full list of them in Sched. I. of the London Building Act, 1930 (20 & 21 Geo. 5, c. clviii.), *Chitty's Statutes.* They include, for general purposes, 'brickwork constructed of good bricks well burnt,' etc, and 'solidly put together with good mortar,' etc., and for the special purposes of 'verandahs, balustrades outside landings, the treads, strings and risers of outside stairs, outside steps, porticos and porches, oak, teak, jarrah, karri or other hard timber not less than 1¼ inches finished thickness.'

Fireworks. The making and selling of fireworks and squibs, or throwing them about in the street, was declared to be a common nuisance by the repealed 9 Wm. 3, c. 7. See also Metropolis Police Act (2 & 3 Vict. c. 47), s. 54, and 9 & 10 Vict. c. 25. By 23 & 24 Vict. c. 139, 24 & 25 Vict. c. 130, and 25 & 26 Vict. c. 98, provisions were made for regulating the manufacture, sale, and use of fireworks, but these have now been repealed, and the law relating to this subject amended by the Explosives Act, 1875 (amended by the Explosives Act, 1923). Any person throwing, casting, or firing any fireworks in or into any highway, street, or public place is liable to a penalty not exceeding 5*l.* (s. 80 of the Act of 1875). And see SQUIBS.

Firkin, a measure containing nine gallons.

Firm, the name or style under which any business is established. 'Partners who have entered into partnership with one another are' for the purposes of the Partnership Act (see PARTNERSHIP) 'called collectively a firm, and the name under which their business is carried on is called the "firm-name"' (Partnership Act, 1890, s. 3). Partners may sue or be sued in the name of their firm, but if suing must disclose names on demand. See R. S. C., Order XLVIIIA. But a partnership firm is not a person in law, see *Re Smith,* 1914, 1 Ch. p. 948, per Joyce, J., and the instances there given by the learned judge of the effect of a legacy or an assurance to a firm. See BUSINESS NAMES.

Firma, a tribute anciently paid towards the entertainment of the King of England for one night: also victuals or rent.

Firma Alba. See ALBA FIRMA.

Firmaratio, the right of a tenant to his lands and tenements.

Firmarius, a fructuary.—1 *Reeves,* 324.

Firmatio, the doe season. Also a supplying with food.—*Leg. Inæ,* c. 34.

Firmaun, Firman or **Phirmaund,** an order, mandate, an imperial decree, royal grant, or charter.—*Indian.*

Firme, a farm.—*Old Records.*

Firmura, liberty to scour and repair a mill-dam, and carry away the soil, etc.

First Fruits, an incident to the old feudal tenures, being one year's profits of the land after the death of a tenant, which belonged to the king. Hence arose the claim of the head of the Church to the first year's profits of every clergyman's benefice; otherwise called *annates* or *primitiæ,* transferred from the Pope to the Crown by 26 Hen. 8, c. 3, and from the Crown to the Church for the augmentation of poor livings, by 2 & 3 Anne, c. 11. The holders of benefices of a value not exceeding 50*l.* a year were freed from first fruits and tenths by 6 Anne, c. 44, and

6 Anne, c. 54. First fruits were paid on their value as compounded for under 26 Hen. 8, c. 3, by the then holders of preferments. But both first fruits and tenths were abolished by the First Fruits and Tenths Measure, 1926 (16 & 17 Geo. 5, No. 5). See BOUNTY OF QUEEN ANNE AND TENTHS.

First Impression. See PRIMÆ IMPRESSIONIS.

First Offender. See PROBATION (3) and PREVIOUS CONVICTION.

Fiscal, belonging to the revenue.

Fiscus, a wicker basket, or pannier, in which the Romans were accustomed to keep and carry about large sums of money (*Cic. 1 Verr.* c. viii.; *Phædr. Fab.* ii. 7), hence any treasure or money chest.

The importance of the imperial fiscus led to the appropriating the name to that property which the Cæsar claimed as Cæsar, and 'fiscus,' without any adjunct, was so used (*Juv. Sat.* iv. 54). Ultimately the word came to signify, generally, the property of the State, the Cæsar having concentrated in himself all the sovereign power; thus the word had finally the signification of *ærarium* in the Republican period. It does not appear at what time the *ærarium* was merged in the fiscus, though the distinction continued to the time of Hadrian. In the latter periods the words were used indiscriminately, to mean the imperial, which was the only public, chest.—*Smith's Dict. Antiq.*

Fishery, the right to take fish. Fisheries are either free, common, or several. A free fishery is the exclusive right of fishing in a public river, and is a royal franchise. Common of fishery, or common of piscary, is the right of fishing in another man's water. A several fishery is the exclusive right of fishing in another man's water, and he that has it, according to Blackstone, 'must also be the owner of the soil' (2 *Bl. Com.* 40). This position of Blackstone, however, has been questioned, and the distinction between the various kinds of fishery is not clear; see *Harg. Co. Litt.* 122 *a*, n. 7; *Holford* v. *Bailey,* (1846) 8 Q. B. 1000; 13 *ib.* 426; *Marshall* v. *Ulleswater Steam Navigation Co.,* (1863) 3 B. & S. 732; *Chesterfield (Earl)* v. *Harris,* 1908, 2 Ch. 397; 1911, A. C. 623; *Coulson and Forbes on the Law of Waters; Leake on Uses and Profits of Land.* No right can exist in the public to fish in an inland non-tidal lake (*O'Neil* v. *Johnston,* 1909, 1 Ir. R. 237).

The fishing rights of the lord of the manor in enfranchised copyholds are not affected by the Law of Property Act, 1922.

The term is also applied to fishing grounds, or parts of the sea where at certain seasons numbers of fish are taken. The right of frequenting these has frequently been the subject of dispute between nations, and sometimes of treaties. A number of Acts approving or enforcing International Conventions have been passed (1818), Newfoundland Fisheries, including France (1904); English Channel Fisheries (1826, 1839, 1867); North Sea Fisheries (1882); Seal Fisheries, see 57 & 58 Vict. c. 2, and succeeding Acts; Whaling, 1934 (24 & 25 Geo. 5, c. 49). For collections of statutes relating to fisheries, see *Chitty's Statutes,* tits. '*Fish*' and '*Fish (Sea),*' and Salmon and Freshwater Fisheries Act, 1923, which consolidates and amends the enactments relating to Salmon and Freshwater Fisheries in England and Wales. The powers and duties under all these Acts are now vested in the Ministry of Agriculture and Fisheries by virtue of the Board of Agriculture and Fisheries Act, 1903 (3 Edw. 7, c. 31). A close season for all freshwater fish is prescribed by Part III. of the Act of 1923. See TROUT.

As to cutting through or destroying the dam, floodgate, or sluice of, or putting lime or noxious materials in, a fishpond or water which is private property, or in which there is a private right of fishery, with intent to take or destroy fish, see Malicious Damage Act, 1861, s. 32; and as to the taking or destroying of fish, see Larceny Act, 1861, ss. 24 and 25; *Barnard* v. *Roberts,* (1907) 96 L. T. 648. See AGRICULTURE AND FISHERIES, MINISTRY OF.

Fishgarth, a dam or weir in a river for taking fish.

Fishing Boats.—See the special provisions as to fishing boats in the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60, Part IV.); *Chit. Stat.,* tit. '*Shipping.*' If profit-sharing, they may be excluded from the Workmen's Compensation Act, 1925: see s. 35 (2).

Fish-royal, whale and sturgeon, the taking of which is the exclusive right of the sovereign.—2 *Bl. Com.* 403.

Fisk, the right of the Crown to the movable estate of a person pronounced rebel.—*Bell's Scots Law Dict.*

Fitz [Nor., fr. *fils,* Fr.], a son. It is used in law and genealogy; as *Fitzherbert,* the son of Herbert; *Fitzjames,* the son of James; *Fitzroy,* the son of the king. It was originally applied to illegitimate children.

Fitzherbert, the most distinguished writer upon law in the reign of Henry VIII. He was first a serjeant, and some years after a judge,

of the Common Pleas. The first book published by this learned author was his *Grand Abridgment*, printed in 1514 by Richard Pynson, of which in 1516 a second edition was printed by Wynkyn de Worde. In 1534 he published his *New Natura Brevium*, which was reprinted in 1537. In 1541 we find *The New Booke of Justyces of Peace made by Anthony Fitzherbert, Judge, lately translated out of Frenche into Englishe.* Of these, the *Natura Brevium* (nature of writs), which is an improvement of a more ancient work of the same nature and title, is by far the best known and most often cited. It is remarkable that this treatise on the nature and effect of the principal writs in the Register was published at a time when those writs were, many of them, going into disuse, and soon afterwards became obsolete.

Five-mile Act, 35 Eliz. c. 2, whereby popish recusants, convicted for not going to church, were compelled to repair to their usual place of abode, and not to remove above five miles from thence, repealed (after long disuse) by 7 & 8 Vict. c. 102. Also, 17 Car. 2, c. 2, whereby clergy who refused to take the oath of non-resistance imposed by the Act on all who had not subscribed the Act of Uniformity, were forbidden to come within five miles of a corporate town, and non-conformists were forbidden to teach in any school under heavy penalties; repealed by 52 Geo. 3, c. 155, s. 1.

Fixtures. Things of an accessory character which are not something which is part of the original structure (*Boswell* v. *Crucible Steel Co.*, 1925, 1 K. B. 119), annexed to houses or lands, which become, immediately on annexation, part of the realty itself, i.e., governed by the same law which applies to the land, in conformity with the maxim *quicquid plantatur solo, solo cedit.* The application of this legal principle, however, is not uniform, as may be thus shown:

(1) Between landlord and tenant. If the chattels be not let into the soil, they are not fixtures at all, and may be removed at will, like any other species of personal property. When the chattel is connected with the freehold, by being let into the earth, or by being cemented or otherwise united to some erection attached to the ground, the question arises—when may the tenant remove such fixtures?

The general rule as to annexations made by a tenant during the continuance of his term is the following—Whenever he has affixed anything to the demised premises during the term he can never again sever it without his landlord's consent; the property, by being annexed to the land, immediately belongs to the freeholder, and a tenant, by making it a part of the freehold, is considered to have abandoned all future right to it, so that it would be waste in him to remove it afterwards; it therefore falls in with his term, and comes to the reversioner as part of the land. But a tenant may so construct the erections that they shall not be deemed fixtures; thus, even if he erect buildings—as barns, granaries, sheds, and mills upon blocks, rollers, pattens, pillars, or plates, resting on brickwork, they may be removed; for unless they be affixed to the freehold by being let into it, or are, by means of nails, mortar, or the like, united to it, they remain merely movable chattels.

The exceptions to the above rule are three: (α) In favour of trade. A tenant may remove such things which he has fixed to the freehold for purposes of trade or manufacture, if the removal causes no material injury to the estate; furnaces, coppers, brewing vessels, fixed vats, salt pans, and the like; machinery in breweries, collieries, and mills, such as steam-engines, cider mills, etc.; buildings for trade, as a varnish-house, built on plates laid on brickwork, and a shed called a Dutch barn, formed of uprights rising from a foundation of brick. (β) For agricultural purposes. The Agricultural Holdings Act, 1923, s. 22 (see that title), abrogating, as did the Acts of 1883 and 1908, the rule of *Elwes* v. *Maw*, (1802) 3 East, 38; 2 Sm. L. C., gives a tenant a property in any engine, machinery, fencing, or building for which he cannot get compensation, so that it is removable by a tenant before, or within a reasonable time after, the termination of the tenancy, subject, however, to the tenant paying any rent due, etc., avoiding or making good damage, giving the landlord notice before removal, and allowing the landlord an option of purchase. The Agricultural Holdings Act, 1875, s. 53, and the Landlord and Tenant Act, 1851 (14 & 15 Vict. c. 25), s. 3, contained very similar enactments, but the Act of 1851 applied only where the fixtures were put up with the written consent of the landlord, and the Act of 1875 made express provision for its exclusion by landlords. (γ) For ornament and convenience. The following are removable: Hangings, tapestry, and pier-glasses, whether nailed to the walls on panels or put up in lieu of panels; marble or other ornamental chimney-pieces; marble slabs, window blinds; wainscots fixed to the wall

by screws; grates, ranges, and stoves although fixed in brickwork; iron backs to chimneys beds fastened to the walls or ceiling; fixed tables, furnaces and coppers, mash-tubs, and fixed water-tubs; coffee and malt-mills; cupboards fixed with hold-fasts; clock cases, iron ovens, and the like; provided the separation occasion but little or no damage. The fixtures must be moved before the tenant's term or interest expires, unless in the case of a strict tenancy at will, when the tenant may be allowed a reasonable time after his tenancy, if his interest were not terminated by his own act.—*Woodfall, L. and T.*

(2) Before 1926, between the heir and the personal representative of the terre-tenant. Though the fixtures will generally pass with the freehold to the heir, yet such of them as are put up for ornament, domestic use, or trade devolve to the personal representative, provided they can be easily removed and are not essential to the enjoyment of the inheritance. See *Re Lord Chesterfield's Settled Estates*, 1911, 1 Ch. 237.

(3) Between the tenant of a particular estate and the remainder-man or reversioner a similar rule applies as in the last case; see *Leigh* v. *Taylor*, 1902, A. C. 157; and see now as to heirlooms generally, Settled Land Act, 1925, s. 67, and also Law of Property Act, 1925, s. 130.

A mortgage of land, including fixtures, does not recognize a Bill of Sale under the Bills of Sales Acts, 1878 and 1882, Law of Property Act, 1925, s. 88 (4).

The larceny of fixtures is punishable; see Larceny Act, 1916, s. 16.

Consult *Amos and Ferard on Fixtures; Goodeve on the Law of Real Property.*

Flaco, a place covered with standing water.

Flagrant Necessity, a case of urgency rendering lawful an otherwise illegal act, as an assault to remove a man from impending danger.

Flagrante delicto, in (in the very act of committing the crime).

Flat. A set of rooms on one floor of a house usually let unfurnished in many separate flats, which for all legal purposes are separate houses. For the purposes of the Housing Act, 1936, defined as a separate and self-contained set of premises constructed for use for the purposes of a dwelling and forming part of a building from some other part of which it is divided horizontally, and 'block of flats,' a building which contains two or more flats and consists of three or more storeys exclusive of any storey which is constructed for use for purposes other than those of a dwelling. See *Blackwell on the Law of Residential Flats; Woodfall, L. and T.*, and Forms in Appendix B. of that work.

Flecta, a feathered or fleet arrow.

Fledwite, or **Flightwite** [fr. *flyth*, Sax., flight, and *wite*, punishment], a discharge from amerciaments, where a person having been a fugitive came to the peace of our lord the king, of his own accord, or with licence.

Fleet [fr. *fleot*, Sax., an estuary], a place where the tide flows, a creek, or inlet of water, hence Northfleet, Purfleet; also a company of ships or navy; also a prison in London (so called from a river or ditch formerly in its vicinity), now abolished by 5 & 6 Vict. c. 22.

Fleet-Books. These books contain the original entries of marriages solemnized in the Old Fleet Prison from 1686 to 1754, but are not, it is said, admissible in evidence to prove a marriage, for they were not made under public authority. But perhaps on a question of pedigree, they are evidence to show the name by which a woman passed when she was married there. The books are now deposited in the office of the Registrar-General, pursuant to the Non-Parochial Registers Act, 1840 (3 & 4 Vict. c. 92), ss. 6, 23.—*Taylor on Evid.*, s. 1430; *Hubback on Succession*, p. 510.

Flem [fr. *flean*, Sax., to kill], an outlaw.

Flemene frit, Flemenes frinthe, Flymena frynthe, the reception or relief of a fugitive or outlaw.—*Jac. Law Dict.*

Flemeswite, the possession of the goods of fugitives.—*Fleta*, lib. 1, cxlvii.

Flet, house; home.—*Cowel.*

Fleta, *seu Commentarius Juris Anglicani*, a treatise upon the whole law, as it stood at the time this author wrote, which serves as an appendix, and often as a commentary, to Bracton. The author was wholly an imitator.

The book was written after the thirteenth year of Edward I., and not much later. The occasion of the title of it is given by the author himself, who says it was written during his confinement in the Fleet prison. From that circumstance it has been conjectured that he might be one of those lawyers who, for malpractice in their office as judges, were punished with imprisonment and pecuniary penalties.—2 *Reeves*, p. 279.

Fletwit, or Flitwit. See FLEDWITE.

Flichwite, a fine on account of brawls and quarrels.—*Spelm.*

Flit, treason.

Floating Capital. Capital available for the purpose of meeting current expenditure.

Floating Charge. This term is not a legal term, but it is well understood and is used in Acts of Parliament, e.g., the Finance Act, 1915, s. 27, and may be said to denote a security which is an equitable charge on the assets for the time being of a going concern. It allows of the business being carried on and the property comprised in it being dealt with in the ordinary course of business, until the undertaking charged ceases to be a going concern, or until the creditor in some way or other intervenes. See *Government Stock, etc., Co.* v. *Manila Ry. Co.*, 1897, A. C. p. 86, per Lord Macnaghten.

The charge becomes fixed and enforceable by the chargees as soon as the company goes into liquidation, even for the purpose of reconstruction (*Crompton & Co.*, 1914, 1 Ch. 954). Under the Companies Act, 1929, s. 88, all floating charges must be registered in the Register of Charges.

Floor of the Court. The part of the Court between the judges and the first row of counsel. Parties who appear in person stand there.

Florin, a coin of the value of two shillings.

Flotages, such things as by accident swim on the top of great rivers.

Flotsam, or **Floatsam,** goods floating upon the sea, which belong to the Crown unless claimed by the true owners thereof within a year and a day.—5 *Rep.* 106 *b*; Merchant Shipping Act, 1894, s. 510. See JETSAM, also LIGAN.

Fly for it. On a criminal trial in former times it was usual after the verdict, even if not guilty, to inquire also: 'Did he fly for it?' Forfeiture of goods followed a conviction upon such inquiry. This practice, after having been long discontinued, was generally abolished by the Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), s. 5. There is a saying, *Fatetur facinus qui judicium fugit* (3 *Inst.* 14)—'He who flies from justice confesses his guilt.'

Flyma, a runaway; fugitive; one escaped from justice, or who has no 'hlaford.'—*Anc. Inst. Eng.* See ABSCOND.

Flyman-frymth, the offence of harbouring a fugitive, the penalty attached to which was one of the rights of the Crown.—*Anc. Inst. Eng.*

Focage, housebote, firebote.—*Cowel.*

Focale, firewood.—*Cowel.*

Fodder, (1) food for horses or cattle; (2) among the Feudists a prerogative of the prince to be provided with corn, etc., for his horses, by his subjects in his wars.

Fodertorium, provisions to be paid by custom to the royal purveyors.—*Cowel.*

Fœdus, a league or compact.

Fœmina viro co-operta (a married woman).

Fœminæ non sunt capaces de publicis officiis. *Jenk. Cent.* 237.—(Women are not admissible to public offices.) But see WOMAN.

Fœneration, the act of putting out money to usury.

Fœnus nauticum (nautical usury), a contract for the repayment of money borrowed, not on the ship and goods only, but on the mere hazard of the voyage itself, with a condition to be repaid with extraordinary interest.

Fœsa, grass; herbage.—*Dugd. Mon.*, tom. 2, p. 506.

Fœticide, criminal abortion. See ABORTION.

Fœtus, a babe in the womb.

Fogage, fog or rank after-grass, not eaten in summer.

Folterers, vagabonds.—*Blount.*

Folc-land, the land of the folk or people. It was the property of the community. It might be occupied in common or possessed in severalty: and in the latter case, it was probably parcelled out to individuals in the *folc-gemot* or court of the district: and the grant sanctioned by the freemen there present. But while it continued to be folc-land it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority. Spelman describes folcland as *terra popularis quæ jure communi possidetur—sine scripto* (Gloss. *voce* Folcland). In another place he distinguishes it accurately from bocland: *Prædia Saxones duplici titulo possidebant: vel scripti auctoritate, quod* bocland *vocabant, vel populi testimonio, quod* folcland *dixere* (*ibid.*, *voce* Bocland).

Folc-land was subject to many burthens and exactions from which bocland was exempt. The possessors of folc-land were bound to assist in the reparation of royal vills and other public works. They were liable to have travellers and others quartered on them. They were required to give hospitality to kings and great men in their progresses through the country, to furnish carriages and horses to them and to their messengers and servants, and those who had charge of their hawks, horses, and hounds.

From these burthens the lands were liberated when converted by charter into bocland. See *Allen's Inquiry into the Rise and Progress of the Royal Prerogative in England*, 143–149.

Folc-mote, or **Folk-mote** [fr. *folk*, Sax., people, and *mote*, meeting], a general assembly of the people to consider of an order matters concerning the commonwealth; also any kind of popular or public meeting.—*Somner; Spelm.; Brady's Glos.* 48; *Termes de la Ley.*

Folc-right, or **Folk-right,** the *jus commune*, or Common Law, mentioned in the laws of King Edward the Elder, declaring the same equal right, law, or justice to be due to persons of all degrees.

Foldage, and **Foldcourse.** See FALDAGE.

Folgarii, menial servants, followers.—*Bracton.*

Folgere, a freeman who has no house or dwelling of his own, but is the follower or retainer of another (*heorthfæst*), for whom he performs certain predial services.—*Anc. Inst. Eng.*

Folgoth, official dignity.

Folio (abbrev. *fol.*): (1) A certain number of words; in conveyances, etc., and proceedings in the High Court (see Ord. LXV., r. 27 (14)) amounting to seventy-two, and in parliamentary proceedings to ninety. (2) In printing, the figure at the top or bottom of the page. (3) The largest size of a book from 15 to 20 inches in height and 10 to 12½ inches in breadth.

Folkland. See FOLC-LAND.

Food. In the Sale of Food and Drugs Act (see ADULTERATION) the word includes 'every article used for food or drink by man, other than drugs or water and any article which ordinarily enters into or is used in the composition or preparation of human food,' and also 'flavouring matters and condiments.'—Sale of Food and Drugs Act, 1899 (62 & 63 Vict. c. 51), s. 26; Public Health Act, 1925 (15 & 16 Geo. 5, c. 71), s. 72; and Food and Drugs (Adulteration) Act, 1928 (18 & 19 Geo. 5, c. 31), s. 34. For power to make regulations as to the importation of food, see AGRICULTURAL PRODUCE; AGRICULTURAL MARKETING; Public Health (Regulations as to Food) Act, 1907 (7 Edw. 7, c. 32). See generally, ADULTERATION, also Sale of Food and Drugs Act, 1927.

Food Inspectors. The Food and Drugs (Adulteration) Act, 1928 (18 & 19 Geo. 5, c. 31), has provisions dealing with inspectors, who have powers of sampling food at the place of or in the course of delivery to a purchaser; such officers are called sampling officers (s. 16 of the Act).

For inspection of *Bakehouses*, *Cookhouses*, and *Weights and Measures*, see those titles.

Foot of a Fine, the conclusion of it, including the whole matter, and reciting the parties, day, year, and place, and before whom it was acknowledged or levied.

Foot-geld, amerciament for not expeditating or cutting out the balls of dogs' feet in the forest.—*Manw.* p. 109 (4th ed.).

Footpath. See WAY.

Forage, hay and straw for horses, particularly in the army.

Foragium, straw when the corn is thrashed out.

Forbalka, a balk or ridge of land lying forwards or next to the highway. — *Old Records.*

Forbannitus, a pirate.—*Leg. Ripuar.*

Forbarre, to deprive one of a thing for ever.—*Cowel.*

Forbatudus, the aggressor slain in combat. —*Jac. Law Dict.*

Forbes Mackenzie Act (16 & 17 Vict. c. 67), the Licensing (Scotland) Act, 1853, now repealed, for the better regulation of public-houses in Scotland, of which the best known provision was that for entirely closing them on Sunday.

Force and Arms [*vi et armis*, Lat.], words usually inserted in an indictment, though not absolutely necessary.—14 & 15 Vict. c. 100, s. 24. They were also formally inserted in every declaration for trespass, in order to give the Court of Common Pleas or Exchequer jurisdiction, but were rendered unnecessary by the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 49.

Force Majeure, irresistible compulsion, coercion diplomatically recognized as irresistible.—*Concise Oxford Dict.* Compare ACT OF GOD; RESTRAINT OF PRINCES.

Forcible Detainer, refusing to restore another's goods, after sufficient amends tendered, the original taking having been lawful; for which injury the remedy usually resorted to was trover (*q.v.*). But if the original taking were unlawful it is a criminal offence against the public peace, and a misdemeanour, punishable by imprisonment and ransom at the pleasure of the Crown.—4 *Bl. Com.* 148.

Forcible Entry is the entering upon any land or tenement with a strong hand, or in a violent manner, in order to take possession. There may be a forcible entry although no actual force is used, as, for example, when threats are made or an unusual number of

persons collected. Forcible entry was permissible at Common Law in certain cases, e.g., when the rightful owner had been wrongfully deprived of possession, but it was absolutely prohibited by the Statutes of Forcible Entry (5 Rich. 2, c. 7; 15 Rich. 2, c. 2; 8 Hen. 6, c. 9), which make forcible entries punishable with imprisonment. The first of these statutes provides that 'none shall make entry into any lands or tenements, but in case where entry is given by law, and in such case not with strong hand nor with multitude of people, but only in a peaceable and easy manner.' A forcible entry by a person entitled to possession, though indictable, does not give rise to civil responsibility in damages. See *Hemmings* v. *Stoke Poges Golf Club*, 1920, 1 K. B. 720; and *Clerk and Lindsell on Torts*, 7th ed. pp. 328-331. See DISTRESS.

Forda, a ford or shallow in a river.

Fordol [fr. *fore*, Sax., before, and *dœle*, a portion], a butt or headland jutting out upon other land.

Forecheapum, præ-emption, forestalling the market.—*Jac. Law Dict.*

Foreclosure. A mortgagee, or any person claiming an interest in the mortgage under him, can compel the mortgagor, after breach of the condition, to elect either to redeem the pledge or that his equity of redemption be extinguished by an order of the Court. The foreclosure of mortgages is one of the matters assigned to the Chancery Division of the High Court (Jud. Act, 1925, s. 56 (1)).

Law of Property Act, 1925, s. 91, replacing the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 25, replacing the Chancery Procedure Act, 1852 (15 & 16 Vict. c. 86), s. 48, empowers either mortgagor or mortgagee to obtain an order for sale instead of redemption or foreclosure.

See ss. 88 and 89 of the L. P. Act, 1925, in regard to the estate acquired by the mortgagee after foreclosure.

Indulgence is sometimes extended to the mortgagor in enabling him to pay, so as to prevent an absolute foreclosure. Some ground must be assigned for enlarging the time, and it is done only on the terms of paying the interest and costs already certified. Even after an order of foreclosure absolute the foreclosure may in a proper case be opened and the mortgagor allowed to redeem (*Campbell* v. *Holyland*, (1877) 7 Ch. D. 166).

For jurisdiction of the county courts in actions (up to 500*l.*) for foreclosure, see County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), s. 52.

Where the amount lent exceeds 500*l.*, to obtain a foreclosure an action must be brought in the Chancery Division of the High Court (Jud. Act, 1925, s. 56). Consult *Coote* or *Fisher on Mortgages*.

Foregift, a premium for a lease, frequently forbidden to be taken for an ecclesiastical lease; see, e.g., the Ecclesiastical Leases Act, 1842 (5 & 6 Vict. c. 108), s. 30.

Foregoers, royal purveyors.—26 Edw. 3, c. 5.

Fore-hand Rent, rent payable in advance.

Foreign Attachment, a custom which prevails in the city of London, whereby a debt owing to a defendant, sued in the Court of the Mayor or Sheriff, may be attached in the hands of the debtor. The custom was certified by the Recorder of London, in the reign of Edward IV., to be, that if a plaint be affirmed in London before, etc., against any person, and it be returned *nihil*, if the plaintiff will surmise that another person within the city is a debtor to the defendant in any sum, he shall have garnishment against him to warn him to come in and answer whether he be indebted in the manner alleged; and if he comes and does not deny the debt, it shall be attached in his hands, and after four defaults, recorded on the part of the defendant, such person shall find new surety to the plaintiff for the said debt, and judgment shall be that the plaintiff shall have judgment against him, and that he shall be quit against the other after execution sued out by the plaintiff. Consult *Brandon on Foreign Attachment*, and see *Cox* v. *Lord Mayor of London*, (1867) L. R. 2 H. L. 239; *Mayor of London* v. *London Joint Stock Bank*, (1881) 6 App. Cas. 393, which exempts corporations from the process, and decides that *fictitious summonses* render it invalid. These decisions have had the effect of reducing foreign attachment to little more than a subject of historical interest.

Foreign Awards. The Arbitration (Foreign Awards) Act, 1930 (20 Geo. 5, c. 15), provides for the enforcement of foreign arbitral awards subject to certain conditions.

Foreign Bill of Exchange, a bill which is not an inland bill. See INLAND BILL. Before 19 & 20 Vict. c. 97, a bill drawn in one part of the United Kingdom, as England, on a person in another part, as Ireland or Scotland, was deemed a foreign bill; but this was altered by s. 7 of that Act, of which the effect is reproduced by s. 4 of the Bills of

Exchange Act, 1882. By the law of merchants, the holder of a foreign bill is obliged to protest it for non-payment, and also for non-acceptance, whenever notice of such non-acceptance is necessary. See *Chitty*, *Byles*, *Bayley*, or *Chalmers*, *on Bills*.

Foreign Bought and Sold, a custom in London which prevented merchants other than freemen of the City from dealing in cattle in Smithfield, was abolished in 1671.

Foreign Company. Every Company incorporated outside the United Kingdom, which has a place of business in the United Kingdom, has to comply with certain regulations laid down by Part XI., ss. 343–352 of the Companies Act, 1929. The regulations relate, *inter alia*, to the registration with the registrar of companies of a copy or translation of the instrument and regulations constituting the company, a list of directors with the statutory particulars and the names and addresses of one or more residents in Great Britain for service of notices and process on the company, and other important provisions. Companies incorporated in a British possession are empowered to hold land in the United Kingdom without prejudice to their powers by virtue of registration in Northern Ireland (s. 345). Special regulations are made for companies incorporated in the Channel Islands and the Isle of Man (s. 343).

The general provisions of the Companies Act, 1929, relating to charges on property in England and on property there acquired subject to charges, are made to apply to companies incorporated outside Great Britain and having an established place of business in England (s. 90).

As to certification of instruments constituting a foreign company or of a charge created under ss. 79 and 81, *ibid.*, see the Companies (Forms) Order, 1929, S. R. & O. 1929, No. 823.

Foreign Courts. The proceedings of a foreign court are proved by copies under the seal of such court, proof being given that the seal affixed is the seal of such court. If a court have no seal, then proof by an exemplification under the hand of the chief judge of the court (his handwriting being proved) will be received. See *Piggott on Foreign Judgments*.

Foreign Documents. The admissibility in evidence in the United Kingdom of entries contained in public registers in other countries is governed by the Evidence (Foreign Dominions and Colonial Documents Act, 1933 (23 & 24 Geo. 5, c. 4). Orders in Council may be made under s. 1 of the Act recognizing public registers in other countries (which expression includes any British Colony or Protectorate) if desirable in the interests of reciprocity.

Foreign Enlistment Act, 59 Geo. 3, c. 69 (as to which see *Burton* v. *Pinkerton*, (1867) L. R. 2 Ex. 340), repealed and replaced by the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), passed to 'regulate the conduct of her Majesty's subjects during the existence of hostilities between foreign states with which her Majesty is at peace.' By s. 4 of this Act, if any British subject accepts any engagement in the military or naval service of any foreign state at war with any foreign state at peace with the Crown, he is punishable by fine and imprisonment or either; and by s. 11, if any person within the British Dominions 'prepares or fits out any naval or military expedition to proceed against the dominions of any friendly state,' such person and any persons employed in any capacity in any such expedition are similarly punishable. In *Reg.* v *Jameson*, 1896, 2 Q. B. 425, many persons were tried and convicted for an offence against s. 11 in making an armed incursion into the Transvaal in South Africa. See also Treaties of Washington Act, 1922, ss. 1–3, as to further restrictions respecting the building or equipment of ships of war.

Foreign-going Ship. See SHIP.

Foreign Judgments. A foreign judgment, i.e., a judgment of a foreign court, stands on a very different footing from a judgment of a court of this country. It cannot be enforced here by execution like an English judgment; it can only be enforced by bringing an action on it as if it were a contract, which of course it is not, though it is convenient to treat it as such. It is not strictly in this country *res judicata*, and therefore does not create an absolute estoppel. Nevertheless it is practically conclusive between the parties on the merits. Every presumption will be made in favour of a foreign judgment. It will be presumed that the court had jurisdiction, and it will be no defence to an action founded on it that the foreign court made a mistake either in its own law or ours. But it may be impeached if the foreign court acted perversely, or had no jurisdiction, or the judgment was obtained by fraud, or the defendant had no notice of the proceedings, or if the judgment was 'contrary to the first principles of reason and justice.'—*Odgers on the Common Law*, pp. 946 *et seq.*

The Foreign Judgments (Reciprocal En-

forcement) Act, 1933 (23 & 24 Geo. 5, c. 13), provides for the enforcement of judgments given in foreign countries which accord reciprocal treatment to judgments given in this country. The countries and the courts in those countries to which the Act may apply are specified by Orders in Council, which may be extended to British Dominions, Protectorates and mandated territories. The Act (s. 7), provides that Part II. of the Administration of Justice Act, 1920 (10 & 11 Geo. 5, c. 81), shall cease to have effect in relation to such Dominions except to such part of the said Dominions to which the Act of 1920 extends at the date of an Order under the Act of 1933, superseding an Order under Part II. of 1920. See also JUDGMENT EXTENSION ACTS. Consult *Piggott on Foreign Judgments ; Dicey's Conflict of Laws.*

Foreign Jurisdiction Acts : 6 & 7 Vict. c. 94 ; 28 & 29 Vict. c. 116 ; 29 & 30 Vict. c. 87 ; 38 & 39 Vict. c. 85 ; and 41 & 42 Vict. c. 67 ; consolidated by the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 37) (extended by the Foreign Jurisdiction Act, 1913 (3 & 4 Geo. 5, c. 16)), which regulates the exercise by the Crown of the powers and jurisdiction acquired by it (whether by treaty, grant, usage, sufferance, or otherwise) in countries out of the dominions of the British Crown.

A decree by a foreign court over a matter outside its jurisdiction has no effect (*Lecouturier* v. *Rey*, 1910, A. C. 262).

Foreign Law in the courts of this country is a question of fact, which is decided by the judge, not the jury (Administration of Justice Act, 1920, s. 15). See LAW, QUESTIONS OF, and SKILLED WITNESS. By the Foreign Law Ascertainment Act, 1861 (24 & 25 Vict. c. 11), the High Court of Justice may remit a case with queries to foreign courts of the countries with which a convention shall have been entered into for the purpose by the British Crown for ascertainment of the foreign law, and may apply the opinion obtained to the facts of the case. According to a note in the *Annual Practice*, 1936, p. 658, ' in the only case in which it is known to have been used, the report of the foreign authority was received through the diplomatic channel and was filed in the Central Office, in the same way as depositions are filed ; an office copy being taken for use.'

Foreign Marriage Acts. See MARRIAGE (*Foreign Marriage*).

Foreign Plate. See PLATE.

Foreign Plea, a plea objecting to the jurisdiction of a judge, on the ground that he had not cognizance of the subject-matter of the suit.

Foreign Seamen. As to apprehension of, for desertion, see Merchant Shipping Act, 1894, s. 238, re-enacting the Foreign Deserters Act, 1852 (15 & 16 Vict. c. 26). See also the Deserters from Foreign Ships Order, 1934, No. 893.

Forejudger [fr. *forisjudicatio*, Lat.], a judgment whereby a person is deprived of the thing in question. To be forejudged by the Court is when an officer or attorney of any court is expelled the same for some offence, or for not appearing to an action.

Foreman, the presiding member of a jury.

Forensic, belonging to courts of justice.

Forensic Medicine, the science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in a court of justice. It comprehends, in a more extensive sense, *medical police,* or those medical precepts which may prove useful to the legislature or the magistracy. This science is also termed *medical jurisprudence, legal medicine,* and *state medicine.* Consult the works of Taylor, Guy, Beck, or Tidy on the subject.

Foreschoke [*derelictum*, Lat.], forsaken ; disavowed.—10 Edw. 2, c. 1.

Foreshore. ' The shore and bed of the sea and of every channel, creek, bay, estuary, and of every navigable river of the United Kingdom as far up the same as the tide flows to the line between the high water mark of ordinary tides and low water mark ' belong to the Crown and its grantees, and the management is transferred from the Commissioners of Woods to the Board of Trade. See s. 7 of the Crown Lands Act, 1866 (29 & 30 Vict. c. 32), subject as in that Act mentioned ; see also Ministry of Transport Act, 1919 (9 & 10 Geo. 5, c. 50). And see BATHING (SEA). Consult *Coulson and Forbes on the Law of Waters.*

For the powers of local authorities to make bye-laws for public bathing, bathing huts and life-saving appliances, see Public Health Act, 1936, ss. 231-234.

There can be no custom giving a right of shooting wildfowl on the foreshore or bed of a tidal navigable river (*Fitzhardinge (Lord)* v. *Purcell*, 1908, 2 Ch. 139).

Forest [fr. *foresta*, Ital.], an incorporeal hereditament, being the right or franchise of keeping, for the purpose of venery and hunting, the wild beasts and fowls of forest, chase, park, and warren (which means all

animals pursued in field sports), in a certain territory or precinct of woody ground and pasture set apart for the purpose, with laws and officers of its own, established for protection of the game.—*Manw. For. Laws.*

The *Charta de Forestâ*, confirmed in parliament, 9 Hen. 3, disafforested many forests unlawfully made. Some of the royal forests still exist, as the New Forest in Hampshire, and Windsor; they are now administered by the Commissioners of Crown Lands and Forestry Commission; see FORESTRY ACTS. A forest is, in general, a royal possession, though it is capable of being vested in a subject. A forest is a right which the owner thereof (whether sovereign or subject) may have either in his own lands or the lands of another, differing from other incorporeal hereditaments, which are rights exercised over another's lands. The owner of a forest is also considered (notwithstanding the general rule that title cannot be made to things *feræ naturæ*) as having a qualified property in the wild animals of chase and venery there found, as long as they continue therein.—1 *Steph. Com*; but the owner of the land could deal with it, provided that they respected forest rights; see *Blanchard* v. *Cawthorne*, (1833) 6 Sim. 155; and VERT.

Forest Courts, fallen into absolute desuetude. They were instituted for the government of the royal forests in different parts of the kingdom, and for the punishment of all injuries done to the deer or venison, to the vert or greensward, and to the covert in which such deer were lodged. They consisted of the Courts of attachments, regard, sweinmote, and justice-seat. The Court of attachments, woodmote, or forty days' Court, was held before the verderers of the forest once in every forty days, to inquire into all offences against vert and venison. The Court of *regard*, or survey of dogs, held every third year, for the expeditation of mastiffs. The Court of *sweinmote*, held before the verderers thrice in every year, the sweins or freeholders within the forest composing the jury. It inquired into the oppressions and grievances committed by the officers of the forest, and tied presentments certified from the Court of attachments against offences in vert and venison. The Court of *justice-seat*, held before the chief itinerant judge, or his deputy, to hear and determine all trespasses within the forest, and claims of franchise, etc., therein arising. This was a Court of Record: but since the Revolution, in 1688, the forest laws have fallen into total disuse.—3 *Steph. Com.*

Forestage, duty or tribute payable to the king's foresters.—*Cowel.*

Forestalling the Market, buying up merchandise on its way to market, or dissuading persons to bring their goods there, or persuading them to enhance the price when there. It was deemed an offence against public trade, but the statutes prohibiting it were repealed by 7 & 8 Vict. c. 24.

Forestry Acts, 1919, 1923 and **1927, The.** The Act of 1919 provided for the establishment of a Forestry Commission for the United Kingdom and for the promotion of afforestation and the production and supply of timber. The Forestry (Transfer of Woods) Act, 1923, provided for the transfer of certain properties to the Forestry Commissioners and amended the former Act. The 1927 Act increased the number of Forestry Commissioners, and gave them the power to make bye-laws in certain cases. Reference should be made to the Acts themselves.

Forethought Felony. See MURDER.

Forfang, or **Forfeng** [fr. *fore*, Sax., before, and *fangen*, to take], the taking of provisions from any person in fairs or markets before the royal purveyors were served with necessaries for the sovereign.—*Cowel.* Also the seizing and rescuing of stolen or strayed cattle from the hands of a thief, or of those having illegal possession of them; also the reward fixed for such rescue.

Forfeiture, a penalty for an offence or unlawful act, or for some wilful omission of a tenant of property whereby he loses it, together with his title, which devolves upon others.

Forfeiture resulted from the following circumstances:—(1) Treason, misprision of treason, felony, murder, self-murder, *præmunire*, and striking or threatening a judge. But the Forfeiture Act, 1870 (33 & 34 Vict. c. 23), enacted that no conviction, etc., for treason or felony, or *felo de se*, shall cause any forfeiture except as consequent on outlawry. The Act also makes provision for the appointment by the Crown of administrators of the property of convicts.

(2) Conveyance contrary to law, as transferring a freehold to an alien, who formerly could take lands but could not hold them; wherefore upon office found the Crown was entitled to the land. But the British Nationality and Status of Aliens Act, 1914 (substituted for the Naturalization Act, 1870), subject to certain provisoes, enables aliens to hold real and personal property. See ALIEN.

(3) Alienation in mortmain, or to any

kind of corporation (which was supposed to hold property in a dead hand locked up from all change or transfer), was prohibited under pain of forfeiture to the lord. The Crown may, however (see MORTMAIN), grant a licence which will avoid this forfeiture. By the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), s. 1, land assured to or acquired by or on behalf of any corporation in mortmain otherwise than under a licence under the Crown or of a Statute shall be forfeited to the Crown or the mesne lord. Apparently, the L. P. Act, 1922, abolishing copyholds, may not have affected the claim to forfeiture by mesne lords under this head.—*Halsbury, L.E.*, 2nd ed., vol. 8, p. 83, n.

(4) Disclaimer, which is a tenant's denial of his landlord's title, by setting up a title either in himself or any other person. This operates as a forfeiture of all interest in such tenant.

(5) Alienation without licence of copyhold land for more than a year was usually a cause of forfeiture before the Law of Property Act, 1922, which enfranchised copyhold and customary lands (s. 128), but forfeiture incurred for reasons other than alienation in fee and alienation without licence was included among the manorial incidents which were saved by the Act until extinguished as provided by the Act. Relief against forfeiture included in the last-mentioned incidents is provided for under s. 132 of the L. P. Act, 1922, and s. 146 of the L. P. Act, 1925, and the compensation payable upon any kind of forfeiture or copyhold or customary land is set out in L. P. Act, 1922, 13th Sched., Part. II.

(6) Breaches of covenants or conditions contained in a lease or other instrument, when it is stipulated that they shall occasion forfeiture; a forfeiture under these circumstances may be waived by the person entitled to take advantage of it, by express declaration, or by any act inconsistent with it, or admitting a continuing tenancy, as by receiving rent accrued due since the breach, or distraining for the same, or by subsequently encouraging the tenant to make subsequent improvements; but he must have fully known of the act of forfeiture at the time of waiver, otherwise it will be no waiver.

Relief against forfeiture of the lease, where the breach was by non-payment of rent, was granted by courts of equity from very early times. Relief may be granted under the Judic. Act, 1925, s. 46, replacing Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 1. This relief is obtainable at any time within six months after execution (C. L. P. Act, 1852, ss. 211, 212.) See *Barratt* v. *Richardson*, 1930, 1 K. B. 686. Where the breach was by not insuring, relief was granted under repealed parts of the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), and of the Common Law Procedure Act, 1860, but only on the conditions that no loss had happened, that an insurance was on foot at the time of the application for the relief, and that the relief should not be granted again. Except as above, and except in rare cases of accident or surprise, no relief was grantable, however trivial the breach might have been, and however great might be the improved value of the demised premises, until the Conveyancing Act, 1881 (44 & 45 Vict. c. 41) (which repealed the prior enactments as to relief against forfeiture for non-insurance, but left standing those as to forfeiture for non-payment of rent), by s. 14, conferred on the High Court a general power to relieve againts forfeiture. Sect. 14 was replaced and extended by s. 146 of the L. P. Act, 1925. By this section, before proceeding to enforce a forfeiture, the lessor must serve on the lessee a notice requiring the lessee to pay compensation for the breach, and also remedy it if it be capable of remedy. If the parties fail to come to terms, and the lessor seek to enforce the forfeiture, the lessee may apply to the Court, which may grant or refuse relief as it thinks fit. The section does not apply to a breach of covenant against assigning when the breach occurred before 1925, and see also Landlord and Tenant Act, 1927, s. 19 (7), or to a condition for forfeiture upon bankruptcy, or in the case of a mining lease, to a covenant to allow the lessor to inspect books. The benefit of the Act was extended to under-lessees by the Conveyancing Act, 1892 (55 & 56 Vict. c. 13), now replaced by the L. P. (Amend.) Act, 1929. See also County Courts Act, 1934, s. 180.

It is very material to observe that the section is (1) except in regard to assignments in breach of covenant before 1926, retrospective, so as to apply to leases made before its passing, and (2) incapable of being nullified by any stipulation of the parties.

(7) Waste. The Statute of Gloucester (6 Edw. 1, c. 5), seems to have this operation; but the better opinion is that the forfeiture was abolished along with the writ of waste

by 3 & 4 Wm. 4, c. 27, s. 36, and at all events is it never insisted on.

Besides the grounds of forfeiture mentioned above, there are two which obtain in reference to ecclesiastical property, viz., (1) lapse ; and (2) simony.

Forfeiture of Marriage, an ancient writ which lay against him who, holding by knight's service and being under age and unmarried, refused to marry the woman whom the lord offered him without disparagement, and married another.—*Fitz. N. B.* 141 ; *Reg. Brev.* 163.

Forfeiture of Shares. The number of shares forfeited by a limited company must be stated in the Annual Return (Companies Act, 1929, ss, 106, 110), and see Articles 23 to 29 of Table A., which enable directors to forfeit shares of a member failing to pay calls or instalments or any other sum payable in respect of a share : see *Hopkinson* v. *Mortimer, Harley & Co.*, 1917, 1 Ch. 646.

Forgabulum, or **Forgavel,** a quit-rent ; a small reserved rent in money.—*Jac. Law Dict.*

Forgery [fr. *forger*, Fr. ; or *fingo*, Lat.], the *crimen falsi*, or the false making or alteration of an instrument, which purports on the face of it to be good and valid for the purposes for which it was created, with a design to defraud. The forged instrument must be false in itself. The mere subscribing a note, given as the party's own, by a fictitious name, was held not to be forgery (*Reg.* v. *Martin*, (1879) 5 Q. B. D. 34).

Forgery at Common Law was a misdemeanour but most forgeries have been made felony by statute. Many of these statutes were consolidated by 11 Geo. 4 & 1 Wm. 4, c. 66, repealed and replaced by the Forgery Act, 1861 (24 & 25 Vict. c. 98), but the law now principally depends on the Forgery Act, 1913 (3 & 4 Geo. 5, c. 27, ' an Act to consolidate, simplify and amend the law relating to forgery and kindred offences.' It repeals such portions of sixty-seven previous Acts as relate to forgery and like offences and presents the law in a clear and concise form. For the purposes of the Act forgery is defined as ' the making of a false document in order that it may be used as genuine,' and in the case of the seals and dies mentioned in the Act, ' the counterfeiting of a seal or die,' and forgery ' with intent to defraud or deceive ' is made punishable as therein provided. A document is ' false ' if ' the whole or any material part thereof purports to be made by or on behalf or on account of a person who did not make it nor authorize its making ' ; or if, although so made, ' the time or place of making, where either is material, or, in the case of a document identified by number or mark, the number or any distinguishing mark identifying the document, is falsely stated therein ' (s. 1). It is immaterial in what language the document is expressed or in what place it is expressed to take effect, or that the document when forged is incomplete, or does not purport to be such a document as would be binding or sufficient in law (*ib.*). Forgery of (*inter alia*) any will, deed or banknote is punishable with penal servitude for life, and forgery of any security, document of title, policy, charterparty, etc., with penal servitude for not more than fourteen years (s. 2). Forgery of certain official and other documents is dealt with by s. 3, the offence being made a felony and punishable with penal servitude in some cases for life and in others for any term not exceeding seven years. Where the forgery is not a statutable felony it is declared a misdemeanour (s. 4). Section 5 deals with forgery of seals and dies, s. 6 with the offence of uttering forged documents, and s. 7 with demanding property on forged documents. The possession of forged documents, seals and dies is dealt with by s. 8, and the making or being in possession of paper or implements for the forgery of banknotes,Treasury Bills, Revenue paper, etc., by s. 9, the provisions in both these cases being most stringent ; and see s. 15 as to possession. Accessories and abettors are made liable as principals (*s.* 11), and there is a special provision for the issue of search warrants (s. 16).

It is not necessary to set forth a copy or a *fac simile* of the forged document, seal or die in the indictment, a description of it being sufficient ; nor to allege or prove an intent to defraud a particular person (s. 17).

Forgery was a capital felony until 1832, and in the three years before 1829, when the last execution took place, fifteen persons were hanged for it.

No title to be registered can be acquired by a forged transfer of shares, but the Forged Transfers Act, 1891 (54 & 55 Vict. c. 43), which was suggested by *Barton* v. *London & North Western Ry. Co.*, (1889) 24 Q. B. D. 77, and is made retrospective by the Forged Transfers Act, 1892 (55 & 56 Vict. c. 36), enables, but does not oblige, companies and local authorities to make compensation, ' by a cash payment out of their funds, for any loss arising from a transfer " of their shares, stock, or securities,"

in pursuance of a forged transfer, or of a transfer under a forged power of attorney.' As to who bears the loss occasioned by a forged transfer, see *Bank of England* v. *Cutler*, 1907, 1 K. B. 889; 1908, 2 K. B. 208. See also FALSE TRADE DESCRIPTION.

Forinsecum manerium, that part of a manor which lies without the town, and is not included within the liberties of it.—*Paroch. Antiq.* 351.

Forinsecum servitium, the payment of extraordinary aid.—*Ken. Glos.*

Forinsecus, outlawed, or on the outside.

Forisbanitus, banished.—*Mat. Par.* 1245.

Forisfacere, i.e., *extra legem seu consuetudinem facere*—to do something beyond law or custom.—*Co. Litt.* 59.

Forisfactura, forfeit.

Forisfamiliation. 'A son was said to be forisfamiliated' (says *Reeves*, i. 110), 'if his father assigned him part of his land and gave him seisin thereof . . . and the son expressed himself satisfied with such portion.'

Forler-land, land in the diocese of Hereford, which had a peculiar custom attached to it, but which has been long since disused, although the name is retained.—*Butterfield's Surv.* 56.

Form. The structure of a document or its contents apart from the substance. See *Conveyancing Forms and Precedents*; *Chitty's Forms*; *Bullen and Leake's Prec. of Pleading*.

Statutory Forms (see, e.g., the forms of mortgage in the Third Schedule to the Law of Property Act, 1925), are usually permissive, but a bill of sale (see that title) is void unless made 'in accordance with' the form in the schedule to the Bills of Sale Act, 1882; see *Thomas* v. *Kelly*, (1888) 13 App. Cas. 506.

Formâ pauperis, suing in. See IN FORMÂ PAUPERIS.

Formalities, robes worn by the magistrates of a city or corporation, etc., on solemn occasions.

Formedon, a writ in the nature of a writ of right, which was the remedy for a tenant-in-tail on a discontinuance. It was of three kinds: (1) in descender; (2) in remainder; (3) in reverter.—3 *Reeves*, 4. Abolished by the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27), s. 36.

Formella, a certain weight of above 70 lb., mentioned in 51 Hen. 3.—*Cowel.*

Formulary, a form, a precedent.

Fornagium [fr. *fournage*, Fr.], the fee taken by a lord of his tenant, who was bound to bake in the lord's common oven (*in furno domini*), or for a permission to use his own.—*Plac. Parl.* 18 Edw. 1.

Fornication [fr. *fornix*, a brothel, Lat.], the intercourse of a man with a prostitute; the act of incontinency in single persons; if either party be married, it is adultery. During the Commonwealth, a second offence was made felony without benefit of clergy.—*Scobel*, 121. After the Restoration the offence was left to be dealt with by the spiritual Court according to the rules of the canon law. Proceedings under the canon law for incontinency have fallen into desuetude.—4 *Steph. Com.* See PROSTITUTE.

Forprise, an exception or reservation; also an exaction; or taking beforehand.—*Cowel.*

Forschel, a strip of land lying next to the highway.

Forschoke, forsaken. See FORESCHOKE.

Forses (*catatudæ*, Lat.], waterfalls.—*Cam. Brit.*

Forspeaker, an attorney or advocate in a cause.—*Blount.*

For-speca, For-spreca, prolocutor, paranymphus.—*Anc. Inst. Eng.*

Fortalice, a fortress or place of strength, which anciently did not pass without a special grant.—11 Hen. 7, c. 18.

Forthcoming, Action of, a process for effectuating the arrestment (attachment) of debts due to one's debtor.—*Scots Law*; see 39 & 40 Vict. c. 70, s. 47.

Forthwith. When a defendant is ordered to plead *forthwith*, he must plead within twenty-four hours. When a statute or rule of Court requires an act to be done 'forthwith,' it means that the act is to be done within a reasonable time having regard to the object of the provision and the circumstances of the case (*Ex parte Lamb*, (1881) 19 Ch. D. 169; 2 *Chit. Arch. Prac.*, 14th ed., 1435).

Fortia, power, dominion, or jurisdiction.—*Leg. Hen.* 1, c. 29.

Fortifications. See DEFENCE ACTS.

Fortility, a fortified place; a castle; a bulwark.—11 Hen. 7, c. 18.

Fortlett, a place or fort of some strength; a little fort.—*Old N. B.* 45.

Fortuna, treasure-trove.—*Jac. Law Dict.*

Fortune-tellers, persons pretending or professing to tell fortunes are punishable as rogues and vagabonds under the Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4. See, further, GYPSIES; PALMISTRY; and VAGRANT.

Fortunium, a tournament or fighting with spears; and an appeal to fortune therein.—*Mat. Par.* 1241.

Forty-days' Court, the Court of attach-

ment in forests, or wood-mote Court. See FOREST.

Forum, a court; the court to the jurisdiction of which a party is liable. *Forum competens*, a court having jurisdiction over the suit; *forum incompetens*, a court not having such jurisdiction.

Forum originis [Lat.], the court of the country of a man's domicile by birth.

Forwarding Merchant, one who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, having no concern in the vessels or waggons by which they are transported, and no interest in the freight, and not being deemed a common carrier, but a mere warehouseman and agent.—*Story on Bailments*, 509.

Fossa, a ditch full of water wherein women committing felony were drowned; also a grave. See FURCA.

Fossagium, the duty levied on the inhabitants for repairing the moat or ditch round a fortified town.

Fossway [fr. *fossus*, Lat., digged], one of the four ancient Roman ways through England. Trevisa describes it thus: 'The first and gretest of the foure weyes is called *fosse*, and stretches oute of the southe into the north, and begynneth from the corner of Cornwaille, and passeth forth by Devenshyre, by Somersete, and forth besides Tetbury, upon Cotteswold, besides Coventre, unto Leycester, and so forth by wylde pleynes towards Newerke, and endeth at Lincoln.'—*Polychron.* l. 1, c. xiv.

Fosterland, lands allotted for the maintenance of a person.

Fosterlean, the remuneration fixed for the rearing of a foster-child; also the jointure of a wife.—*Jac. Law Dict.*

Foujdar, Fojedar, Phousdar, Fogedar, under the Mogul Government a magistrate of the police over a large district, who took cognizance of all criminal matters within his jurisdiction, and sometimes was employed as receiver-general of the revenues.—*Indian.*

Foujdarry Court, a tribunal for administering criminal law.—*Indian.*

Foul Shop, in the language of trade unionism, means a shop in which non-unionists are employed; see *Rigby* v. *Connol*, (1880) 14 Ch. D. 482.

Foundation, the founding or building of a college or hospital. The word is taken in two different senses, '*fundatio incipiens*' and '*fundatio perficiens*'; as to the politic capacity, the act of incorporation is metaphorically called the foundation, but as to the dotation, the first gift of the revenues is called the foundation, and he who gives it is the founder in law (*Sutton's Hospital case*, (1613) 10 Rep. 1; 1 *Bl. Com.* 468).

Foundling-hospitals, charitable institutions which exist in most countries for taking care of infants forsaken by their parents, such being generally the offspring of illegal connections. The Foundling Hospital Act is the 13 Geo. 2, c. 29, and other personal Acts.

Foundries. Places in which the process of founding or casting metal is carried on, 'except any premises in which such process is carried on by not more than five persons and as subsidiary to the repair or completion of some other work,' are regulated as 'non-textile factories' by the Factory and Workshop Act, 1901. See FACTORY.

Fourcher, to put off, or delay an action.—*Termes de la Ley.*

Fourching, the act of delaying legal proceedings.—*Termes de la Ley.*

Four-corners of an instrument; that which is contained on the face of a deed, without any aid from knowledge of the circumstances under which it is made, is said to be 'within its four corners,' because every deed is still supposed to be written on one entire skin, and so to have but four corners.

Fourierism, an elaborate form of non-communistic Socialism. See *Mill's Pol. Econ.*, Bk. II. c. 1.

Four Seas. These are (1) The Atlantic, which comprises the Irish Sea and St. George's Channel; (2) The North Sea; (3) The German Ocean; and (4) the English Channel. See *Woolrych on Waters*. Before the reign of James the First, the four seas were understood with more restriction, the Scotch seas being excluded. The expression 'within the four seas,' '*intra quatuor maria*,' means 'within the kingdome of England, and the dominions of the same kingdome.'—*Co. Litt.* 107 *a*.

Fowls, Domestic. These can be the subject of larceny. If they stray on to the land of others they can be distrained damage feasant, but not killed. If they stray on to a highway and cause injury to a cyclist, their owner is not responsible in damages (*Hadwell* v. *Righton*, 1907, 2 K. B. 345). As to the prevention of cruelty to fowls, see the Poultry Act, 1911, and the Protection of Animals Act, 1911, and Diseases of Animals Act, 1935 (25 & 26 Geo. 5, c. 31), and see ANIMALS.

Fowls of Warren. According to Coke they

are the partridge, quail, rail, pheasant, woodcock, mallard, heron, etc. According to Manwood, they are the pheasant and partridge only.—*Co. Litt.* 233 *a*; *Manw.* (3rd ed.) 95.

Foxhunting upon the land of another without leave is a trespass (*Paul* v. *Summerhayes*, (1878) 4 Q. B. D. 9).

Fox's Act, 32 Geo. 3, c. 60 (the Libel Act, 1792), which secured to juries, upon indictments for libel, the right of pronouncing a general verdict of guilty or not guilty upon the whole matter in issue, and no longer bound them to find a verdict of guilty on proof of the publication of the paper charged to be a libel, and of the sense ascribed to it in the indictment. See LIBEL. Consult *Odgers on Libel*.

Foy [fr. *foi*, Fr.], faith; allegiance.

Fractionem diei non recipit lex. *Lofft*, 572.—The law does not take notice of a fraction of a day. See next title.

Fraction of a Day, the law does not recognize, except in cases of necessity and for the purposes of justice: see *Clarke* v. *Bradlaugh*, (1881) 8 Q. B. D. 63; when, therefore, a thing is to be done upon a certain day, all that day is allowed to do it in (*Gelmini* v. *Moriggia*, 1913, 2 K. B. p. 552). An Act of Parliament becomes law as soon as the day on which it is passed commences (*Tomlinson* v. *Bullock*, (1879) 4 Q. B. D. 230), unless the commencement be expressly postponed; and every minor comes of age on the day preceding the twenty-first anniversary of his birthday, and may act as of full age the first moment of that day.

Fractitium, arable land.

Fractura navium, wreck of shipping at sea.

Franchilanus, a freeman.—*Chart. Hen.* 4.

Franchise, an incorporeal hereditament synonymous with liberty. A royal privilege or branch of the Crown's prerogative subsisting in the hands of a subject. It arises either from royal grant, or from prescription, which pre-supposes a grant. The kinds are almost infinite, but the principal are: bodies corporate, the right to hold Courts-leet, fairs, markets, ferries, forests, chases, parks, warrens, fisheries. The remedy for disturbance is an action. See COPYHOLDS.—1 *Steph. Com.*

Also, the right of voting at an election for a member of parliament. See ELECTION.

Franchise Prisons, abolished by 21 & 22 Vict. c. 22.

Francigenæ, a name anciently applied to foreigners generally.—*Jac. Law Dict.* See FRENCHMAN.

Frank. Members of parliament, peers, etc., formerly had the privilege of franking their letters by autograph. It was abolished upon the introduction of the penny postage by 3 & 4 Vict. c. 96.

Frank-almoigne, free alms. A spiritual tenure whereby religious corporations, aggregate or sole, held lands of the donor to them and their successors for ever. They were discharged of all other except religious services, and the *trinoda necessitas*. It differs from tenure by divine service, in that the latter required the performance of certain divine services, whereas the former, as its name imports, is free. This tenure was expressly excepted in the 12 Car. 2, c. 24, s. 7, and therefore still subsisted in some few instances until 1926, when by repeal of the exception in 12 Car. 2, c. 24, s. 7, under the Administration of Estates Act, 1925, 2nd Sched., the tenure became converted into free and common socage.

Frank-bank. See FREE-BENCH.

Frank-chase, a liberty of free chase.

Frank-fee, freehold lands exempted from all services, but not from homage.

Frank-ferm, lands or tenements changed in the nature of the fee by feoffment, etc., out of knight service, for certain yearly acknowledgments.—*Britton*, c. lxiv.

Frankfold. See FOLDAGE.

Frank-law, the benefit of the free and Common Law of the land.—*Crompton Juris.* 156.

Franklin, a steward; a bailiff of land.

Frank-marriage [*in libero maritagio*, Lat.], a species of entailed estates, now grown out of use, but still capable of subsisting. When tenements are given by one to another, together with a wife, who is a daughter or cousin of the donor, to hold in frank-marriage, the donees shall have the tenements to them and the heirs of their two bodies begotten, i.e., in special tail, without the words of limitation such as 'heirs of his body.' The legal estate in estates tail has been abolished by L. P. Act, 1925, s. 1, and see s. 130, *ibid.* for the words of limitation necessary to create an equitable interest in tail For the word *frank-marriage, ex vi termini*, both creates and limits an inheritance, not only supplying words of descent, but also terms of procreation. The donees are liable to no service except fealty, and a reserved rent would be void until the fourth degree of consanguinity be past between the issues of the donor and donee, when they were capable by the law of the church of intermarrying.—*Litt.* s. 19; and see *Challis on Real Property*.

Frank-pledge, a surety to the sovereign for the good behaviour of freemen. Living under frank-pledge has been termed living under law.—*Fleta*, i. 47. See COURT-LEET.

Frank-tenement [*liberum tenementum*, Lat.], a freehold estate.

Frassetum, a wood or wood-ground where ash-trees grow.—*Co. Litt.* 4 *b*.

Frater consanguineus, a brother by the father's side, opposed to *frater uterinus*, a brother by the mother's side.

Frater fratri uterino non succedet in hæreditate paternâ.—(A brother shall not succeed a uterine brother in the paternal inheritance.)

The maxim is now superseded; for by the Inheritance Act, 1833 (3 & 4 Wm. 4, c. 106), s. 9, the half-blood inherit next after any relation in the same degree of the whole blood and his issue where the common ancestor is a male, and next after the common ancestor where a female, so that the brothers of the half-blood, on the part of the father, inherit next after the sisters of the whole blood on the part of the father and their issue, and the brothers of the half-blood on the part of the mother inherit next after the mother.

This rule still applies in regard to (*a*) the devolution of entailed interests in real or personal property (L. P. Act, 1925, s. 130 (4), and L. P. (Amend.) Act, 1924, 9th Sched.), (*b*) the ascertainment of heirs as purchasers under limitations by deed or will coming into operation after 1925 under s. 132, *ibid.*, and (*c*) the rights of lunatics or defectives living and of full age on 1st January, 1926, as provided by Administration of Estates Act, 1925, s. 51 (2). In other respects the rule has been altered by the assimilation of intestate succession to real and personal estates of persons dying after 1925. See HALF-BLOOD.

Frater nutricius, a bastard brother.

Frater uterinus, a brother by the mother's side, opposed to *frater consanguineus*.

Fraternia, a fraternity or brotherhood.

Fraternities, bodies corporate.

Fratres conjurati, sworn brothers, or companions for the defence of their sovereign, or for other purposes.—*Hoved.* 445.

Fratres pyes, certain friars who wore white and black garments.—*Walsingham*, 124.

Fratriage, a younger brother's inheritance.

Fratricide, the killing of a brother or sister.

Fraud. A term used in a variety of meanings. At Common Law, fraud is actionable under the heading of *deceit* (*q.v.*).

In equity and upon the equitable principles which are now applicable in any court of law, fraud may be described as an infraction of the rules of fair dealing. For the action at law intention and representation (*q.v.*) are material. In equity an act or its consequences to the person aggrieved may be of greater importance than the intention of the defendant or any representation made to the plaintiff, and the same may be said of acts which have been stigmatized as fraudulent by statute. In *Patrick* v. *Lyon*, 1933, Ch. 786, it was held that an offence under s. 275 of the Companies Act, 1929, required a proof of fraud while a contravention of the law under s. 265 did not necessarily imply moral blame.

It is impossible to lay down a definition completely comprehending fraud, and no rule can, from the very nature of the subject, be invariable. Fraud is infinite: '*Crescit in orbe dolus*'; and were the Courts to prescribe the limits of their equitable relief against fraud, or to define the species of evidence receivable in support of it, their decrees would be continually eluded: to afford complete protection new principles must be created to meet new species of fraud.

Concealed fraud. In the case of a designed fraud, whereby any person is, by concealment of material facts, prevented from asserting his title to *land or rent*, the limitation of time (12 years) within which he may sue in equity for the land or rent runs from the time at which such fraud was or might with reasonable diligence have been first known or discovered; see Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27), s. 26; *Vane* v. *Vane*, (1873) L. R. 8 Ch. 383; *Lawrance* v. *Lord Norreys*, (1890) 15 App. Cas. 210; see also LACHES.

Constructive fraud. Such acts or contracts as, though not originating in any actual evil design or contrivance to perpetrate fraud or injury upon others, yet, by their tendency to deceive or mislead, or to violate public or private confidence, or to injure the public interests, are equally reprehensible with positive fraud, and therefore equally prohibited.

Thus, to prevent injustice and shut out inducement to wrong, certain transactions are held to be fraudulent, as contrary to general policy, or to fixed legal principles; as marriage-brokerage bonds, and contracts in restraint of trade. Other transactions again, growing out of a special confidential or fiduciary relation between the parties, are watched with special jealousy, because they

afford the means of taking advantage of or exercising undue influence over others; such are transactions between parent and child, attorney and client, principal and agent, guardian and ward, trustee and *cestui que trust*, partners, etc. Others are of a mixed character, combining the ingredients of the preceding with others of a peculiar nature; but they are chiefly prohibited because they operate as a fraud upon the private rights, interests, duties, or intentions of third parties; or compromise the private interests, rights, or duties of the parties themselves, such as secret composition deeds, voluntary conveyances, etc.—1 *St. Eq. Jur.* 213. For instances of acts which have been declared to be or treated as fraudulent by statute, see MISFEASANCE; PROSPECTUS; WINDING-UP; FRAUDULENT PREFERENCE; FRAUDULENT CONVEYANCES; PASSING OFF.

Fraud on a Power. The name given to the execution of a limited power for a purpose outside its limits, either at the expense of the intended object or to obtain a benefit to the donee of the power or to extend or restrict the appointment beyond the intention; proof of moral turpitude is not necessary.

Frauds, Statute of, 29 Car. 2, c. 3 (A.D. 1676). This famous statute is said to have been framed by Sir Matthew Hale, Lord-Keeper Guilford, and Sir Leoline Jenkins, an eminent civilian. Lord Nottingham used to say of it, that 'every line was worth a subsidy,' and it has been said that at all events the explanation of every line has cost a subsidy, no statute having been the subject of so much litigation. The statute, though it does not apply or have any Act corresponding to it in Scotland, was practically copied by the Irish Parliament in 7 Wm. 3, c. 12, applies generally to the British colonies, and, remarks Mr. Chancellor Kent (2 *Com.* 494, n. (*d*)), 'carries its influence through the whole body of American jurisprudence, and is in many respects the most comprehensive, salutary, and important legislative regulation on record affecting the security of private rights.'

The main object of the statute was to take away the facilities for fraud and the temptation to perjury which arose in verbal obligations, the proof of which depended upon unwritten evidence.

The greater part of the Statute of Frauds has been repealed by the following statutes: Wills Act, 1837 (7 Will. 4 and 1 Vict. c. 26); Civil Procedure Act, 1879 (42 & 43 Vict. c. 59); Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59); Sale of Goods Act, 1893 (56 & 57 Vict. c. 71); Law of Property Act, 1925 (15 Geo. 5, c. 20); Administration of Estates Act, 1925 (15 Geo. 5, c. 23); and Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), s. 162. There now remain in force s. 4 (amended), ss. 10, 11 and 23 and 24 (though repealed as to deaths occurring after 1925), and s. 22.

By sects. 1 and 2 (as replaced by Law of Property Act, 1925, s. 54), all interests in land created by parol and not put in writing and signed by the parties making the same, or their agents lawfully authorized by writing, have the effect of leases at will only, except in the case of a lease taking effect in possession for not more than three years, at the best rent which can be reasonably obtained without taking a fine; and by sect. 3 grants and surrenders were required to be by deed *or* writing signed by the party granting or surrendering, or his agent authorized by writing. Sect. 4 now reads:

> no action shall be brought whereby to charge an executor or administrator upon any special promise, to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person, or to charge any person upon any agreement made upon consideration of marriage [an expression held not to apply to the agreement to marry (*Cork* v. *Baker*, 1 Str. 33)]; or (as replaced by L. P. Act, 1925, s. 40, in regard to land) upon any contract for the sale or other disposition of land or any interest in land, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

The first three sections (materially affected by the Real Property Act, 1845 (8 & 9 Vict. c. 106), reproduced and amended by the L. P. Act, 1925, s. 52, which (subject to exceptions), requires a *deed* instead of a writing) and the 4th are of the greatest practical importance, and have been the subject of very numerous legal decisions.

The equitable doctrine of part performance which enables proof of a contract to be given notwithstanding the Statute of Frauds has been saved by L. P. Act, 1925, s. 40 (2). The doctrine is applied principally to contracts for the sale or purchase of land, but it also applies to other cases in which specific performance would be granted by a Court of Equity. It applies wherever the defendant has obtained some substantial advantage under a parol agreement which, if in writing, would be such as the Court would

direct to be specifically performed (see *McManus* v. *Cooke*, (1887) 35 C. D. p. 681).

The 17th, or, as numbered in the Revised Statutes, the 16th, section provided that no contract for the sale of goods for 10*l.* or more should be good, except the buyer should accept part, *or* give something in earnest to bind bargain or in part payment, *or* some memorandum in writing of the bargain should be made and signed by the parties to be charged or their agents; but this section has been repealed by the Sale of Goods Act, 1893 (see that title), and, as amended, is now represented by s. 4 of that Act.

The statute also contained important provisions as to the making, revocation, etc., of wills devising land, and as to nuncupative wills, etc., which have been repealed by the Wills Act, 1837 (1 Vict. c. 26), but s. 22, relating to the wills of soldiers and sailors, is still in force.

As to what constitutes an agreement not to be performed within a year, see *Reeve* v. *Jennings*, 1910, 2 K. B. 522; as to a promise to answer for the debt, etc., of another person, see *Guild* v. *Conrad*, 1894, 2 Q. B. 884.

See *Addison*, *Leake*, or *Pollock on Contracts*; *Chalmers' Sale of Goods*; *Agnew on the Statute of Frauds*; and *Chitty's Statutes*, tit. '*Frauds*.'

Fraudulent Conveyances, Statutes against, sect. 172 of the L. P. Act, 1925, now provides that every conveyance of property made either or before 1925 with intent to defraud creditors shall be voidable at the instance of any person thereby prejudiced, but the section does not affect disentailing assurances or the law of bankruptcy, nor does it extend to conveyances in good faith either for valuable or for good consideration to any person without notice of fraudulent intent. This enactment replaces 13 Eliz. c. 5 (A.D. 1570), made perpetual by 29 Eliz. c. 5. See *Twyne's case*, (1602) 3 Rep. 80; 1 *Smith's L. C.* 1; *Halifax Bank* v. *Gledhill*, 1891, 1 Ch. 31.

The 27 Eliz. c. 4, s. 2, made perpetual by 39 Eliz. c. 18, enacts that every conveyance of lands, made with the intent to defraud and deceive any person, bodies politic or corporate, who shall purchase the same, shall be deemed (as against that person, etc.) to be utterly void. But the Act shall not be construed to defeat or make void any conveyance, etc., for good consideration and *bonâ fide*. The Act was held to extend to mere voluntary assurances, and accordingly any voluntary conveyance of land was held to be void against a subsequent purchaser for value, even with notice of the voluntary conveyance, but this rule has been abrogated by the Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), now replaced by L. P. Act, 1925, s. 173. A debtor commits an act of bankruptcy if he makes a fraudulent conveyance of his property, i.e., a conveyance which tends to delay or defeat creditors. See Bankruptcy Act, 1914, s. 42; and FRAUDULENT PREFERENCES; VOLUNTARY CONVEYANCES.

Fraudulent Debtors. Punishable by the Bankruptcy Act, 1914, Pt. VII., ss. 154 *et seq.*, and in Ireland by 35 & 36 Vict. c. 57.

Fraudulent Preferences. Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they became due from his own moneys, in favour of any creditor, with a view of giving such creditor a preference over other creditors, is fraudulent and void as against the trustee in bankruptcy if the debtor becomes bankrupt within three months.—Bankruptcy Act, 1914, s. 44; and see Companies Act, 1925, s. 265, in regard to winding-up of companies.

Fraudulent Settlement. If a marriage settlement comprise property without which the settlor cannot pay his debts, or contain a covenant for the future settlement of property in which the settlor has no present interest, then, if the settlor become bankrupt, *and* the settlement appears to have been made to defeat creditors, or was unjustifiable having regard to the state of the settlor's affairs, the Bankruptcy Court may refuse an order of discharge, as if he had been guilty of fraud: Bankruptcy Act, 1914, s. 27.

Fraunc, or **Fraunke Ferme.** See FRANKFERM.

Fraus est cel are frau dem. It is fraud to conceal fraud.

Fraus est odiosa et non præsumenda. *Cro. Car.* 550.—(Fraud is odious and not to be presumed.)

Fraus et dolus nemini patrocinari debent. 3 *Co.* 78.—(Fraud and deceit ought not to benefit any person.)

Fraus legis (fraud of law), using legal proceedings with a felonious purpose.

Fraxinetum, a wood of ash trees.—*Co. Litt.* 4 *b.*

Fray. See AFFRAY.

Fred, peace.

Fredstole, or **Fridstol,** sanctuaries, seats of peace.—*Gibson's Camden.*

Fredwit, a liberty to hold courts and make amerciaments.

Free-bench [*sedes libera*, Lat.], a widow's dower out of copyholds to which she was entitled by the custom of some manors. It is regarded as an excrescence growing out of the husband's interest, and is indeed a continuance of his estate

The term *free-bench* is equally applicable to the estate which, by the custom of some manors, a husband takes in his wife's copyhold lands after her death, and anciently it was indiscriminately applied to that and to the widow's dower, but now the estate of the husband is called his curtesy, while the term free-bench is confined to the widow.

Since free-bench is only claimable by special custom, the estate which a widow is to take, both as to its quantity, quality, and duration, must be such as the custom prescribes. It is generally a third for her life, as at Common Law, but it is sometimes a fourth part only, and sometimes but a portion of the rent. In many manors the wife takes the whole for her life, in others she takes the inheritance.

Frequently the customary right is *durante viduitate*, and in some cases it is confined to her chaste widowhood. See COPYHOLD.

As the right of the wife to free-bench does not, like that to dower at Common Law, attach till the husband's death, any alienation by him alone, to take effect in his lifetime, though without the concurrence of the wife, whether by surrender in court, or by forfeiture, bars the claim of the widow.

Free-bench was abolished in connection with enfranchised land by the Law of Property Act, 1922, 12th Sched., but it survives if the husband died before 1926; in regard to lands enfranchised under the Copyhold Act, 1894, or the L. P. Act, 1922, or if he dies after 1925, but was on the 1st January, 1926, of full age and of unsound mind, and died intestate and without having recovered.

Free-board, or **Freebord.** The precise nature of free-board is not very clear, but it may be described as denoting certain rights enjoyed by the owner of an ancient park over a strip of ground, varying in width in different cases, running along the *outside* of the boundary fence. The right seems to be of the nature of a negative easement, its essence apparently consisting in the right of the owner of the park to have the strip kept free, open and unbuilt upon. Cowel (*Law Dict.*) has the following: 'Freebord, *Francbordus*, in some places they claim as a *Free-bord*, more or less ground beyond or without the fence. In *Mon. Angl.* 2 *par. fol.* 241, it is said to contain two foot and a half.' He then quotes the passage from Dugdale, but inaccurately, the correct reading being as follows: *Et totum boscum quod vocatur Brendewode, cum frankbordo duorum pedum et dimidium, per circuitum illius bosci*, etc.; see *Dugd. Mon.*, ed. *Caley Ellis & Bandinel*, vol. vi. p. 375. *Du Cange* simply says, 'Francbordus *Anglis* freebord,' and cites the same passage from the Monasticon.

In an article in the *Sol. Journ.*, vol. xlvi., p. 118, free-board is defined as 'a certain limited quantity of land, of a width determined by local custom, varying in different places, lying outside the fence of a manor, park, forest, or other estate, or sometimes, but less accurately, as the mere right of claiming the use of such a width of land.' The better opinion, however, would seem to be that free-board is not ownership of the soil but an easement over adjoining soil of another, *jus in alieno solo.*

Free-board is most commonly found in Leicestershire and the Midland counties, and is mentioned in local Inclosure Acts, e.g., in the Oadby Inclosure Act (32 Geo. 2, c. 51); but it also occurs elsewhere: thus there is said to be a free-board of sixteen feet and a half round Richmond Park in Surrey. In '*Shakespeare, His Family and Friends*,' p. 141, Mr. Elton, Q.C., says: 'At Stratford there was another kind of boundary called "free-boards," as mentioned in the Stratford Inclosure Act, 1774. The "free-board" is more usually found as the ancient boundary of a forest. "Frith" meant a tract of common, and the "free-board" was a band of grass-land marking its extent.' For further references to the subject, see *Notes and Queries, First Series*, vol. v., pp. 440, 548, 595, 620. See DEERLEAP.

Freeborough-men, such great men as did not engage like the frank-pledge men for their decennier.—*Jac. Law Dict.*

Free-chapel, a place of worship, so called because not liable to the visitation of the ordinary. It is always of royal foundation, or founded at least by private persons to whom the Crown has granted the privilege.—1 *Burn's Ec. Law*, 298.

Free-course, having the wind from a favourable quarter.—*Merc. Law.*

Freedom of a Borough, the right to enjoy the privileges of a freeman. Before the Municipal Corporations Act, 1835, these

privileges, in many cases valuable either from conferring, especially before the Reform Act, 1832, a limited parliamentary franchise or from other causes, could be sold or given away; but the Act of 1835, s. 3, enacted that no person should be admitted a freeman by gift or purchase, and s. 202 of the Municipal Corporations Act, 1882, repeats this enactment, which is, however, qualified by the Honorary Freedom of Boroughs Act, 1885 (48 & 49 Vict. c. 29), in favour of the admission to be honorary freemen of persons of distinction and persons who have rendered eminent services to the borough (see now Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), ss. 259–265, which reproduces the provisions of the former Acts). The right of a freeman, as such, to a vote at parliamentary elections was abolished by the Representation of the People Act, 1918, which repealed ss. 32 and 56 of R. P. Acts, 1832 and 1867, which had preserved this privilege.

Free Fishery, a royal franchise; being the exclusive right of fishing in a public river. Grants of this description cannot now be made, the Great Charter and its confirmations prohibiting it.

Freehold, one of the two chief tenures known in ancient times by the phrase 'tenure in free socage,' and the only free lay-mode of holding property. It is derived from the feudal system, but the services connected with it were honourable and mild. The annihilation of the feudal severities has left this tenure unshackled, and by far the greater part of the real property in this country is freehold.

Such an interest in lands of frank tenement as may endure not only during the owner's life, but which is cast after his death upon the persons who successively represent him. Such persons were called *heirs*, and he whom they thus represented, the *ancestor*. When the interest extended beyond the ancestor's life, it was called a *freehold of inheritance*, and when it only endured for the ancestor's life, it was a freehold not of inheritance.

An estate to be a freehold must possess these two qualities: (1) immobility, that is, the property must be either land or some interest issuing out of or annexed to land; and (2) indeterminate duration; for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold.

Now by the L. P. Act, 1925, s. 1, the only estates in land which are capable of subsisting or of being conveyed or created at law are an estate in fee simple absolute in possession, and a term of years absolute. All other estates are equitable interests under that Act; descent of legal estates to heirs of persons dying after 1925 has been abolished: A. E. Act, 1925, s. 45. See HEIRS.

Free-holder, he who possesses a freehold estate.

Freehold Land Societies, associations designed for the purpose of enabling the members to purchase, by means of their subscriptions, a piece of land of a sufficient value which is then divided amongst them in certain agreed shares, according to the rules of the Society. As to the mode of winding-up such a society, see *Re Osmondthorpe, etc., Society*, 1913, W. N. 243.

Freeman [*liber homo*, Lat.], an allodial proprietor; one born or made free to enjoy certain municipal immunities and privileges; the privileges of freemen were preserved by the Municipal Corporations Act, 1835, and continued by Part X. of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50). See now Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), ss. 259—265. See FREEDOM OF BOROUGH.

Freemasons, members of the body of Ancient Free and Accepted Masons of England—the oldest and most famous of all secret societies. Its objects, of course, are unknown except to the members, but are believed to be of a charitable nature. Lodges of Freemasons are excepted from the operation of the Unlawful Societies Act, 1799, and the Seditious Meetings Act, 1817, if registered annually: see ss. 5–7 of the Act of 1799 and s. 26 of the Act, 1817.

Freemen's Roll, a list of all persons admitted burgesses or freemen in respect of those rights which were reserved by the Municipal Corporations Act, 1835 (5 & 6 Will. 4, c. 76), as distinguished from the burgesses newly created by the Act, and entitled to the rights which it confers, who are entered on the burgess-roll. See now Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), ss. 259–265.

Free Services, such as were not unbecoming the character of a soldier or a freeman to perform, as to serve under his lord in the wars, to pay a sum of money, or the like.

Free Ships, neutral ships.

Free-warren, a royal franchise, granted by the Crown to a subject for the preservation or custody of beasts and fowls of warren.

Freight, the sum paid by a merchant or other person chartering a ship or part of a ship, or sending goods in a general ship, for

the use of such ship or part, or the conveyance of such goods during a specified voyage or for a specified time. The freight is most commonly fixed by the charter-party, or bill of lading, but in the absence of any formal stipulation on the subject it would be due according to the custom or usage of trade. In the absence of an express contract to the contrary, the entire freight is not earned until the whole cargo be ready for delivery, or has been delivered to the consignee, according to the contract for its conveyance.

Dead freight is the freight agreed to be paid in respect of any part of the cargo which was contracted to be carried and through any fault of the consignor has not been carried.

As to the shipowners' lien for freight, see Merchant Shipping Act, 1894, ss. 494, 495 (repeating ss. 68–70 of the repealed Merchant Shipping Act, 1862). See also Carriage of Goods by Sea Act, 1924. Consult *Maclachlan* or *Temperley on Merchant Shipping ; Abbott on Merchant Ships.*

Frenchman. In early times this term was applied to every stranger or outlandish man. —*Bracton*, lib. 3, tr. 2, c. 15. See FRANCIGENÆ.

Frend-wite [fr. *freond*, Sax., friend, and *wite*, mulct], a fine exacted of him who harboured an outlawed friend.—*Blount.*

Frenum, a composition anciently paid by a criminal to be freed from prosecution, of which the third part was lodged in the Exchequer. See *Montesquieu's Spirit of Laws*, l. 30, c. 20.

Fresh Disseisin, that disseisin which a person might formerly seek to defeat of himself, and by his own power, without resorting to the law ; as where it was not above fifteen days old, or of some other short continuance.—*Britt.* c. v.

Fresh Fine, a fine levied within a year past. Mentioned in 13 Edw. 1, st. 2, c. 45.

Fresh Force, an act of violence (force) newly done in any city, borough, etc.—*Fitz. N. B.* 7 ; *Old Nat. B.* 4.

Fresh Suit, or **Pursuit,** such a present and earnest following a robber as never ceases from the time of the robbery until apprehension. The party thus pursuing had his goods restored to him, which otherwise were forfeited to the Crown.—*Staundf. Pl. Cor.*, lib. 3, cc. 10, 12.

Frettum, Freetum, the freight of a ship ; freight-money.—*Cowel.*

Fretum Britannicum, the straits between Dover and Calais.

Friar [fr. *frère*, Fr. ; *frater*, Lat., brother], an order of religious persons, of whom there were four principal branches, viz. : (1) Minors, Grey Friars, or Franciscans ; (2) Augustines ; (3) Dominicans, or Black Friars ; (4) White Friars, or Carmelites, from whom the rest descend. See 4 Hen. 7, c. 17 ; *Lyndewood de Relig. Domibus*, c. 1.

Friborough, or **Frithburgh,** the Norman term for frank-pledge.

Fribusculum, a temporary separation between husband and wife.—*Civil Law.*

Friendless Man, an outlaw, because he was denied all help of friends.—*Bracton*, lib. 3, tr. 2, c. 12.

Friendly Societies, associations supported by subscription for the relief and maintenance of the members or their wives, children, relations, and nominees, in sickness, infancy, advanced age, widowhood, etc. By the Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), various prior statutes regulating these societies were in whole or in part repealed, and the law consolidated and amended. Such societies may be formed for providing payments on birth of a member's child, or on death of a member, or for relief and maintenance of members and their husbands, wives, children, etc., in old age or sickness, the endowment of members at any age, the insurance of tools against fire, or of cattle, for working men's clubs, or for any other purpose authorized by the Treasury. Before any such society can be properly established, its rules must have been transmitted to and approved of by the central office for the registration of Friendly Societies. The Act was amended in 1876 by 39 & 40 Vict. c. 32 as to conversion of Friendly Societies into branches, and other matters ; in 1879 by 42 Vict. c. 9 as to the receipt of contributions at a greater distance than ten miles from the registered office ; and in 1887 by 50 & 51 Vict. c. 56 as to various small details, s. 18 of that Act empowering the Queen's Printers to print the Act of 1875 ' with the additions, omissions, and substitutions required ' by that Act. There was again a consolidation in 1896 by the Friendly Societies Act, 1896, and the Collecting Societies and Industrial Assurance Companies Act, 1896, but without any amendment of the previous law, and the Act of 1896 was amended by the Friendly Societies Act, 1908, and reprinted as so amended. Sections 1, 62, and 65 of the Act of 1896 were amended by the Friendly Societies Act, 1924. See also Industrial Assurance Act, 1923, which gives further protection to the poorer classes of assured persons. As to the exercise of the domestic jurisdiction

by s. 68 for the settlement of disputes, see *Andrews* v. *Mitchell*, 1905, A. C. 78. The Industrial Assurance and Friendly Societies Act, 1929, made it possible to issue policies on the duration of certain lives for a specified period, and to validate certain endowment policies. As to the conversion of a Friendly Society into a limited company, see *Re Blackburn, etc., Society*, 1914, 2 Ch. 430; Companies (Converted Societies) Act, 1910, which was passed, it is conceived, owing to certain *obiter dicta* in *McGlade* v. *Royal London Mutual Insurance Society*, 1910, 2 Ch. 169. As to winding up, see also Companies Act, 1929, Part X. Consult *Brabrook*, or *Pratt*, or *Fuller on Friendly Societies*.

Friendly Suit, any suit instituted by agreement between the parties to obtain the opinion of the Court upon some doubtful question in which they are interested.

Friends, Society of. See QUAKER.

Friling, or **Freoling** [fr. *freoh*, Sax., free, and *ling*, progeny], a freeman born.

Friscus, fresh, uncultivated ground.—*Dugd. Mon.*, tom. 2, p. 56.

Frith. A tract of common land (*ante* FREEBOARD).

Frith-borg, frank-pledge.—*Cowel.*

Frithbreach, the breaking of the peace.

Frithgar, the year of jubilee, or of meeting for peace and friendship.—*Jac. Law Dict.*

Frithgilda, guildhall; a company or fraternity for the maintenance of peace and security; also a fine for breach of the peace. —*Ibid.*

Frithman, a member of a company or fraternity.—*Blount.*

Frith-soen, or **Frithstol,** an asylum; sanctuary.

Frithsoke, Frithsoken, the right of liberty of frank-pledge.—*Fleta.*

Frithsplot, or **Frith-geard,** a spot or plot of land, encircling some stone, tree, or well, considered sacred, and therefore affording sanctuary to criminals.

Frodmortel, or **Freomortel,** an immunity for committing manslaughter.—*Dugd. Mon.*, tom. 1, p. 173.

From ordinarily excludes the day from which the time is to be reckoned, but is construed inclusively of that day if the context requires it. See *South Staffordshire, etc., Co.* v. *Sickness, etc., Association*, 1891, 1 Q. B. 402, in which an assurance for twelve months from Nov. 24, 1887, was held to exclude Nov. 24, 1887, and to include Nov. 24, 1888. See *English* v. *Cliff*, 1914, 2 Ch. 376, and the cases there referred to.

Fructus. See INCOME; PROFITS.

Fructus augent hæreditatem. *D. A.* 3, 20, 31.—(The yearly increase enhances an inheritance.)

Fructus industriales (emblements).

Fruit, as to larceny of and damage to, see Larceny Act, 1916, s. 8 (3), and Malicious Damage Act, 1861, ss. 23, 24; as to compensation to market garden tenant for fruit trees and fruit bushes, see ss. 48 and 49 and Sched. III. of the Agricultural Holdings Act, 1923, which repealed and replaced the Agricultural Holdings Act, 1908, which itself had replaced the Market Gardeners Compensation Act, 1895. See *Saunders-Jacob* v. *Yates*, 1933, 2 K. B. 240 (market garden includes part of private premises so treated). As to importation and marking of foreign fruit, see AGRICULTURAL ACTS (marketing—produce—returns).

Fruit Fallen, the produce of any possession detached thereform, and capable of being enjoyed by itself. Thus, a next presentation, when a vacancy has occurred, is a fruit fallen from the advowson.

Frumgyld, the first payment made to the kindred of a person slain, the recompense for his murder.—*Leg. Edm.*

Frumstol, original or paternal dwelling.—*Anc. Inst. Eng.*

Frusca terræ, waste and desert lands.—*Dugd. Mon.*, tom. 2, p. 327.

Frussura, a breaking; ploughing.—*Cowel.*

Frustration. The unforeseen determination or prevention of a contract by reason of the destruction of the subject-matter or other common ground forming the basis of the agreement. See IMPOSSIBILITY.

Frustrum terræ, a piece or parcel of land.—*Co. Litt.* 5 *b.*

Frutectum, Frutettum, Fruticetum, a place where shrubs or herbs grow.—*Jac. Law Dict.*

Frymith, Fynmith, the affording harbour and entertainment to any one.—*Anc. Inst. Eng.*

Frythe, a plain between woods. — *Co. Litt.* 5 *b.* See FRITH.

Fuage. See FUMAGE.

Fuer, flight. It is of two kinds: (1) *fuer in fait* or *in facto*, where a person does apparently and corporally flee; (2) *fuer in ley*, or *in lege*, when being called into the county court he does not appear, which legal interpretation makes flight.—*Staund. Pl. Cor.* lib. 3, c. 22.

Fuero jurgo, a code of Spanish law, said to be the most ancient in Europe.

Fuga catallorum, a drove of cattle.—*Fleta.*

Fugacia, a chase.—*Blount.*

Fugam fecit (he has made flight), said of a person who is found by inquisition to have fled for felony, etc., upon which forfeiture of goods took place. Obsolete.—7 & 8 Geo. 4, c. 28, s. 5; and see 33 & 34 Vict. c. 23.

Fugatio, a privilege to hunt.—*Blount.*

Fugatores carrucarum, waggoners who drive oxen without beating or goading.—*Fleta,* l. 2, c. lxxviii.

Fugitation. In Scotland, when a criminal does not obey the citation to answer, the Court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the Crown.

Fugitive Offenders. Where a person accused of any offence punishable by imprisonment with hard labour for twelve months or more, has left that part of his Majesty's dominions where the offence is alleged to have been committed, he is liable, if found in any other part of his Majesty's dominions, to be apprehended and returned in manner provided by the Fugitive Offenders Act, 1881, to the part from which he is a fugitive; the Act has been amended by the Fugitive Offenders (Protected States) Act, 1915. See *R.* v. *Brixton Prison* (*Governor*), 1907, 1 K. B. 696; and see EXTRADITION.

Full Age, twenty-one years. A man is competent in law to do anything as a person of full age on the day *preceding* his 21st birthday, because the completion of the 21st year is supposed to belong as much to the day *before* as to the day *after* the imaginary interval at which it takes place.—*Hals. L. E.*, tit. '*Age.*'

Full Compensation. See s. 16 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 16), *Chitty's Statutes*, tit. '*Railways,*' and s. 17 of the Electric Lighting Act, 1882 (45 & 46 Vict. c. 56), *ibid.*, tit. '*Electric Lighting,*' by which 'full compensation' is granted for damage by exercise of the powers under the Acts. See COMPENSATION.

Full Court. The Judge Ordinary, with two other members of the Court for Divorce and Matrimonial Causes, constituted the Court of Appeal, and in some instances the Court of original jurisdiction, under the name of the Full Court of Divorce, the jurisdiction of which was transferred to the Court of Appeal by the Jud. Act, 1881.

Fullum aquæ, a fleam or stream of water.

Fumage, Fuage, or **Fouage** (vulgarly called smoke-farthings), a tax paid to the sovereign for every house that had a chimney. It is probable that the hearth-money, imposed by 13 & 14 Car. 2, c. 10, took its origin hence. This hearth-money was declared a great oppression, and abolished by 1 W. & M., st. 1, c. 10; but a tax was afterwards laid upon all houses, except cottages, and upon all windows, by 7 Wm. 3, c. 18. The window duty was repealed by 14 & 15 Vict. c. 36.

Function [fr. *fungor,* Lat., to perform], employment; discharge of office.

Functus Officio, a person who has discharged his duty, or whose office or authority is at an end.

Fundi patrimoniales (lands of inheritance).

Funditores, pioneers.—*Jac. Law Dict.*

Funds, public, the name given to the public funded debt due by Government. The practice of borrowing money to defray a part of the war expenditure began, with us, in the reign of William III. In the infancy of the practice it was customary to borrow upon the security of some tax, or portion of a tax, set apart as a fund for discharging the principal and interest of the sum borrowed. This discharge was rarely effected. The public exigencies still continuing, the loans were continued, or the taxes again mortgaged for fresh ones. At length the practice of borrowing for a fixed period, or, as it is called, upon terminable annuities, was abandoned, and loans made upon interminable annuities, or until it might be convenient for the Government to pay off the principal. Such loans are called Funded Debt, or 'The Funds'; loans for a fixed period are said to be 'Unfunded."

In the beginning of the funding system the term 'fund' meant the taxes or funds appropriated to the discharge of the principal and interest of loans. Those who held Government securities and sold them to others, selling, of course, a corresponding claim upon such fund. But after the debt began to grow large, and the practice of borrowing upon interminable annuities had been introduced, the meaning of 'fund' was changed, and instead of signifying the security upon which loans were advanced, it has, for a long time, signified the principal of the loans themselves.

The National Debt is secured upon all the 'funds' or taxes of Great Britain. A certain part of this debt is of a purely temporary and short term character; such debts are generally in the form of Exchequer Bonds or Treasury Bills (see these titles). Prior to the War of 1914–18 the National Debt consisted almost entirely of funded loans which gave the holders annuities, i.e., a fixed sum per cent. per annum, without any rights as

to redemption except those provided from time to time by the Government in Acts dealing with the National Debt. See the National Debt Act, 1870 (33 & 34 Vict. c. 71), which consolidated the law as to the denomination of stock, payment of dividends, etc., as well as fixing the terms and dates of redemption.

Since August, 1914, the National Debt has increased enormously.

On 31st March, 1936, the National Debt was :—

Funded . .	£3,366,474,816
Terminable Annuities . . .	12,108,986
Unfunded . .	4,537,828,660
	£7,916,412,462

Fundus, the bottom or foundation of a thing; from *fud*, *βυθ-ός*, *πυθμήν*, the *n* in *fundus* being used to strengthen the syllable. *Fundus* is often used as applied to land, the solid *substratum* of all man's labour.—*Smith's Dict. of Antiq.*

Appellatione fundi omne ædificium et omnis ager continetur (under the word *fundus* every building and every field is comprehended).—4 *Rep.* 87.

Funeral Expenses. An executor or administrator should bury the deceased testator or intestate suitably to the estate left, and the expense of the burial will be allowed before all other debts and charges; but if the personal representative be extravagant, he commits a *devastavit*, for which he will be answerable to the creditors or legatees.

Fungibles, movable goods, which may be estimated by weight, number, or measure, such as corn, wine, or money.

Fungibles res, a term applied in the Civil Law to things of such a nature as that they could be replaced by equal quantities and qualities, because *mutuâ vice funguntur*, they replace and represent each other; thus, a bushel of wheat. A particular horse would not be *fungibilis res.*—*Sand. Just.*, 7th ed. 328.

Furandi animus (an intention of stealing).

Furca [fr. *farkah*, Heb., to divide], the gallows.

Furcam et Flagellum (the gallows and whip), the meanest of all servile tenures, when the bondman was at his lord's disposal, both life and limb.

Furigeldum, a mulct paid for theft.

Furiosis nulla voluntas est. *D.* 50, 17, 5; *D.* 1, 18, 13, s. 1.—(Madmen have no free will.) *Furiosus stipulare non potest nec aliquid negotium agere, qui non intelligit quid agit.* 4 Co. 126.—(A madman who knows not what he does cannot make a bargain, nor transact any business.) See UNSOUND MIND.

Furious Driving. See DRIVERS.

Furlong [fr. *furlang*, A.-S.; *furlongus, ferlingus, ferlingum*, Low Lat.], *quasi* 'a furrow long,' that is, bounded or terminated by the length of a furrow, i.e., *quod uno progressu aratrum describit antequam regreditur; Spelman Gloss.* Also the eighth part of an acre; *Minsheu. Stadium* and *quarentena terræ* are sometimes used for a furlong.—*Co. Litt.* 5 *b.* By the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 11, a furlong contains 220 imperial standard yards.

Furnagium. See FORNAGIUM.

Furnival's Inn, formerly an Inn of Chancery. See INNS OF CHANCERY.

Furst and Fondung, time to advise or take counsel.—*Jac. Law Dict.*

Further Advance, or **Charge,** a second or subsequent loan of money to a mortgagor by a mortgagee, either upon the same security as the original loan was advanced upon, or an additional security. Equity considers the arrears of interest on a mortgagee security converted into principal, by agreement between the parties, as a further advance.

Although the *tacking* of a third or subsequent mortgage has been abolished by the Law of Property Act, 1925, s. 94, that section has expressly preserved the right to tack a further advance by a prior mortgage so that the advance may rank in priority to subsequent mortgages, even if the further advance was made with notice of a subsequent mortgage or charge in cases where the mortgage imposes an obligation to make further advances. Where the mortgage is to secure a current account or any other further advances, notice of an intervening charge will postpone the further advance to that charge but (by way of exception) in this case notice will not be imputed to the mortgagee by the registration of the subsequent charge as a land charge or in a local deeds registry if it was not so registered at the date of the first advance or when the mortgagee last made a search, whichever last happened. A further advance may be tacked to the original security if the advance has been made without notice by registration or otherwise of an intervening mortgage, whether or not the original mortgage was expressed to secure further advances, and in any case tacking will be allowed if the

subsequent mortgagees agree to it. See also EQUITY OF REDEMPTION.

Section 94 of the Law of Property Act, 1925, does not apply to charges registered under the Land Registration Act, 1925. Tacking is not allowed under any circumstances in the case of registered land (see s. 30, L. R. Act, 1930), except that where the proprietor of a registered charge is under obligation noted on the Register to make a further advance, a subsequent registered charge shall take effect subject to any further advance made pursuant to the obligation (s. 5, L. P. (Amendment) Act, 1926). See ss. 30, 34 and 106, L. R. Act, 1925.

Further Assurance, Covenant for, one of the usual covenants entered into by a vendor for the protection of the vendee's interest in the subject of purchase, to the effect that the vendor will, at the request and cost of the vendee, execute further conveyances, etc., for more perfectly assuring the subject-matter of the conveyance; implied in conveyances made on or after Jan. 1st, 1882, expressed to be made by a 'beneficial owner,' or if other terms of art are employed, according to the case by the Law of Property Act, 1925, s. 76, and the Second Schedule re-enacting and extending s. 7 of the Conveyancing Act, 1881.

Further Consideration, the postponed consideration by a judge of a cause or of some question in it. In the Chancery Division in actions for administration, partition, and the like, it is usual at the first hearing merely to direct accounts and inquiries and to adjourn the further consideration of the cause. When the Master has made his certificate as to the result of the accounts and inquiries the action comes on for hearing on further consideration, when any outstanding questions of law are determined by the Court and the action is finally disposed of; though in some rare cases a second or even a third further consideration may be necessary. See R. S. C., Ord. XXXVI., r. 21; *Dan. Ch. Pr.* In the King's Bench Division, if there are important legal questions raised, the judge sometimes does not give judgment at once, but reserves the matter for further consideration.

Further Maintenance of the Action, plea to the. See PUIS DARREIN CONTINUANCE.

Furtum [fr. φώρ, a thief, fr. φέρειν, to carry away], theft; robbery. It is *manifestum et nec manifestum.*—*Sand. Just.*, 7th ed. 399, 400, where other kinds are enumerated; and see LARCENY; ROBBERY.

Furtum est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerat. 3 Inst. 107.—(Theft is the fraudulent handling of another's property, with an intention of stealing, against the will of the proprietor whose property it was.)

Furtum non est ubi initium habet detentionis per dominium rei. 3 Inst. 107.—(There is no theft where the foundation of the detention is based upon ownership of the thing.)

Furze, Growing, setting fire to: see Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 17.

Future Estates, expectancies, which are, at Common Law, of two kinds: reversions and remainders. If in land, these are now referred to as equitable interests by the L. P. Act, 1925, and are no longer capable of subsisting, being conveyed or created at law (*ibid.*, s. 1), but the interests may be disposed of (s. 4). See SETTLEMENT; LEASE.

Future Uses. See CONTINGENT USES.

Fuz, or **Fust** [Celt.], a wood or forest.

Fyht-wite, one of the fines incurred for homicide.

Fyrd, Fyrdung, the military array or land force of the whole country. Contribution to the fyrd was one of the imposts forming the *trinoda necessitas.*

Fyrd-wite, the fine incurred by neglecting to join the fyrd; one of the rights of the Crown.—*Anc. Inst. Eng.*

G.

Gabel [fr. *gabelle*, Fr.; *gabella*, Ital.; *gafel*, Sax.], an excise, a tax on movables; a rent, custom, or service.—*Co. Litt.* 213.

Gabulus denariorum, rent paid in money.—*Seld. Tit.* 321.

Gaffoldgild, the payment of tribute or custom.—*Jac. Law Dict.*

Gaffoldland, liable to taxes, and rented or let for rent.—*Ibid.*

Gafold, rent, tribute, or tax.

Gage [fr. *gage*, Fr.], a pledge, pawn, or caution; anything given in security.

Gage, Estates in, those held *in vadio* or pledge. They are of two kinds: (1) *vivum vadium*, or living pledge, or vifgage; (2) *mortuum vadium*, or dead pledge, better known as mortgage.

Gager de deliverance, when he who has distrained, being sued, has not delivered the cattle distrained; then he shall not only

avow the distress, but *gager deliverance*, i.e., put in surety or pledge that he will deliver them.—*Fitz. N. B.* 67.

Gager del ley (wager of law).

Gain, to make profitable. See Statute of the Exchequer or 51 Hen. 3, c. 4, by which no man 'shall be distrained by his beasts that gain his land,' nor by his sheep, so long as other distress can be found.

Gainage [fr. *gainagium*, Lat.], the gain or profit of tilled or planted land, raised by cultivating it; and the draught, plough, and furniture for carrying on the work of tillage by the baser kind of *sokemen* or *villeins*.—*Bract.* l. i. c. ix.

Gale [fr. *gavel*, Sax., a rent or duty], a periodical payment of rent.—*Spelm. Gloss.* voce '*gabellum*.' The term is also used as meaning the right granted by the Crown to mine or to quarry in parts of the Forest of Dean. See the Forest of Dean (Mines) Act, 1838.

Galli-halfpence, a kind of coin which, with suskins and doitkins, was forbidden by 3 Hen. 5, c. 1. See *Stow's Survey*, 137.

Gallivolatium [fr. *gallus*, Lat., cock], a cock-shoot, or cock-glade.

Gallon, a liquid measure, containing 231 cubic inches, or 4 quarts; see Weights and Measures Act, 1878, s. 15. A gallon equals 4·54596 litres.

Gallows [it is used by some in the singular, but more generally in the plural], a beam laid over either one or two posts, from which malefactors are hanged. See EXECUTION OF CRIMINALS.

Game [fr. *gaman*, Sax.], all sorts of birds and beasts that are objects of the chase. The term is defined by the Game Act, 1831 (1 & 2 Wm. 4, c. 32), as including for the purposes of that Act 'hares, pheasants, partridges, grouse, heath or moor-game, black game, and bustards'; but some of its provisions are directed to trespass in pursuit of woodcocks, snipes, quails, land rails, and coneys.

At Common Law game belongs to a tenant and not to a landlord, but leases frequently contain a reservation of the game to the landlord, and before the Game Act, 1831, the right to kill game was restricted to freeholders having 100*l.* a year freehold, or leaseholders having a 99 years' leasehold of 150*l.* a year, etc. This Act repeals the Qualification Act of 22 & 23 Car. 2, c. 25, and (after giving the game to landlords in the case of leases made before the Act for less than 21 years—a provision now expired) protects *reservations* of game by penal provisions. The Act also requires all persons killing or taking game to take out a yearly certificate (for exceptions, see Ground Game Act, 1880; and see GAME LICENCE), and all uncertificated persons selling it a yearly licence, and makes it unlawful to kill game on a Sunday or Christmas-day, or between the days and seasons when game may be killed. The prohibited period is, *for partridges*, between 1st February and 1st September; *for pheasants*, between 1st February and 1st October; *for black game* (except in the county of Somerset or Devon, or in the New Forest in the county of Southampton), between 10th December and 20th August; or in the county of Somerset or Devon, or in the New Forest, between 10th December and 1st September; *for grouse*, commonly called red game, between 10th December and 12th August; *for bustard*, between 1st March and 1st September. As to buying, selling or being in possession of game during the prohibited periods, see Revenue Act, 1911, s. 10. As to Licensing Dealers in Game, see Game Act, 1831; Game Licences Act, 1860, s. 14, as amended by Revenue (No. 2) Act, 1161, s. 17; Customs and Inland Revenue Act, 1893, s. 2; Hares Preservation Act, 1892, s. 2.

Compensation for Damage by.—By the Common Law, the moment a man brings game on to land to an unreasonable amount, or causes it to increase to an unreasonable extent, he is doing that which is unlawful, and an action may be maintained for the damage sustained (*Farrer* v. *Nelson*, (1885) 15 Q. B. D. 258).

Section 11 (5) of the Agricultural Holdings Act, 1923, gives the following definition:—

> For the purposes of this section the expression 'game' means deer, pheasants, partridges, grouse, and black game;

and, subject to certain restrictions and conditions, gives compensation for damage caused by such 'game,' if it exceeds in amount the sum of one shilling per acre of the area over which the damage extends. Consult *Aggs on Agricultural Holdings*.

As to right of occupier to kill hares and rabbits under Ground Game Acts, 1880 (43 & 44 Vict. c. 47), and 1906 (6 Edw. 7, c. 21), see HARE. See also GAME LICENCE; POACHING; *Chitty's Statutes*, tit. '*Game*.'

Game Certificate, the expression used to designate a game licence (*q.v.*) in Acts prior to the Game Licences Act, 1860.

Gamekeepers. As to their appointment and authority, see the Game Act, 1831

(1 & 2 Wm. 4, c. 32), s. 13. The expression is also commonly used with reference to servants employed to look after game who have not been appointed in accordance with this Act; those appointed under the Act have powers of arrest, while others have not.

Game Licence. A licence issued under the Game Licence Act, 1860 (as amended by the Customs and Inland Revenue Act, 1883, ss. 4—6), which authorizes the holder to kill game, woodcock, snipe, quail or landrail, rabbits or deer, during open seasons. Failure to comply with this provision makes the offender liable to a penalty of 20*l.* See FIRE ARMS.

Games. For validity of custom for parishioners to play on private property, see MAYPOLE.

Gaming or **Gambling,** the playing any game of chance, as cards, dice, etc., for money, or money's worth.

The still unrepealed 33 Hen. 8, c. 9, prohibits the keeping of any common house for dice, cards, or any unlawful games, under penalties of 40*s.* for every day of so keeping the house, and 6*s.* 8*d.* for every time of playing therein; and the Gaming Act, 1738 (12 Geo. 2, c. 28) (applied by the Gaming Act, 1739 (13 Geo. 2, c. 19), to all games with dice, except backgammon, and by the Gaming Act, 1744 (18 Geo. 2, c. 34), to 'roulet, otherwise roly-poly'), declares hazard and other games to be lotteries, so that the keepers of tables for them are liable to penalties under the Lotteries Act, 1721 (8 Geo. 1, c. 2), the Lotteries Act, 1710 (9 Anne, c. 6), and the Lotteries Act, 1698 (10 & 11 Wm. 3, c. 17); the system of incorporation of previous statutes by reference being carried very far in gaming legislation.

Gaming in Public-houses, etc.—Sect. 79 of the Licensing (Consolidation) Act, 1910 (replacing s. 17 of the Licensing Act of 1872), penalizes up to 10*l.* for a first offence and up to 20*l.* for a subsequent one any licensed person who suffers gaming or any unlawful game on his premises or suffers them to be used for betting; but to play whist for prizes not contributed to by the players is not within this enactment, because for gaming there must be a chance of the players losing as well as of winning (*Lockwood* v. *Cooper*, 1903, 2 K. B. 418).

Gaming-houses.—The Gaming Act, 1845 (8 & 9 Vict. c. 109), repeals so much of 33 Hen. 8, c. 9, as prohibits bowling, tennis, and other games of mere skill. It also provides that the owner or keeper of any common gaming-house, and every person having the care or management thereof, and also every banker, croupier, and other person in any manner conducting the business of any common gaming-house, shall, on conviction, be liable, in addition to the penalties of the Act of Hen. 8, to pay such penalty (not more than 100*l.*) as shall be adjudged by the justices, or may be imprisoned with or without hard labour for not more than six calendar months; but adds that nothing shall prevent any proceeding by indictment. See *Daniels* v. *Pinks*, 1931, 1 K. B. 374, following *Jenks* v. *Turpin*, (1884) 13 Q. B. D. 505.

Justices of the peace, at the general annual licensing meeting, may grant annual billiard licences to such persons as they deem fit to keep billiard tables and bagatelle boards, or the like. Penalties are imposed for keeping such tables without a licence, or allowing play between one and eight o'clock a.m., or on Sunday, Christmas-day, or Good Friday, or on any day of public fast or thanksgiving.

Winning money by 'ill practice' in play is made punishable in the same way as obtaining money under false pretences; and by sect. 18 wagers are declared to be irrecoverable at law, and wagering contracts void. As to the liability of a bankrupt for gambling or rash and hazardous speculation, see Bankruptcy Act, 1914, s. 157. And as to gambling on loss by maritime perils, see Marine Insurance (Gambling Policies) Act, 1909. See the Betting and Lotteries Act, 1934 (24 & 25 Geo. 5, c. 58), and see *Elderton* v. *United Kingdom Totalisator Co.*, 1935, 1 Ch. 373 (as to advertisement of football pool on credit); WAGER; BETTING; and LOTTERY; and see *Chitty's Statutes*, tit. '*Game and Gaming.*' Consult *Coldridge and Hawksford, Law of Gambling.*

Ganancial [Sp.], a species of community in property enjoyed by husband and wife, the property being divisible between them equally on a dissolution of the marriage.—1 *Burge, Confl. Laws*, 418.

Gangiatori, officers in ancient times whose business it was to examine weights and measures.—*Skene.*

Gangmaster. See AGRICULTURAL GANGS ACT, 1867.

Gang-week [fr. *gangan*, Sax., to go], the time when the bounds of the parish are lustrated or gone over by the parish officers—rogation week.

Gantelope (pronounced gauntlet) [fr. *gant*, Dut., all; and *loopen*, to run], a military punishment, in which the criminal running

between the ranks receives the lash from each man. This was called 'running the gauntlet.'

Gaol [fr. *gaola*, Lat. ; *geole*, Fr., a cage for birds], a prison ; a strong place for the confinement of offenders against the law. See PRISONS.

Gaol Delivery, a commission to the judges, etc., to try and deliver every prisoner in gaol when they arrive at the assize town. See ASSIZE.

Gaoler, the master or keeper of a prison ; one who has the custody of a place where prisoners are confined. See Prison Rules, 1899, *Chit. Stat.*, tit. '*Prisons.*'

Gaol Sessions, a special sessions of county justices of the peace, constituted under 5 Geo. 4, c. 12, for regulating matters connected with county gaols. See PRISONS.

Garb [fr. *gerbe*], a bundle or sheaf of corn ; a handful.—*Fleta*, l. 2, c. xii.

Garbales decimæ, tithes of corn.

Garbler of Spices, an ancient officer in the city of London, who might enter into any shop, warehouse, etc., to view and search drugs and spices, and garble and make clean the same ; or see that it be done.—6 Anne, c. 16.

Garcio [fr. *garçon*, Fr.] **stolæ** (groom of the stole).—*Pl. Cor.* 21 Edw. 1.

Garciones, servants who follow a camp.—*Wals.* 242.

Gard [fr. *garde*, Fr.], wardship, care, custody.

Gardens. The Town Gardens Protection Act, 1863 (26 & 27 Vict. c. 13), provides for the protection of gardens and ornamental grounds vested in trustees, in squares and other public places, by transfer of such gardens and grounds from the trustees to local authorities or committees of the inhabitants. See also the London Squares Preservation Act, 1931 (22 & 23 Geo. 5, c. xciii.) and Housing Act, 1936.

As to stealing or destroying any fruit or vegetable production in gardens, etc., see Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 36, 37 ; and Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 23, 24 ; Allotments Act, 1922 (12 & 13 Geo. 5, c. 51). See also OPEN SPACES ; PARK ; PLEASURE GROUNDS ; RECREATION GROUNDS ; and as to compensation, on quitting, to tenants of market gardens, see MARKET GARDENS.

Gardia, custody.—*Lib. Feud.*

Garlanda, a chaplet, coronet, or garland.

Garnestura, victuals, arms, and other implements of war, necessary for the defence of a town or castle.—*Mat. Par.* 1250.

Garnish, to warn ; see 27 Eliz. c. 3. Also money paid (illegally) by a prisoner on his going to prison. Also to attach a debt. See next title.

Garnishee, a debtor who has been warned to pay his debt not to his own creditor but to some third party who has obtained a final judgment against the creditor. The order thus arresting the debt in the hands of the debtor is called a 'garnishee order.' See R. S. C., Ord. XLV. See ATTACHMENT OF DEBTS ; FOREIGN ATTACHMENT.

Garnishment, warning or notice, as not to pay money, etc. See previous title.

Garnisture, a furnishing or providing.

Garranty. See GUARANTY.

Garrotting, the criminal choking of a person. By the Garrotters Act, 1863 (26 & 27 Vict. c. 44), the crimes of robbery with violence, which is punishable by penal servitude under s. 23 of the Larceny Act, 1916, and choking, etc., with intent to commit any indictable offence, which is similarly punishable under s. 21 of the Offences against the Person Act, 1861, are each of them punishable also by whipping, if the offender be a male.

Garson, a menial servant.—*Toland.*

Garsummune, a fine or amerciament.—*Spelm. Gloss.*

Garter. The Order of the Garter, constituted by King Edward III. about 1348, has since June 28, 1831, consisted of the Sovereign and twenty-five Knight Companions, such lineal descendants of King George I. as may have been elected, and of Sovereigns and extra Knights who have been admitted by special statutes. The Prince of Wales is a constituent part of the original institution, The Habit and Ensigns of the Order comprise (*inter alia*) (1) a garter of dark blue velvet edged with gold bearing the motto *Honi soit qui mal y pense*, in gold letters with buckle and pendant of gold richly chased. It is worn on the left leg, below the knee ; (2) a collar of gold ; (3) the Lesser George or Badge ; and (4) a Star of eight points of silver. At death the Badge and Star are delivered up to His Majesty by the knight's nearest male relative, the Collar and Garter being returned to the Central Chancery. The Chapel of St. George, Windsor Castle, is the Chapel of the Order.—*Debrett's Peerage.*

Garth [same as girth, fr. *gyrdan*, A.-S., to surround, to enclose], an enclosure about a house, church, etc. ; a close ; a dam or wear ; a place formed at the side of a river that the fish might be more easily taken.

Gas. See the Gasworks Clauses Act, 1847,

and other Acts set out in *Chitty's Statutes*, tit. '*Gas*.'

By s. 161 of the Public Health Act, 1875 (see also Road Traffic Act, 1934 (24 & 25 Geo. 5, c. 50), s. 23), any urban authority may contract with any person for the supply of gas or other means of lighting their district, and provide lamps and other materials for such lighting; or where there is not any company or person authorized by parliament to supply gas, may themselves undertake to supply gas to their district or such part of it as is not within the limits of supply of any such company or person. By s. 162, an urban authority for the purpose of supplying gas to their district may (with the sanction of the Board of Trade) buy, and the directors of any gas company (duly authorized as required by the Act) may sell and transfer their undertaking to such authority, on agreed terms.

Originally gas was supplied to a prescribed illuminating standard. Later, when the incandescent mantle came into use and also the use of gas for cooking and heating increased, a prescribed calorific standard superseded the illuminating standard, as the latter had become of subsidiary importance. See Gas (Standard of Calorific Power) Act, 1916 (6 & 7 Geo. 5, c. 25). Finally, the thermal system of charge was adopted, see Gas Regulation Act, 1920 (10 & 11 Geo. 5, c. 28). The heat unit of charge is the therm, which is 100,000 British thermal units; a British thermal unit represents the amount of heat required to raise the temperature of 1 lb. of water through 1° F.; calorific value of gas is defined as the number of British thermal units (gross) produced by the combustion of 1 cubic foot of gas under appropriate conditions; see also Gas Undertakings Acts, 1929, 1932, 1934. Consult *Michael and Will on Gas and Water*.

Gastaldus, a temporary governor of the country.—*Blount*.

Gaudies, double commons.—*University term*.

Gaudy [fr. *gaudium*, Lat.], a feast, a festival, a day of plenty.—*Ibid*.

Gauge of Railways, their measure or width; fixed, with some exceptions, at 4 feet 8½ inches in Great Britain, and 5 feet 3 inches in Ireland, by 9 & 10 Vict. c. 57.

Gauger, an officer who ascertains the quantity of wines or spirits for revenue purposes.

Gaugetum, a gauge or gauging; a measure of the contents of any vessel.

Gavel. See GABEL.

Gavelcester (*sextarius vectigalis*, Lat.], a certain measure of rent-ale.—*Jac. Law Dict*.

Gavelet [fr. *gaveletum*, Lat.], an ancient and special kind of *cessavit* used in Kent and London for the recovery of rent. Obsolete. The statute of Gavelet is 10 Edw. 2.—2 *Reeves*, c. xii. p. 298.

Gavelgeld, payment of tribute or toll.—*Dugd. Mon.*, tom. 3, p. 155.

Gavelkind. A mode or rule of descent by custom abolished by the Administration of Estates Act, 1925, s. 45 (1) (*a*), in the case of all deaths after 1925, except in regard to entailed estates, and descent from a person of unsound mind, as provided by s. 51 (*ibid.*), and see L. P. Act, 1922, 12th Sched. (1) (*d*), and *Re Price*, 1928, Ch. 579. The word is derived from the Saxon word '*gafol*,' or, as it is otherwise written, '*gavel*,' which signifies 'rent' or a 'customary performance of husbandry works'; accordingly the land which yielded this kind of service, in contradistinction to knight-service land, was called 'GAVELKIND' that is 'land of the kind that yields rent.' Lambarde (*Perambulations of Kent*, ed. 1656, p. 585) first advanced and promulgated this supposition, which does not seem to be sufficiently comprehensive since 'gavelkind' does not necessarily denote land subject to rent, in opposition to the opinion of Lord Coke, who traced the word to 'gave all kinde' 'for the custom giveth to all sonnes alike,' which, until then, was generally received.—*Co. Litt.*, 140 *a*.

Gavelkind land descended in the right line to all the sons equally, being an exception to the law of primogeniture. In default of sons, it descended to the daughters in the ordinary manner.

It is to be remarked that though females, claiming in their own right, were postponed to males, yet they might inherit together with males by representation. 'If a man have three sons and purchase lands held in gavelkind, and one of the sons dies in the lifetime of his father, leaving a daughter, she will inherit the share of her father; yet she is not within the words of the custom, *inter hæredes masculos partibilis*; for she is no male, but the daughter of a male coming in his stead *jure representationis*.'

This custom extended also to the collateral line, for it has been resolved that where one brother dies without issue, all the other brothers shall inherit from him; and in default of brothers their respective issue shall take *jure representationis*. But where the nephews succeeded with an uncle, the

descent was *per stirpes* and not *per capita*; and so from the nature of the thing it must be where the sons of several brothers succeeded, no uncle surviving, for though in equal degree, they stood in the place of their respective fathers.

The partible quality of gavelkind extends also to estates-tail, for if a person die seised in tail of lands held in gavelkind, all his sons shall inherit together as heirs of his body.

Since the 1st January, 1834, the half-blood inherit, for the Inheritance Act, 1833 (s. 9), applied to land of every tenure (s. 1).

This Act and the L. P. Amendment Act, 1859, s. 19, still govern the descent to the heirs in entail. As to the question who are the heirs in tail in gavelkind, see Law of Property Act, 1932; *Re Price*, 1928, Ch. 579; 1929, 2 Ch. 400.

The other special customs of this tenure were: (1) a wife was dowable of one-half, instead of one-third of the land; (2) a husband would be tenant by the courtesy, whether there be issue born or not, but only of one-half so long as he remains unmarried; (3) gavelkind lands were not liable to escheat for felony, the maxim being, 'The father to the bough, the son to the plough,' although they were for treason or want of heirs (see 33 & 34 Vict. c. 23, abolishing escheat or forfeiture for treason and felony); and (4) an heir in gavelkind at fifteen years could make a contract and sell his estate for money; but the livery upon the feoffment (the only assurance which could be adopted) had to be made by the heir in person; for, being under age, he could not, by the Common Law, appoint an attorney.

Conveyance of the legal estate by feoffment is now abolished (L. P. Act, 1925, s. 51). An infant cannot hold a legal estate (L. P. Act, 1925, s. 1 (6)). If an infant's estate is in possession in fee simple or for a term of years absolute, the estate becomes settled; see S. L. Act, 1925, s. 1, and INFANT.

Gavelkind, before A.D. 1066, was the general custom of the realm; the feudal law of primogeniture superseded it. It was retained in Kent, because, according to the historical legend, the Kentish men surrounded William I. with a moving wood of boughs, just after the slaughter of Hastings, and for that service obtained a confirmation of their ancient rights.

By 34 & 35 Hen. 8, c. 26, all gavelkind lands in Wales were made descendible to the heir according to the Common Law. This could only be effected by Act of Parliament. Gavelkind was met with occasionally, in a modified form, in copyholds.

Primâ facie all land in Kent was gavelkind, except such as is disgavelled by particular statutes (which should always be noticed in transactions relating to Kentish property); and as to such land the custom is never pleaded, but is presumed, and the Courts take judicial notice of it.—1 *Mod.* 98. Consult *Robinson on Gavelkind*.

Gavelman, a tenant liable to tribute.

Gavelmed, the duty or work of mowing grass or cutting meadow land, required by the lord from his customary tenants.

Gavelwerk, the personal labour of customary tenants.

Gazette [fr. *gaza*, treasure; or *gazetta*, the name of a coin, about a farthing], the official newspaper of the Government, said to have been first published at Oxford in 1665; on the removal of the Court to London, the title was changed to the *London Gazette*. It is published on Tuesdays and Fridays, and contains all the acts of state, proclamations, and appointments to offices under the Crown; also all Orders in Council, and such other Orders, Rules, and Regulations as are directed by Act of Parliament to be published therein; also dissolutions of partnership, and notices of proceedings in bankruptcy. There is also an *Edinburgh Gazette*. It is presumed that another *Gazette* will be issued for N. Ireland, which will be of the same effect as the *Dublin Gazette*; with regard to S. Ireland it does not seem certain what steps will be taken in this direction. By various Acts (especially the Documentary Evidence Acts, 1868, 1882, and 1895) publication in the *Gazette* is made evidence of the matter so published.

Gebocced [A.-S.], conveyed.

Geburscript, neighbourhood or adjoining district.

Geburus [fr. *gebure*, Sax., a farmer], an inhabitant of the same geburship or village.

Geld, a mulct, compensation, value, price. *Angeld* is the single value of a thing; *twigeld*, double value, etc.

Geldable, taxable.—*Cowel.*

Gemot, a mote or moote, meeting, public assembly. The various kinds were—(1) The *folc-gemot*, or general assembly of the people, whether it was held in a city or town, or consisted of the whole shire. It was sometimes summoned by the ringing of the moot-bell. Its regular meetings were annual. (2) The *shire-gemot*, or county court, which met twice during the year. (3) The *burg-gemot*, which met thrice in the year. (4) The

hundred-gemot, or hundred court, which met twelve times a year in the Saxon ages; but afterwards a full, perhaps an extraordinary, meeting of every hundred was ordered to be held twice a year. This was the sheriff's tourn or view of franc-pledge. (5) The *halle-gemot*, or the court-baron. (6) The *wardemotus*.—*Anc. Inst. Eng.*

Genealogy [fr. γενεά, Gk., and λόγός], the history of the succession of families; enumeration of descent in order of succession; pedigree.

Genearch [fr. γενεά, Gk., and ἀρχός, the head of a family.

Geneath, a hind or farmer.

Gener [Lat.], a son-in-law.

General Agent, a person who has general authority in regard to a particular object or thing. See *Story on Agency*, ss. 17–19.

General Average. See AVERAGE.

General Council. 'The General Council of Medical Education and Registration of the United Kingdom' (Medical Act, 1858). The Medical Council, as it is commonly called, has power to settle the qualifications of medical practitioners and to strike off the register any of them convicted of felony or misdemeanour or judged guilty by the Council of 'infamous conduct in any professional respect' (s. 29); see *R.* v. *General Medical Council, Ex parte Kynaston*, 1930, 1 K. B. 562. The High Court has no jurisdiction to interfere with the Council's *bonâ fide* decision (*Allbutt* v. *Medical Council*, (1889) 23 Q. B. D. 400). The Council consists of five Crown nominees, twenty-two persons chosen by the same number of universities and colleges, and five persons elected by the registered medical practitioners of the United Kingdom (Medical Act, 1886, s. 7). See S. R. & O., 1931, No. 719, as to the election of an additional member.

General Council (of the Bar), the full title of the Bar Council. See BAR COUNCIL.

General Council (of the Catholic Church), a council consisting of members of the Church from most parts of the world, but not from every part, as an Œcumenical Council.

Generale, the usual commons in a religious house, distinguished from *pietantiæ*, which on extraordinary occasions were allowed beyond the commons.—*Cowel.*

General Issue, a plea simply traversing *modo et formâ* the allegations in the declaration, as the plea of 'not guilty' in torts: 'never indebted' to money counts, or '*nunquam assumpsit*' to actions on simple contract (C. L. P. Act, 1852, Sched. B, 37). Pleading the general issue was abolished by the Judicature Acts, R. S. C. 1883, Ord. XIX., r. 4, providing that every pleading shall contain, and contain only, a statement in a summary form of the facts on which the party pleading relies; and the particular form of pleading the general issue by pleading 'not guilty by statute' (see that title) is abolished by the Public Authorities Protection Act, 1893, as regards any proceeding to which that Act applies.

In criminal proceedings the general issue is 'not guilty,' which is pleaded *viva voce* by the prisoner at the bar.

General Nursing Council for England and Wales (see the Nurses Registration Act, 1919 (9 & 10 Geo. 5, c. 94)), regulates the registration of nurses. The Council is appointed by the Privy Council, Board of Education, and Minister of Health. The rules are subject to the approval of the Minister of Health.

General Lighthouse Fund. See MERCANTILE MARINE FUND.

General Ship, a ship employed by the owners on a particular voyage in the conveyance of the goods of a number of persons unconnected with each other.

General Tail, an estate-tail where one parent only is specified whence the issue must be derived, as to A. and the heirs of his body. See TAIL.

General Verdict, the decision of the jury, either for the plaintiff or defendant generally. See VERDICT.

General Warrant, a process from the Secretary of State, to arrest (without naming any person) the author, printer, and publisher of such libels as were specified in it. It was declared illegal and void for uncertainty by a vote of the House of Commons.—*Com. Jour.*, 1766, April 22 and 25. And see *Entick* v. *Carrington*, (1765) 19 St. Tr. 1030; also *Wilkes* v. *Wood*, 19 St. Tr. 1153; *Leach* v. *Money*, 19 St. Tr. 1001; *Broom's Const. Law.*

General Words, the clause immediately following the parcels in a conveyance and commencing 'together with all buildings fixtures fences commons ways,' etc. These general words as particularized in s. 62 of Law of Property Act, 1925, replacing s. 6 of the Conveyancing Act, 1881, are impliedly contained in a conveyance of land by virtue of that enactment, before the passing of which it was necessary to particularize them in the conveyance itself.

Generalia specialibus non derogant. (General words do not derogate from special) Jenk. Cent. 123, cited in *Earl of Derby* v.

Bury Improvement Commissioners, (1869) L. R. 4 Exch. 226.

Generalibus specialia derogant. *Lofft*, 351; *Halkerston*, 51.—(Special things derogate from general.)

Generals of Orders, chiefs of orders of monks, friars, and other religious societies.

Generosus [Lat.], a gentleman.

Geneva Arbitration, an arbitration held at Geneva to determine the extent of the liability of the British Government for having allowed the *Alabama*, a man-of-war built in the Mersey for the Confederate States, to put to sea, where she preyed on the commerce of the United States. The British Government admitted liability, and the only question was as to the amount of the damages which were ultimately fixed by the arbitrators at 3,229,166*l.* The five arbitrators were nominated by Great Britain, the United States, Italy, Switzerland, and Brazil. The British arbitrator was Sir Alexander Cockburn, L.C.J., and the counsel who appeared for the British Government were Sir Roundell Palmer and Mr. Arthur Cohen. The arbitrators met on 17th December, 1871, and made their award on 15th September, 1872. See *Memorials of the Earl of Selborne*, vol. ii. ch. 55.

Geneva Convention, an international agreement concluded 22nd August, 1864, at Geneva, for the purpose of improving the condition of wounded soldiers of armies in the field. Consult *Encyc. of Eng. Law*; *Higgins's Hague Peace Conferences.*

Geneva Convention Act, 1911. This was an Act passed to carry into effect the provisions of the Second Geneva Convention, 1906. It prohibits the use of a red cross on a white ground ('Red Cross') or of the words 'Red Cross' or 'Geneva Cross' without leave of the Army Council.

Gen. fil. (*generosi filius*), the son of a gentleman.

Gens, race, nation, great family.

Gentleman [fr. *gentilhomme*, Fr.; *gentilhuomo*, Ital., i.e., *homo gentilis*, Lat., a man of ancestry, however high his rank]. All persons above yeomen; whereby noblemen are truly called gentlemen.—*Smith de Rep. Ang.*, l. 1, cc. xx., xxi.

The word was not employed as a legal addition until about the time of Henry V. It has no precise legal meaning, but is used to designate a man of independent means and no occupation who is not entitled to 'esquire.'

To describe the giver (a clerk in the Audit Office) of a bill of sale (see that title) as a gentleman was held an insufficient description in *Allen* v. *Thompson*, (1856) 1 H. & N. 15; and so of a deponent to the fitness of a proposed new trustee in *Re Orde*, (1883) 24 Ch. D. 271.

Gentlewoman, a woman of birth above the common; an addition of a woman's state or degree. The word has no precise meaning in law.

Genus, in logic, connotes an idea or quality which is universal or common to a whole class, all the members of which are differentiated by that quality or idea from any other class: e.g., incorporeal hereditament is *genus* with respect to a *rent*, which is *species.*—*Woolley's Introd. to Logic*, 45; *Mill's Log.*, Bk. I. c. 7. See EJUSDEM GENERIS.

George Noble, a gold coin, current at 6*s.* 8*d.* in the reign of Henry VII.—*Lowndes's Essay on Coins*, p. 41.

German [fr. *germain*, Fr.; *germanus*, Lat.], brother; one approaching to a brother in proximity of blood: thus the children of brothers and sisters are called cousins-german.

Gerontocomium [fr. γερων, Gk., an old man, and κομέω, to take care of], an almshouse for old people. Their managers are called *gerontocomi.*

Gersumarius, fineable; liable to be amerced at the discretion of the lord of the manor.—*Cowel.*

Gestation. There is no extreme period of gestation by English law. In *Bosvile* v. *Attorney-General*, (1887) 12 P. D. at p. 178, medical witnesses put the normal time at from 270 to 275 days, adding that a longer period, though not unknown or even uncommon, is exceptional. See also *Gaskill* v. *Gaskill*, 1921, P. 425, where it was held that in the present state of medical knowledge 331 days was not an impossible period of gestation.

Gestio pro hærede (behaviour as heir), conduct by which the heir renders himself liable for his ancestor's debts, as by taking possession of title-deeds, receiving rents, etc.

Gestu et fama, an obsolete writ, resorted to when a person's good behaviour was impeached.—*Lamb. Eiren.*, l. 4, c. 14.

Gewineda, the ancient convention of the people to decide a cause.—*Leg. Ethel.*, c. 1.

Gewitnessa, the giving of evidence in our ancient British law.—*Ibid.*, c. 1.

Gewrite, writings, deeds, or charters.

Ghirdawar, Girdwar, an overseer of police, under whom the *goyendas* or informers act.—*Indian.*

Gibbet [fr. *gibet*, Fr.], a gallows; the post on which malefactors are hanged, or on which their bodies are exposed after death—a practice abolished in England by 4 & 5 Wm. 4, c. 36.

Gift. The old text-writers made a *gift* (*donatio*) a distinct species of deed, and describe it as a conveyance applicable to the creation of an estate-tail; while a feoffment they strictly confine to the creation of a fee simple estate. The operative verb was 'give,' which no longer implies any covenant in law (Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 4), replaced by the Law of Property Act, 1925, s. 59 (2), and the deed required livery of seisin. It is obsolete. See *Jac. Law Dict.*

A gift is now understood to mean a mere voluntary assurance or transfer of property without any consideration being given for it. Such a transaction is apt to be very jealously scrutinized in a Court of Equity, and will be set aside on proof of undue influence (see that title), or of a fiduciary relationship of the donee to the donor: see *Huguenin* v. *Baseley*, (1806–8) 14 Ves. 273; W. & T. L. C.; *Morley* v. *Loughman*, 1893, 1 Ch. 736, 757; *Lyon* v. *Home*, (1868) L. R. 6 Eq. 655. In the absence of any such objection, however, a gift if completed is good both at law and in equity, but the Court will do nothing to perfect the gift if the donor has left it incomplete: see *Ellison* v. *Ellison*, (1802) 6 Ves. 656; 1 W. & T. L. C.

A gift of chattels without delivery is ineffectual to pass any property unless the gift be by deed: see *Irons* v. *Smallpiece*, (1819) 2 B. & Ald. 551, approved by the Court of Appeal in *Cochrane* v. *Moore*, (1890) 25 Q. B. D. 57.

Also the name given to the right of presentation to a church living which is said to be 'in the gift' of the person enjoying the right.

A gift within three years of the death of the donor is subject to estate duty on his death. See FRAUDULENT CONVEYANCES and VOLUNTARY CONVEYANCES; ESTATE DUTY.

By L. P. Act, 1925, s. 175, specific gifts, whether contingent or future, by will coming into operation after 1925, carry the intermediate income; see also Trustee Act, 1925, s. 3; and A. E. Act, 1925, ss. 41 and 42.

Gifta aquæ, the stream of water to a mill.—*Dugd. Mon.*, tom. 3.

Giftoman [*Swed.*], the right to dispose of a woman in marriage.

Gilbert Acts, the Clergy Residences Repair Act, 1776 (17 Geo. 3, c. 53), introduced into Parliament by Mr. Davies Gilbert, providing for the building and repairing of parsonages, with the amending Acts 21 Geo. 3, c. 66, 7 Geo. 4, c. 66, 1 & 2 Vict. c. 23, and 28 & 29 Vict. c. 69, described as the Gilbert Acts in the marginal note of s. 64 of the Ecclesiastical Dilapidations Act, 1871. Mr. Gilbert also introduced 22 Geo. 3, c. 83, first establishing unions of parishes with guardians of the poor, superseded by the Poor Law Amendment Act, 1834, and repealed by the Statute Law Revision Act, 1871.

Gild, or **Guild** [fr. Ang.-Sax. *gildan*, to pay], a tax, tribute, or contribution; a society or fraternity constituted for mutual protection and benefit, generally in trade, so called because each member paid his share to the general expenses. See *Steph. Com.*

Gildable, liable to pay gild.—*Cowel.*

Gilda mercatoria, a mercantile meeting or assembly. If the Crown grants to a set of men the privilege to have *gildam mercatoriam*, this is sufficient to incorporate them. —10 *Rep.* 30. A guild merchant was an incorporated society of the merchants of a town or city having exclusive rights of trading within the town. In many English towns and in the royal burghs of Scotland the merchant guild became the governing body of the town.—*Oxf. Dict.*

Gild-rent, certain payments to the Crown from any gild or fraternity.

Gill, one-fourth of a pint measure.

Gin Act, 9 Geo. 2, c. 23, by which the retailer of spirits in less quantity than 2 gallons had to pay a licence duty of 50*l.* a year, and a further duty of 20*s.* for every gallon sold. Repealed by Statute Law Revision Act, 1867, as having been already impliedly repealed.

Girantem, an Italian word which signifies the drawer. Derived from *girare*, to draw.—*Bouvier's Law Dict.*; *Emerigon on Maritime Loans*, ed. J. E. Hall.—*Merc. Law.*

Gisement, cattle taken in to graze at a certain price; also the money received for grazing cattle. See AGISTMENT.

Gisetaker, a person who takes cattle to graze.

Gisle, a pledge. *Fredgisle*, a pledge of peace. *Gislebert*, an illustrious pledge.—*Gibs. Camden.*

Gist of Action [fr. *giste*, Fr. *gesir*, to lie; *jaceo*, Lat.], the cause for which an action lies; the ground and foundation of a suit, without which it is not maintainable.

Glandered Horses. By 32 & 33 Vict. c. 70, ss. 57 and 60, penalties were imposed on persons bringing glandered horses, etc.,

into markets, etc., and provision is made for their seizure, slaughter, and burial; but the Contagious Diseases (Animals) Act, 1878 (41 & 42 Vict. c. 74), which repeals and replaces that Act, contains no such express provision, although by s. 32, sub-s. xxxii., it gave the Privy Council power to apply its provisions to horses and glanders and farcy; and the Diseases of Animals Act, 1894, s. 22, sub-ss. xxxv. and xxxvi., appears to give a similar power to the Ministry of Agriculture by general words. See CONTAGIOUS DISEASES (ANIMALS).

Glanville, the author, about 1181, of a book entitled *Tractatus de Legibus et Consuetudinibus Regni Angliæ*, which is supposed to have been the first undertaking of the kind in any country of Europe. It is little more than a sketch, as far as the plan of it goes, and is confined to proceedings in the King's Court. A translation, with notes, was published in 1812 by Mr. Beames.

Glass. By the Larceny Act, 1916 (6 & 7 Geo. 5, c. 50), s. 81 (1), every person who steals or with intent to steal breaks any glass belonging to any building, shall be guilty of a felony punishable as in the case of simple larceny.

By Carriers Act, 1830 (11 Geo. 4 and 1 Will. 4, c. 68), s. 1, a carrier is not liable for loss or damage above 10*l.* unless such glass has been declared and an increased charge accepted.

As to deposit in streets and the power of making byelaws to prevent such a nuisance, see Highways Act, 1835 (5 & 6 Will. 4, c. 50), s. 72; Public Health (London) Act, 1891 (54 & 55 Vict. c. 76), s. 16; Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 171; Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), s. 28.

Under Factories and Workshops Act, 1901 (1 Edw. 7, c. 22), 'Glass works' is a non-textile factory; see ss. 40, 78, regarding meals and meal-times in such works; as to night employment of persons of fourteen and upwards, see s. 55; see the Employment of Women, Young Persons, and Children Act, 1920 (10 & 11 Geo. 5, c. 65), Sched. I., Part I., Article 2; and Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 29 (4).

Glass-men, wandering rogues or vagrants. —1 Jac. 1, c. 7, rep. by 13 Anne, c. 26.

Gleaning, Leasing, or **Lesing.** No right exists at Common Law for the poor to enter on a person's land and glean after harvest (*Steel* v. *Houghton*, (1788) I H. Bl. 51).

Glebæ ascriptitii, villein-socmen, who could not be removed from the land while they did the service due.—*Bract.* c. 7.

Glebariæ, turfs dug out of the ground.

Glebe, the land possessed as part of the property of an ecclesiastical benefice.

As to sale of glebe, and offer thereof for the purpose of allotments, see the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20), and the Glebe Land Sale Rules made by the Land Commissioners (now the Ministry of Agriculture) thereunder; and as to letting glebe on lease up to 14 years with consent of patron and bishop, see Ecclesiastical Leases Act, 1842 (5 & 6 Vict. c. 27); and as to the hiring of glebe land for small holdings and allotments, see the Small Holdings and Allotments Acts, 1908 (8 Edw. 7, c. 36); 1926 (16 & 17 Geo. 5, c. 52); and see Housing Act, 1936. Consult *Key and Elphinstone's Prec.*

Gliscywa, a fraternity.—*Leg. Ethel.*, c. 12.

Glomerells, commissioners appointed to determine differences between scholars in a school or university and the townsmen of the place.—*Jac. Law Dict.*

Gloucester, Statute of (6 Edw. 1, c. 1), A.D. 1278, by which (among other things) a plaintiff recovering damages was first given a right to costs. Impliedly superseded by R. S. C., Ord. LXV., and expressly repealed by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 79), as to costs in the Supreme Court. See *Garnett* v. *Bradley*, (1878) 3 App. Cas. 944.

Glove Silver, extraordinary rewards formerly given to officers of courts, etc.; money formerly given by the sheriff of a county in which no offenders are left for execution to the clerk of assize and judge's officers.

Gloves. It is an ancient custom on a maiden assize, when there is no offender to be tried, for the sheriff to present the judge with a pair of white gloves. It is an immemorial custom to remove the glove from the right hand on taking oath.

Glycerine, Nitro. See EXPLOSIVES, and 38 & 39 Vict. c. 17, and 13 & 14 Geo. 5, c. 17.

Glyn, or **Glen** [fr. *glyn*, Erse], a hollow between two mountains; a valley.—*Co. Litt.* 5 *b.*

God-bote, an ecclesiastical or church fine paid for crimes and offences committed against God.

God-gild, that which is offered to God or His service.

Godpenny, earnest money given to a servant when hired.

God's Acre, a churchyard.

Going through the Bar. The chief of a

Common Law Court demanding of every member of the Bar, in order of seniority, if he has anything to move; done at the sitting of the Court each day except Special Paper days, and other days on which motions are not taken. See also LAST DAY OF TERM.

Going to the Country. When a party, under the system of pleading before the Common Law Procedure Act, finished his pleading by the words, 'and of this he puts himself upon his country,' meaning that he intended to take the verdict of a jury upon the issue of fact; this was called 'going to the country.' It was the essential termination to a pleading which took issue upon a material fact in the preceding pleading. See VERIFICATION.

Gold. As to the duty of the Bank of England under the Coinage Act, 1870 (33 & 34 Vict. c. 10), s. 8, to coin gold bullion for any person bringing the same for that purpose, which was suspended by the Gold Standard Act, 1925 (15 & 16 Geo. 5, c. 29); and the Bank's duty during the period of suspense, to sell gold bullion in bars containing approximately 400 ounces troy of fine gold to any purchaser paying £3 17*s.* 10½*d.* per ounce troy of fine gold, see those Acts, and CURRENCY ACT. The right to purchase gold provided by the Act of 1925 was suspended by the Gold Standard (Amendment) Act, 1931 (21 & 22 Geo. 5, c. 46) (see BULLION). As to standards and marking of gold plate and gold ware, see *Safford*, '*Law of Merchandise Acts*.'

A promise to repay a loan or other obligation in terms of 'gold' depends for its performance on the law of the country governing the performance at the time of performance, see *Feist* v. *Société Intercommunale Belge d' Electricité*, 1934, A. C. 161.

Golda, a mine.—*Blount.*

Gold-mines, a branch of the ordinary revenue of the kingdom. By 1 W. & M. st. 1, c. 30, and 5 W. & M. c. 6, amended by 55 Geo. 3, c. 134, it is enacted that no mines of copper, tin, iron, or lead shall be looked upon as royal mines, notwithstanding gold or silver may be extracted from them in any quantities; but that the sovereign, or persons claiming under his authority, may have the ore (other than the tin ore in Devon and Cornwall) at a price stated in the Act.

As to the transfer of gold and silver mines in the County Palatine of Durham to the Crown, see 6 & 7 Will. 4, c. 19 and 21 & 22 Vict. c. 45.

Goldsmiths' Notes. Bankers' cash notes (i.e., promissory notes given by a banker to his customers as acknowledgments of the receipt of money) were originally called in London goldsmiths' notes, from the circumstance that all the banking business in England was originally transacted by goldsmiths.

Goldwit, or **Goldwich,** a golden mulct.

Goliardus, a jester or buffoon.

Gomashtah, an agent, a steward, a confidential factor, a representative.—*Indian.*

Good, the technical term applied to pleading to express soundness or validity.

Good Abearing. See ABEARANCE.

Good Behaviour, Security for. The exercise of preventive justice, which consists in being bound with one or more sureties in a recognizance or obligation to the Crown, and taken in some court, by some judicial officer; whereby the parties acknowledge themselves to be indebted to the Crown in the sum required, with the condition to be void if the party shall be of good behaviour, either generally or especially for the time therein limited. See Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 25; see, further, Probation of Offenders Act, 1907 (7 Edw. 7, c. 17); Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86), ss. 26 (2), 39 (3); *Chitty's Statutes*, tit. '*Justices*.'

Security for Convicted Drunkard.—The Licensing Act, 1902 (2 Edw. 7, c. 28), enables a court on conviction of a person for drunkenness in a public place, etc., to order him to enter into a recognizance, with or without sureties, to be of good behaviour.

Good Consideration, *e.g.* natural love and affection: distinguish from *valuable* consideration. See Law of Property Act, 1925, s. 172; FRAUDULENT CONVEYANCE; and CONSIDERATION.

Good Friday. The Bills of Exchange Act, 1882, s. 92, consolidating 39 & 40 Geo. 3, c. 42, passed for the better observance of Good Friday, and 7 & 8 Geo. 4, c. 15, provides that Good Friday and Christmas Day are to be excluded as 'non-business days' in cases where the time limited by that Act for doing any act or thing is less than three days; and also, by s. 14, that where the last of the three 'days of grace' (see GRACE, DAY OF) falls on Good Friday, a bill of exchange shall be payable on the preceding business day. Good Friday is a holiday in the Courts and offices of the Supreme Court (R. S. C. 1883, Ord. LXIII., r. 4), and is not reckoned in the computation of limited time (less than six days) for the purposes of the

Rules (*ibid.*, Ord. LXIV., r. 2), or of limited time, not exceeding seven days, for the purposes of the Municipal Corporations Act, 1882, by s. 230 of that Act, which also allows acts to be done on the day after Good Friday instead of on Good Friday. Houses where intoxicating liquor is sold are closed as on Sunday (Licensing Act, 1874, s. 3). See, further, HOLIDAY.

Good Jury. A jury of which the members are selected from the list of special jurors. See *Vickery* v. *L. B. & S. C. Ry. Co.*, (1870) L. R. 5 C. P. 165, sanctioning a fee of a guinea each for their payment. See SPECIAL JURY.

Good Law. This expression is sometimes used of propositions of law which could not be successfully questioned in a court, although they be either irreconcilable with justice, or may have been judicially disapproved of. Cf. 'Good sense or good law.'

Goods and Chattels, the general denomination of things personal, as distinguished from things real, or lands, tenements, and hereditaments. See CHATTELS.

Goods, Sale of. See SALE OF GOODS ACT.

Goodwill, the advantage or benefit which is acquired by a business, beyond the mere value of the capital, stock, funds, or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers; see *Trego* v. *Hunt*, 1896, A. C. 7. It is considered a subject of sale and part of and incident to any business which is sold as a business or 'stock in trade and premises.' It cannot be sold apart from the business (*Smale* v. *Graves*, (1850) 3 De G. & Sm. 706); it may be local, or attached to premises, or personal such as the practice of a dentist or doctor (other than a Fellow of the Royal College of Physicians). But premises may be retained to the business and goodwill sold separately (*Morris* v. *Moss*, (1855) L. J. Ch. 194). Goodwill cannot be divided so that part follows a special trademark; see *Re Dobie & Son, Ltd.*, 52 R. P. C. 333. Compensation for goodwill on quitting a tenancy is provided for subject to the statutory conditions by the Landlord and Tenant Act, 1927 (17 & 18 Geo. 5, c. 36), s. 4; see *Whitley* v. *Stumbles*, 1930, A. C. 540; LANDLORD AND TENANT. The purchase of a goodwill is of little or no value as a rule unless the sale is accompanied by the vendor's covenant in restraint of his competition or trade. See RESTRAINT OF TRADE and TRADEMARK. Consult *Lindley on Partnership*; *Encyclopædia of the Laws of England*; *Halsbury's Laws of England.*

Goole, a breach in a sea wall or bank; a passage worn by the flux and reflux of the sea.—16 & 17 Car. 2, c. 11.

Gooroo, Guru, a spiritual teacher or guide. —*Indian.*

Goree, or **Gors,** a weir, pool, or pit of water.—*Termes de la Ley.*

Gordon Riots, a series of violent 'No Popery' disturbances which occurred in London in June, 1780, so called after Lord George Gordon, the President of the 'Protestant Association.' The authorities behaved with the utmost imbecility and for four or five nights abandoned the town to the fury of the mob, who amongst other outrages sacked and burned Lord Mansfield's house in Bloomsbury Square and destroyed his library and a priceless collection of manuscripts, many from the pen of Mansfield himself. At length the military were called in and the riots suppressed, but not until an immense amount of damage had been done. Lord George Gordon was indicted for high treason on the charge of levying war against the King. He was defended by Erskine and acquitted for want of evidence; see 21 St. Tr. 485; *Lecky's Hist. of England in the Eighteenth Century*, ch. xii. For an account of the riots, see *Dickens's Barnaby Rudge*; and *Memoirs of Sir Samuel Romilly.*

Gore, a narrow slip of land.

Gossipred, compaternity, spiritual affinity. —*Canon Law.*

Gote, a ditch, sluice, or gutter.—23 Hen. 8, c. 5.

Government, that form of fundamental rules and principles by which a nation or state is governed; the state itself.

Government Annuities. By 27 & 28 Vict. c. 43, and 45 & 46 Vict. c. 51, the Government Annuities Acts, 1864 and 1882, and other 'Government Annuities Acts,' facilities are afforded for the purchase of such annuities, and for assuring payments of money on death, the latter Act allowing the purchase of an annuity of any amount not exceeding 100*l.* a year, the limit under the Act of 1864 having been 50*l.* a year. At the present time life annuities are granted from the National Debt offices without any limit on the amount, or through the Post Office or trustee savings banks up to 330*l.* a year.

The Government Annuities Act, 1929 (c. 29), consolidates with amendments the former Acts. See ANNUITIES.

Governor. In Dominions and Colonies

usually the name of the representative of the King and the head of the local executive with powers limited by his commission (*Cameron* v. *Kyte*, (1835) 3 Knapp 332). In the Dominions of Canada, the Irish Free State and Union of South Africa, called the 'Governor-General'; in New Zealand and Newfoundland, the 'Governor.' In India the head of the Executive of the Indian Federation, who may also be His Majesty's representative (Government of India Act, 1936 (25 & 26 Geo. 5, c. 42)). In Northern Ireland, the 'Governor.' Interpretation Act, 1889, ss. 18 and 42, provides that in all Acts passed after that year the word 'Governor' when used with reference to Canada shall mean the Governor-General or the person having his powers for the time being, and with reference to any other British possession shall include the officer for the time being administering the government thereof.

Goyend, land immediately next to a village.—*Indian.*

Grace, a faculty, licence, or dispensation; also general and free pardon by Act of Parliament.

Grace, Pilgrimage of, an insurrection which broke out in the northern counties in the reign of Henry VIII. after the suppression of the lesser monasteries, the principal object being the restoration of the Church.

Gradient, moving by steps; the deviation of a road or railway from a level surface upon an inclined plane.

Graduates, scholars who have taken a degree in a university. See UNIVERSITY.

Gradus [Lat.], a step or degree.

Gradus parentelæ, a pedigree; a table of relationship.

Graffer, a notary, or scrivener.—5 Hen. 8. c. 1.

Graffio, Gravio, a landgrave or earl.

Graffium, a writing-book, register, or cartulary of deeds and evidences.

Grail, a gradual or book containing some of the offices of the Roman Church. The holy grail was the vessel out of which our Lord was believed to have eaten at the Last Supper.

Grain, the twenty-fourth part of a pennyweight according to Troy weight.

A grain is $\frac{1}{252326}$th of the weight of a cubic inch of distilled water at a temperature of 62° F. A grain is $\frac{1}{5760}$th of the pound Troy and $\frac{1}{7000}$th of the pound avoirdupois. A metric gram equals 15·432356 grains. A milligram is ·015 grains. A carat is 200 milligrams or 3 grains. (B.T. Standard.)

Grain, Loading of. As to the regulations with regard to this, see s. 452 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), and s. 11 of the amending Act of 1906 (6 Edw. 7, c. 48). Grain for the purpose of these Acts means any corn, rice, paddy, pulse, seeds, nuts, or nut kernels.

Grain, Poisoned, Act prohibiting the use of (26 & 27 Vict. c. 113). See POISON.

Grainage, an ancient duty in London, under which the twentieth part of salt imported by aliens was taken.

Grammar Schools, endowed schools founded (many of them by King Edward the Sixth) for the purpose of teaching Latin and Greek, or either of them, and in which, except under the orders of a Court of Equity, under the Grammar Schools Act, 1840 (3 & 4 Vict. c. 77), the teaching of one or both of these languages, in accordance with the terms of the foundation, cannot be dispensed with. Grammar Schools are now usually governed by schemes under the Endowed Schools Acts, and in such cases visitatorial power is exercised by the Board of Education.—*Tudor's Char. Trusts*, 4th ed. p. 78, note (*d*). See ENDOWED SCHOOLS.

Grammatica falsa non vitiat chartam. 9 *Rep.* 48.—(False grammar does not vitiate a deed.) See CLERICAL ERROR.

Granatarius, an officer who kept the corn-chamber in a religious house.

Grand Assize, a peculiar species of trial by jury, introduced in the time of Henry II., giving the tenant or defendant in a writ of right the alternative of a trial by battle, or by his peers. Abolished by 3 & 4 Wm. 4, c. 42, s. 13.

Grand Cape. See CAPE.

Grand Costumier of Normandy, an ancient book, of great authority, containing the ducal customs of Normandy, probably compiled since the time of Richard I.—*Hale's Hist. Com. Law*, c. vi.

Grand Distress, Writ of, formerly issued in the real action of *quare impedit*, when no appearance had been entered after the attachment; it commanded the sheriff to distrain the defendant's lands and chattels in order to compel appearance. It is no longer used, the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), by s. 26, having abolished the action of *quare impedit*, and substituted for it the procedure in an ordinary action.

Grand Jury was abolished with some exceptions by the Administration of Justice

(Miscellaneous Provisions) Act, 1933 (23 & 24 Geo. 5, c. 36). The bill of indictment is now preferred by any person before a court in which a person charged may lawfully be indicted, and the proper officer of the court shall, if the requirements have been complied with, sign the bill and it shall thereupon become an indictment. But bills of indictment may be preferred before Grand Juries of the counties of London and Middlesex by virtue of certain enactments extant, in the 1st Schedule (High Treason), and certain other offences triable in the King's Bench Division.

Formerly it was an inquisition composed of not less than twelve nor more than twenty-three good and lawful men of a county, returned by the sheriff to every session of the peace, and every commission of oyer and terminer, and of general gaol delivery, who inquire, present, do and execute all those things which, on the part of the king, shall then and there be commanded them. Grand jurymen at the Assize Courts ought to be freeholders, but to what amount is uncertain.—2 *Hale, P. C.* 154.

The grand jury was previously instructed in the articles of their inquiry by a charge from the judge. They then withdrew to sit, and receive indictments, which were preferred in the name of the king, but at the suit of any private prosecutor, and they were only to hear evidence on the part of the prosecution: for the finding of an indictment was only in the nature of an inquiry or accusation, afterwards to be tried; and the grand jury only inquired upon their oaths whether there be sufficient cause to call upon the party accused to answer it.

When the grand jury had heard the evidence, if they thought it a groundless accusation, they indorsed upon the bill of indictment 'not a true bill,' or 'not found'; the bill was then thrown out, and the party accused discharged. But a fresh bill might afterwards be preferred to a subsequent grand jury. If they were satisfied of the truth of the accusation, they indorsed a 'true bill'; the indictment was then found, and the party stood indicted. A majority of the grand jury must have agreed, i.e., not less than twelve.—4 *Steph. Com.*

Grand Larceny, stealing to above the value of twelve pence. Abolished by 7 & 8 Geo. 4, c. 29, s. 2.

Grand Serjeanty, an ancient holding by military service. See TENURE.

Grange, a farm furnished with barns, granaries, stables, and all conveniences for husbandry.—*Co. Litt.* 5 *a.*

Grangearius, a keeper of a grange or farm.

Grangia [Low Lat.], a grange.—*Co. Litt.* 5 *a.*

Grant [fr. *garantir*, Fr., Junius and Skinner; but Minsheu thinks *gratuito*, or perhaps *gratia, gratificor*, Lat.], a Common Law conveyance.

This deed was originally confined to the transfer of incorporeal hereditaments and expectant estates, of which livery of seisin could not be given. But the distinction between property lying in livery and in grant, as regards the conveyance of the immediate freehold, was abolished by the Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 2, which provided that all corporeal hereditaments should, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery. The Law of Property Act, 1925, s. 51, replacing s. 6 of the R. P. Act, 1845, enacts that all lands and interests therein shall lie in grant and not in livery and seisin. The operative verb was 'grant,' which, by s. 4 of the same statute, replaced by Law of Property Act, 1925, s. 59, is not to imply any covenant in law in respect of any hereditaments except by force of any Act of Parliament, and by Conveyancing Act, 1881, s. 49 (see now L. P. Act, 1925, s. 51), the use of the word 'grant' is not necessary to convey land or any interest in land.

Before 1926 conveyance by grant had become the usual mode of transferring realty. A corporation can convey by grant.

A grant of personalty is frequently termed an assignment or a bill of sale.

The king's grants are matters of record, and are either letters-patent or writs close.

Grant to Uses. This was the common grant with uses superadded. The legal estate was conveyed by the words of grant, and on the seisin thus vested in the grantee uses could be declared which the Statute of Uses at once converted into legal estates. The L. P. Act, 1925, 7th Sched., has repealed the Statute of Uses.

Grantee, he to whom any grant is made.

Grantor, he by whom a grant is made.

Grantz, grandees.—*Jac. Law Dict.*

Grass-hearth, the feudal service of turning up the earth with a plough.—*Paroch. Antiq.* 496.

Grassum, in Scots law, a fine paid in consideration of a right which is to endure for a term of years, e.g., a contract of lease or of ground-annual.—*Green's Encyc. of Scots*

Law; and see *Case of the Queensberry Leases*, (1819) 1 Bligh, 339.

Grass-week, Rogation week, so called anciently in the Inns of Court and Chancery.

Gratis, without reward.

Gratis dictum, a voluntary statement.

Gratuitous Bailment. See BAILMENT.

Gratuitous Deeds, instruments made without valuable consideration.

Gratuitous Trustees, Act to amend the law in Scotland relative to the resignation, powers, and liabilities of, 24 & 25 Vict. c. 84.

Grava, a little wood or grove.—*Co. Litt.* 4 *b.*

Gravamen, the substantial grievance or complaint.

Gravare et Gravatio, an accusation or impeachment.—*Leg. Ethel.* c. xix.

Gray's Inn. See INNS OF COURT.

Grazing. The right of grazing on the sides of the highway belongs to the adjoining owners *usque ad medium filum viæ*. See also AGISTMENT. As to power to attach grazing rights to small holdings and allotments, see s. 42 of the Small Holdings and Allotments Act, 1908 (8 Edw. 7, c. 36), as amended by 9 & 10 Geo. 5, c. 59.

Great Cattle, all manner of beasts except sheep and yearlings.

Great Charter, *Magna Charta*, which see.

Great Seal [*clavis regni*, Lat.], the emblem of sovereignty, introduced by Edward the Confessor. It is held by the Lord Chancellor or Lord Keeper for the time being and may not be taken out of the country. By Art. 24 of the Union between England and Scotland (5 Anne, c. 8) it was provided that there should be one Great Seal for the United Kingdom, to be used for sealing writs to summon the parliament, and for sealing treaties with foreign states and all public acts of state which concern the United Kingdom, and in all other matters relating to England, as the Great Seal of England was then used; and that a seal in Scotland should be kept and made use of in all things relating to private rights or grants, which had usually passed the Great Seal of Scotland, and which only concern offices, grants, commissions, and private right within Scotland. On the Union between Great Britain and Ireland no express provision was made by any of the Articles of the Union as to the establishing one Great Seal for the United Kingdom; but various acts as to the summoning of parliament, etc., were required to be done under the Great Seal of Ireland; and by s. 3 of the Acts of Union, 39 & 40 Geo. 3, c. 67 (*British*), and 40 Geo. 3, c. 38 (*Irish*), it was enacted that the Great Seal of Ireland may, if his Majesty shall so think fit, after the Union, be used in like manner as before the Union (except where it is otherwise provided by the Articles of Union), within that part of the United Kingdom called Ireland. See Great Seal Acts, 1880 and 1884. See now IRELAND and statues there cited. As to forging these seals, see Forgery Act, 1913, s. 5. Consult *Campbell's Lives of the Chancellors, Intro.: Wyon's Great Seals of England.*

His Majesty's Seal for Scotland is in the custody of a principal Secretary of State, lately the Secretary for Scotland, by Secretaries of State Act, 1926 (16 & 17 Geo. 5, c. 18).

Great Seal (Offices) Act, 1874 (37 & 38 Vict. c. 81. This Act makes provision for the abolition of various offices connected with the Great Seal; such as those of the Messenger of the Great Seal, Clerk of the Petty Bag, Clerk of the Patents, and Purse-bearer to the Lord Chancellor.

Gree, satisfaction for an offence committed or injury done.—*Cowel.*

Greek Kalends, an expression to signify a date that will never arrive, there being no such division of time known to the Greeks.

Green Cloth. The counting-house of the king's household was commonly called the Green Cloth in respect of the green cloth upon the table whereat the lord steward, the treasurer of the king's house, and other inferior officers sat:—(1) For daily taking the accounts for all expesnes of the household. (2) For making provisions for the household, according to the laws and statutes of the realm. (3) For making of payments for the same. (4) For the good government of the king's servants. (5) For payment of the wages of the king's servants. The officers of the counting-house never held plea of anything.—4 *Inst.* 131.

Greenhew or **Greenhue,** vert in forests, etc.—*Manw.* c. vi., n. 5 (3rd ed.).

Greenland Fisheries. See SEAL FISHERY ACT, 1875.

Green Silver, a feudal custom in the manor of Writtel, in Essex, where every tenant whose front door opens to Greenbury shall pay a halfpenny yearly to the lord, by the name of 'green silver.'—*Jac. Law. Dict.*

Greenwax, estreats delivered to a sheriff out of the Exchequer, under the seal of the Court, which was impressed upon green wax, to be levied.—7 Hen. 4, c. 3.

Greenwich Hospital. An institution for

the relief of seamen, now vested in the Admiralty. See 1 Jac. 2, c. 18, rep. 6 Geo. 4, c. 105; 7 & 8 Wm. 3, c. 21, rep. 4 & 5 Wm. 4, c. 34; 10 Geo. 4, c. 26, and the many Acts which have subsequently been passed dealing with the Hospital. The principal Act now in force is the Greenwich Hospital Act, 1868 (31 & 32 Vict. c. 44), and, as to the application of the revenues of the Hospital, the Act of 1872 (35 & 36 Vict. c. 67), and subsequent Acts. See *Chron. Table and Index of Stats.*, tit. 'Greenwich Hospital.'

Greenwich Time. 'Time' in an Act of Parliament, deed or legal instrument means in Great Britain Greenwich mean time; see Statutes (Definition of Time) Act, 1880 (43 & 44 Vict. c. 9). For the effect of Summer Time, see 12 & 13 Geo. 5, c. 22, and 15 & 16 Geo. 5, c. 64.

Gregorian Epoch, the time from which the Gregorian calendar or computation dates, i.e., from the year 1582. See CALENDAR.

Grenville Act (10 Geo. 3, c. 16), by which the jurisdiction over parliamentary election petitions was first transferred from the whole House of Commons to select committees; repealed by 9 Geo. 4, c. 22, s. 1. See ELECTION PETITIONS.

Gretna Green Marriage, a marriage celebrated at Gretna, in Dumfries (bordering on the county of Cumberland), in Scotland. By the law of Scotland a valid marriage may be contracted by consent alone before witnesses without any other formality. See PER VERBA DE PRÆSENTI.

When Lord Hardwicke's repealed Marriage Act of 1753 (26 Geo. 2, c. 33), rendered the publication of banns (or a licence) necessary in England, it became usual for persons who wished to marry clandestinely to go to Gretna Green, the nearest part of Scotland, and marry according to the Scotch law; so a sort of chapel was built at Gretna Green, in which the English marriage service was performed by the village blacksmith; as to the validity of such marriages, see *Hubback on Succession*. But by the Marriage (Scotland) Act, 1856 (19 & 20 Vict. c. 96), s. 1, after 31st December, 1856, no marriage contracted in Scotland by declaration, acknowledgment, or ceremony is valid, unless one of the parties had, at the date thereof, his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage, any law, custom, or usage to the contrary notwithstanding.

Greve [fr. *gerefa*, or rather, *reve*, Sax.], a word of power or authority.

Grievous Bodily Harm. See ACTUAL BODILY HARM.

Grimgribber [fr. *grimoire*, Fr., a conjuring book in the old French romances, or perhaps the art of necromancy itself], the jargon used as a cover for legal sophistry.—*Div. of Purl.* 36, and notes.

Grith, peace, protection.—*Termes de la Ley.*

Grithbreche, breach of the peace.—*Cowel.*

Grithstole, a place of sanctuary.—*Cowel.*

Grogging. The subjecting a cask to any process for abstracting any spirits absorbed in the wood thereof, punishable by a fine of 50*l.*, as a revenue offence, by s. 4 of the Finance Act, 1898 (61 & 62 Vict. c. 10).

Gronna, a deep pit or place where turfs are dug to burn.—*Hoved.* 438.

Groom Porter, formerly an officer belonging to the royal household.—*Jac. Law Dict.*

Groom of the Stole [fr. στολή, Gk., a robe], an officer of the royal household, who has charge of the king's wardrobe.

Gross, absolute, entire. A thing in gross exists in its own right, and not as an appendage to another thing.

Gross Weight, the whole weight of goods and merchandise, including the dust and dross, and also the chest or bag, etc., upon which tare and tret are allowed.

Grosse bois, timber.—*Cowel.*

Grossment enceinte, pregnancy in its later stages.

Grotius. A renowned European writer on International Law. He was born at Delft, in Holland, in 1585. His greatest work is *De Jure Pacis et Belli.*

Groundage, a custom or tribute paid for the standing of shipping in port.—*Jac. Law Dict.*

Ground-annual, a ground rent.

Ground Game Act, 1880 (43 & 44 Vict. c. 41), and Ground Game (Amendment) Act, 1906 (6 Edw. 7, c. 21), giving to occupiers concurrent rights with owners to kill hares and rabbits. See HARES.

Ground-rent. Rent reserved on a lease by a lessor, usually for a long term of years to a lessee who may use or dispose of the land by sale or lease at its value during the term subject to the ground rent; it generally takes the form of rent payable for land let on a building lease on which the lessee erects buildings, which at the termination of the lease become, together with the land, the property of the lessor (*Bartlett* v. *Salmon*, 6 De G. M. & G. p. 33.

Ground-writ. Before the C. L. P. Act, 1852, a *ca. sa.* (*capias ad satisfaciendum*,

(*q.v.*) or *fi. fa.* (*fieri facias*, *q.v.*) could not be issued into a county different from that in which the venue in the action was laid, without first issuing a writ called a *ground-writ* into the latter county, and then another writ, which was called a *testatum* writ, into the former. The 121st section of that Act abolished this useless process. See EXECUTION.

Grouse. The close time is between 10th December and 12th August. See GAME.

Growth Halfpenny, a rate paid in some places for the tithe of every fat beast, ox, or other unfruitful cattle.—*Clayton's Rep.* p. 92.

Gruarii, the principal officers of a forest.

Guarantee, he to whom a guaranty is made; also, and more commonly, the guaranty itself. See GUARANTY.

Guarantee. Company limited by. See COMPANIES.

Guarantee by Companies Act, 1867 (30 & 31 Vict. c. 108), repealed, and new provisions substituted, by the Government Officers Security Act, 1875 (38 & 39 Vict. c. 64).

Guarantor, he who makes a guaranty.

Guaranty, or **Guarantee,** a promise to a person to be answerable for the payment of a debt or the performance of a duty by another, in case he should fail to perform his engagement. An offer to guarantee until it be accepted is not binding. At Common Law a guarantee need not have been in writing, but the Statute of Frauds (29 Car. 2, c. 3), s. 4, enacts that 'No action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriages of another person, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith or some other person thereunto by him lawfully authorized.' In case of guarantees, great inconvenience had resulted from the construction put upon the above section, viz., that the consideration for the promise of the guarantor must appear upon the written instrument. To remedy this, the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), provides that no promise to answer for the debt, etc., of another is to be deemed invalid to support an action, by reason that the consideration does not appear in writing (s. 3). By s. 18 of the Partnership Act, 1890 (53 & 54 Vict. c. 39), which takes the place of s. 4 of the same Act, 'a continuing guaranty given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which or of the firms in respect of the transactions of which, the guaranty was given.' See *McCall* v. *Hargreaves*, 1932, 2 K. B. 423.

For the Statute of Frauds to apply, the party whose debt is guaranteed must himself remain liable (*Birkmyr* v. *Darnell*, (1705) Salk. 27; 1 Sm. L. C.). The contract of a *del credere* agent is not within the statute; see *Harburg Indiarubber Co.* v. *Martin*, 1902, 1 K. B. 778. A contract of guarantee is one of considerable nicety, and a surety will not be held bound beyond the strict terms of his undertaking; an apparently small variation will often release him, e.g., he will be discharged if his rights against the debtor are affected, disturbed or destroyed by any agreement between the creditor and debtor without his privity, such as if time is given by the creditor to the principal debtor (*Bolton* v. *Buckenham*, 1891, 1 Q. B. 278). For forfeiture of shares by a debtor whose payments have been guaranteed by a surety (*Re Darwen and Pearce*, 1927, 1 Ch. 176), and for circumstances in which the guarantor for a lessor, contemplating assignment, was not discharged by assignment (see *Johnson Bros.* (*Dyers*), *Ltd.* v. *Davison*, 79 Sol. Jo. 306). The guarantor, as a rule, has the right of subrogation or to step into the shoes of the creditor to the extent of the discharge of the debt or part of it by the guarantor. See INDEMNITY. Consult *De Colyar on Guarantees*; *Leake* or *Chitty on Contracts*.

Guardage, state of wardship.

Guardian. A guardian is one appointed by the wisdom and policy of the law to take care of a person and his affairs, who by reason of his imbecility and want of understanding is incapable of acting for his own interest (2 *Bacon's Abridgment*, 672). See GUARDIANSHIP.

Guardian, or **Warden, of the Cinque Ports,** a magistrate who has the jurisdiction of the ports or havens which are called the *Cinque Ports*. This office was first created amongst us, in imitation of the Roman policy, to strengthen the sea-coasts against enemies, etc.—*Camd. Brit.* 238. See CINQUE PORTS.

Guardian de l'Eglise, a churchwarden.

Guardian (Gardein) de Lesteinery, the warden of the stannaries or mines in Cornwall and Devon. See 16 Car. 1, c. 15.

Guardian of the Peace, a warden or conservator of the peace.

Guardian of the Spiritualities, the person to whom the spiritual jurisdiction of any diocese is committed during the vacancy of the see.

Guardian of the Temporalities, the person to whose custody a vacant see or abbey was committed by the Crown.

Guardians of the Poor. Their powers have been transferred to the councils of the counties and county boroughs, who are now the poor law authorities; see the Local Government Act, 1929 (c. 17), s. 1, and Poor Law Act, 1930) c. 17), s. 2 (see POOR LAW AUTHORITIES). Previously, they were the persons administering, under the control of the Ministry of Health, the funds raised by poor rates under the Poor Relief Act, 1601, and other Acts for the relief of the poor. They were elected by ballot by parochial electors, each giving one vote and no more for each of any number of persons not exceeding the number to be elected in 'unions' or parishes, as the case may be, within 40 days after the 25th March in every year, to serve for three years, one-third of their number going out of office every year under the Poor Law Amendment Act, 1834 (4 & 5 Wm. 4, c. 76), ss. 38 *et seq.*, as amended materially by the Local Government Act, 1894 (56 & 57 Vict. c. 73, s. 20).

Guardianship. The care of and responsibility for a person of non-age or infancy in regard to its person or property, or both. At Common Law, the father is the guardian by nature and nurture but the rights and duties relating to that office have been modified in favour of the mother by the Custody of Infants Act, 1873 (36 & 37 Vict. c. 12), Guardianship of Infants Acts, 1886 (49 & 50 Vict. c. 27), and 1925 (15 & 16 Geo. 5, c. 45), and the Custody of Children Act, 1891 (54 Vict. c. 3). The main consideration is the welfare of the child.

In modern times, guardians may be said to be of six kinds:—

(1) *Testamentary.*—By 12 Car. 2, c. 24, s. 8, *the father*, and by s. 5 of the Act of 1925, both father and mother have an equal right to appoint a guardian by deed or will to act after death respectively either jointly with the survivor or otherwise, as the Court may direct.

(2) *Maternal.*—Under the Acts of 1886 and 1925, s. 4, on the death of the father, the mother, if surviving, becomes guardian, either alone when no guardian is appointed by the father, or jointly with any guardian appointed by the father, or by the High or County Court if it shall think fit. A corresponding right is given to the father.

(3) *Customary.*—This guardianship, which was entirely local, and depended upon the law of the particular place where it existed, was found in the case of copyholds, ancient corporations, and gavelkind lands. Guardians of this kind have ceased to exist in respect of deaths after 1925; see Law of Property Act, 1922 and Administration of Estates Act, 1925. The father's authority of appointing a guardian under 12 Car. 2, c. 24, did not extend to copyhold property.

(4) *Ad litem.*—A guardian *ad litem* is a person who agrees or is appointed to appear and act for an infant, or a person of unsound mind not so found, who is made defendant to proceedings in Court. As to the appointment of married women as guardians *ad litem*, which is not favoured in, nor the practice of the Court of Chancery, see notes *A. P.* 1937 to R. S. C. Ord. XVI., r. 16.

(5) *By appointment of Chancery.*—This Court had power to appoint a guardian to protect the interests of an infant ward, where there was no guardian already. The guardian was usually of the same religion as the infant's parents, and must be solvent, of a moral, capable, and humane character, and resident in England. The wardship of infants and the care of infants' estates is continued to the Chancery Division of the High Court of Justice by the Judicature Act, 1925, ss. 44 and 56.

(6) *Guardian in Tort, or by Intrusion (Tutor Alienus).*—This is an indirect guardianship, arising from a person intruding into an infant's property; if he receive the profits belonging to the infant he must account for them in Chancery, being regarded as the infant's trustee. See *Wall* v. *Stanwick*, (1887) 34 Ch. D. 763.

Guastald, one who had the custody of the royal mansions.

Gubernator [Lat.], a pilot or steersman.

Guest. One who chooses to become a guest cannot complain of the accommodation afforded him by his host, so long as there is nothing in the nature of a trap or concealed danger; see *Corby* v. *Hill*, (1858) 4 C. B. N. S. p. 565, explaining *Southcote* v. *Stanley*, (1856) 1 H. & N. 247. See also CAVEAT VIATOR; INNKEEPER.

Guest-taker, an agister; one who took cattle in to feed in the royal forests.

Guidage, a reward for safe conduct through a strange land or unknown country.

Guidon de la Mer, a treatise on maritime law, being a collection of existing usages and customs. It was probably written and issued

for the first time towards the end of the sixteenth century, though the exact date is doubtful and the name of the compiler unknown. See *Pardessus*, vol. ii.

Guild [fr. *gildan*, Sax., to pay or contribute], a company, fraternity, or corporation, associated for some commercial purpose.

Guildhall, the chief hall of a city or borough-town, for holding courts, and for the meeting of the corporation in order to make laws for the regulation of the city or town, and to administer summary justice. See TOWN HALL.

Guildhall Sittings. The sittings held in the Guildhall of the City of London for City of London causes. See ROYAL COURTS OF JUSTICE.

Guildrents. See GILD-RENT ; GULTWIT.

Guilty. Having committed a crime or tort ; the word used by a prisoner in pleading to an indictment when he confesses the crime of which he is charged, and by the jury in convicting.

Guinea, a coin formerly issued by the Mint. These coins were called in *temp.* Wm. IV., and the word now means only the sum of 1*l.* 1*s.*, in which denomination the fees of counsel and physicians are always given.

Gule of August, the first day of that month.—*Fitz. N. B.* 62 ; *Plow.* 316.

Gules, the heraldic names of the colour usually called red. The word is derived from the Arabic word *gule*, a rose, and was probably introduced by the Crusaders. Gules is denoted in engravings by numerous perpendicular lines. Heralds who blazoned by planets and jewels called it *Mars* and *ruby*.

Gultwit, or **Gultwit,** amends for a trespass.

Gun-cotton. As to the making, sale, etc., of gun-cotton, see the Explosives Act, 1875 and tit. EXPLOSIVES.

Gun. The Gun Licence Act, 1870 (33 & 34 Vict. c. 57), in which ' gun ' ' includes a fire-arm of any description and an air-gun or any other kind of gun from which any shot, bullet or other missile can be discharged,' grants to the Crown ' for every licence to be taken out yearly by every person who shall use or carry a gun in the United Kingdom the sum of 10*s.*' By s. 6 of the Customs and Inland Revenue Act, 1883, licences expire on July 31st after date. Licences are registered by the inland revenue officers who grant them, and must be produced to such officers on demand. For using a gun without licence except in a dwelling-house, the fine is 10*l.*, but there are six exemptions, being of (1) persons in the naval, military, or volunteer service in discharge of their duty ; (2) licensees to kill game ; (3) persons carrying such licensee's gun, by his order and for his use, and giving his name and address as well as his own on request of inland revenue officer or constable, or owner or occupier of land on which the gun is used ; (4) occupier of land for scaring birds or killing vermin, or persons using gun by order of an occupier who has a game licence ; (5) gunsmiths or their servants in the course of trade or testing, and (6) common carriers carrying guns as such. See FIREARMS ; STREET OFFENCES.

Gunge, a granary, a depôt, chiefly of grain for sale. Wholesale markets held on particular days. Commercial depôts.—*Indian.*

Gunpowder. As to the making, keeping, sale, and carriage of gunpowder, see the Explosives Act, 1875, as amended by the Act of 1923. See EXPLOSIVES. As to the exportation of gunpowder, see also Customs Consolidation Act, 1876.

Gurgites [Lat.], weirs.—*Jac. Law Dict.*

Guti and **Gotti,** Goths, Jutæ or Getæ, who are said to have come to this island by way of Germany, see *Leg. Edw. Conf.* c. 35.

Gwabr merched, a payment or fine made to the lords of some manors upon their tenants' daughters marrying or committing incontinency.—*Jac. Law Dict.*

Gwalstow, a place of execution.—*Ibid.*

Gwayf, that which has been stolen and afterwards dropped in the highway for fear of a discovery.—*Cowel.*

Gylput, the name of a court which was held every three weeks in the liberty or hundred of Pathbew, in Warwick.—*Jac. Law Dict.*

Gynarcy, or **Gynæcocracy,** government by a woman ; a state in which women are legally capable of supreme authority, e.g., in Great Britain and Spain.

Gypsies. The first of the laws against gypsies, 22 Hen. 8, c. 10, describes this people, who were then new-comers in this country, as ' outlandish persons calling themselves Egyptians, using no craft or feat of merchandise, who have come into this realm and go from shire to shire and place to place in great company, and use great, subtle, and crafty means to deceive the people, bearing them in hand, that they by palmistry could tell men's and women's fortunes ; and so many times by craft and subtilty have deceived the people of their money, and also have committed many heinous felonies and robberies.' It was enacted that if any such persons came within the realm, they should forfeit all their goods and chattels, and should leave the kingdom within fifteen days

after command so to do, upon pain of imprisonment.—4 *Reeves*, c. xxx., 420.

Both this Act, and the still more severe 1 & 2 P. & M. c. 4, have been repealed, as Acts not in use, by 19 & 20 Vict. c. 64. Fortune-tellers are, however, punishable under the Witchcraft Act, 1735 (9 Geo. 2, c. 5), but more commonly are prosecuted under the Vagrant Act, 1824 (5 Geo. 4, c. 83), and *eo nomine*, any gypsy encamping on a highway by the Highways Act, 1835 (5 & 6 Wm. 4, c. 50), s. 72). See TENTS, VANS AND CAMPING SITES; and Public Health Act, 1936, ss. 268 and 269; also EDUCATION.

Gyves [fr. *gevyn*, Wel.], fetters or shackles for the legs.

H.

Habeas corpora juratorum (that you have the bodies of the jurors), a process which issued out of the Court of Common Pleas, commanding the sheriff to summon a jury. The practice was similar to the *distringas* from the King's Bench and Exchequer for the same purpose. Abolished by C. L. P. Act, 1852, s. 104.

Habeas Corpus Act (31 Car. 2, c. 2), providing remedy for violation of personal liberty by the writ of *habeas corpus ad subjiciendum*, which see below.

Habeas corpus ad subjiciendum (that you have the body to answer). This, the most celebrated prerogative writ in the English law, is a remedy for a person deprived of his liberty. It is addressed to him who detains another in custody, and commands him to produce the body, with the day and cause of his caption and detention, and to do, submit to, and receive whatever the judge or Court shall consider in that behalf. The writ is applied for either by motion to a court or application to a judge, supported by an affidavit of the facts. (See Crown Office Rules, 1906, rr. 216–230.) If a probable ground be shown that the party is imprisoned without a cause and has a right to be delivered, this writ ought of right to be granted to every man committed or detained in prison or otherwise restrained, though by command of the sovereign, the Privy Council, or any other power. Therefore there is an absolute necessity of expressing upon every commitment the reason for which it is made, that a Court upon a *habeas corpus* may examine, and, according to the circumstances of the case, may discharge, admit to bail, or remand the prisoner.

The great Habeas Corpus Act, 1679 (31 Car. 2, c. 2), did not newly establish the remedy for unjust imprisonment by writ of *habeas corpus*, but, reciting the shifts of gaolers and others to avoid their yielding obedience to such writ 'contrary to their duty and the known laws of the land' (as laid down in Magna Charta and other statutes), made the writ more actively remedial by imposing penalties for disobedience to the writ, and otherwise.

This statute extends only to the case of commitments for criminal charges, all other cases of unjust imprisonment being left to the *habeas corpus* at Common Law, now regulated by the Criminal Procedure Act, 1853 (16 & 17 Vict. c. 30), under which, where any person is restrained of his liberty (otherwise than for some criminal or supposed criminal matter, or for debt, or by process in any civil suit), any judge of the King's Bench Division of the High Court 'shall, upon probable and reasonable ground for such complaint, award in vacation a writ of *habeas corpus*,' directed to the person in whose custody the party is, returnable immediately.

Besides the efficacy of the writ of *habeas corpus* in liberating the subject from illegal confinement in a public prison, it also extends its influence to remove every unlawful restraint of personal freedom in private life, availing, for instance, to restore children to the lawful custody of their father, unless he is leading a vicious life (see *Re Goldsworthy*, (1875) 2 Q. B. D. 75); and see *Mews's Digest*, vol. v., tit. '*Crown Office (Habeas Corpus)*.'

By the Habeas Corpus Act, 1862 (25 & 26 Vict. c. 20), no writ of *habeas corpus* shall issue out of any of the courts in England into any colony or foreign dominion of the Crown where his Majesty has a lawfully established court of justice, having authority to grant and issue the said writ, and to ensure the due execution thereof throughout such colony or dominion. See *R.* v. *Crewe (Earl)*, 1910, 2 K. B. 576. See the Criminal Law Amendment Act, 1867, s. 10, as to bringing up persons indicted, and who are in gaol for some other offence.

The Habeas Corpus Act has been occasionally suspended in times of great public danger for a limited time, so as to allow the government to arrest persons on mere suspicion and to detain them without trial.

See, e.g., 57 Geo. 3, cc. 3 and 55, and as to Ireland, 29 Vict. c. 1, and 44 Vict. c. 4.

As to whom the writ should be directed, see *R.* v. *Secretary of State for Home Affairs, Ex parte O'Brien*, 1923, 2 K. B. 361, and 1923, A. C. 603. The House of Lords held, in this case, that no appeal lies from an order of a competent court for the issue of a writ of *habeas corpus* where the court determines the illegality of the applicant's detention and his right to liberty, although the order does not direct his discharge.

Habeas corpus testificandum (that you have the body to testify), a writ to bring a witness into court, when he is in custody at the time of a trial. A Secretary of State or a judge of the High Court or of a county court has power, on a proper application being made to him, to issue a warrant or order to bring up as a witness in any civil or criminal proceeding any prisoner in custody on a criminal charge; see Criminal Procedure Act, 1853 (16 & 17 Vict. c. 30), s. 9; County Courts Act, 1888, s. 112 (see, now, 1934 Act, s. 83); *Graham* v. *Glover*, (1855) 5 E. & B. 591; Crown Office Rules, 1906, rr. 228–230; Prisons Act, 1898, s. 11.

Habemus confitentem reum. (We have an accused person who confesses the whole charge.)

Habendum of a Deed, that part of a conveyance, etc., which determines the quantity of interest conveyed; but should the quantity be expressed in the premises, then the *habendum* may lessen, enlarge, explain, or qualify, but not contradict, or be repugnant to the estate granted in the premises. See DEED.

Habentia, riches.—*Dugd. Mon.*, tom. 1, p. 100.

Habere facias possessionem (that you cause to have possession), a writ that issues for a successful plaintiff in ejectment, to put him in possession of the premises recovered. If the first writ be not executed, an *alias*, etc., may be sued out. The officer, if necessary, may break open outer doors, in order to give possession, or he may take the *posse comitatus* with him if he fear violence.—1 *Chit. Arch. Prac.* By R. S. C. 1883, Ord. XLVII., a judgment that a party recover possession of land may be enforced by writ of possession, and where by any judgment any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment shall be entitled to sue out the writ on filing an affidavit showing service of the judgment and disobedience thereto. An unsuccessful defendant can be ordered to pay to the plaintiff his costs of obtaining this writ (*Dartford Brewery Co.* v. *Moseley*, 1906, 1 K. B. 462).

Habere facias seisinam (that you cause to have possession), a writ addressed to the sheriff to give seisin of a freehold estate recovered by *ejectione firmæ* or other action. —*Old N. B.* 154.

Habere facias visum (that you cause to have view), a writ that lay in divers cases in real actions, as in formedon, etc., where a view was required to be taken of the lands in controversy. See FORMEDON.

Habergeon, a diminutive of hauberk, a short coat of mail without sleeves.—*Blount.*

Haberjects, a cloth of a mixed colour.—*Magna Charta*, c. 26.

Habit and Repute. By the law of Scotland marriage may be established by habit and repute where the parties cohabit and are at the same time held and reputed as man and wife.—*Bell's Law Dict.*; see *Dysart Peerage Case*, (1881) 6 App. Cas. 489.

Habitatio. The nature of this personal servitude is not obvious. Some jurists confound it with the right to use a house; but Justinian declares it to be quite distinct both from the *jus utendi* and the *jus fruendi*. For whilst the *jus utendi* is one and entire, the *habitatio* is a series of rights arising from day to day, so that in bequeathing it you make a separate bequest, in fact, for each day; hence, also, it was not extinguished by nonuser. Justinian added the further distinction, that it might be let.—*Cum. C. L.* 95, and *Sand Just.*

Habitual Criminals Act (32 & 33 Vict. c. 99. By this Act power was given to apprehend on suspicion convicted persons holding licence under the Penal Servitude Acts, 1853, 1857, and 1864. The Act was repealed and replaced by the Prevention of Crimes Act, 1871. See that title.

Habitual Criminal. See PREVENTIVE DETENTION.

Habitual Drunkard. Defined by the Habitual Drunkards Act, 1879 (42 & 43 Vict. c. 19) (made perpetual by the Inebriates Act, 1888, and amended by the Inebriates Acts, 1898 and 1899), which authorizes confinement in a retreat, upon the party's own application, as :—

a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself or herself or to others, or incapable of managing himself or herself, and his or her affairs.

See also Licensing Act, 1902, s. 5 (extended to drug addicts by 15 & 16 Geo. 5, c. 51, s. 3); *Eaton* v. *Best*, 1909, 1 K. B. 632; *R.* v. *Briggs*, *ibid.* 381; and DRUNKENNESS.

Hable, seaport town.—27 Hen. 6, c. 3.

Hackney Carriages. The provisions relating to these vehicles in large towns are contained in the Town Police Clauses Act, 1847 (10 & 11 Vict. c. 89), ss. 37 *et seq.*, incorporated by the Public Health Act, 1875, s. 171, and in London in the London Hackney Carriages Act, 1831 (1 & 2 Wm. 4, c. 22), which has been amended by many subsequent Acts, of which 6 & 7 Vict. c. 86, and 16 & 17 Vict. cc. 33, 127, and the London Cab and Stage Carriage Act, 1907 (7 Edw. 7, c. 55), are the most important. In the last-mentioned Act provision for taximeter cabs is made. The conveyance of infected persons in public vehicles is prohibited by ss. 159 and 160 of the Public Health Act, 1936. For orders fixing fares and making other regulations for London cabs, see also the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43); and London Passenger Transport Act, 1933 (23 & 24 Geo. 5, c. 14); Road Traffic Act, 1934 (24 & 25 Geo. 5, c. 50), and the various statutory rules and orders, and generally, see *Chitty's Statutes*, tit. '*Hackney and Stage Carriages*,' and *Bonner and Farrant's Law of Motor Cars*.

Hadbote, a recompense for an affront offered to a priest.—*Cowel.*

Haderunga [fr. *had*, Sax., person, and *arung*, honoured], respect of persons; partiality.—*Ibid.*

Hadgonel, a tax or mulct.—*Jac. Law Dict.*

Hæreda [Goth.], court-leet.

Hærede abducto, an ancient writ that lay for the lord, who, having by right the wardship of his tenant under age, could not obtain his person, the same being carried away by another person.—*Old N. B.* 93.

Hærede deliberando alteri habet custodiam terræ, an ancient writ, directed to the sheriff to require one that had the body of an heir being in ward, to deliver him to the person whose ward he was by reason of his land.—*Reg. Brev.* 161.

Hærede rapto, a writ for the ravishment of the lord's ward.—*Reg. Brev.* 163.

Hæredes proximi, heirs begotten; children.

Hæredes remotiores, heirs not begotten, as grandchildren, great grandchildren, etc., descending in a direct line *in infinitum*.

Hæredipeta, the next heir to lands.

Hæreditas jacens. An estate in Scotland is *in hæreditate jacente* when, after the ancestor's death, no title to it has been made up in the person of his heir.—*Bell's Dict.*

Hæres factus, an heir appointed; a devisee.

Hæres natus, an heir so born.

Hæretico comburendo, De, an ancient common law writ against a heretic, who having been convicted of heresy by the bishop, abjured it, and afterwards fell into the same again, or some other, and was thereupon delivered over to the secular power in order that he might be burnt to death.—See *Fitz. N. B.* 269; *Lely's Church of England Position*, 179; 2 Hen. 4, c. 15; 1 & 2 P. & M. c. 6; 31 Hen. 8, c. 14. By 1 Eliz. c. 1, s. 6, all statutes relating to heresy were repealed, though somehow two men were burnt in her reign and two under James I. By 29 Car. 2, c. 9, s. 1, the writ *de hæretico comburendo* was abolished, but with a saving for the jurisdiction of Protestant archbishops or bishops or any other judges of any ecclesiastical courts to punish, according to his Majesty's ecclesiastical laws, 'atheism, blasphemy, heresy, or schism and other damnable doctrines and opinions by excommunication, deprivation, degradation, and other ecclesiastical censures not extending to death' in such sort and no other as they might have done before the Act; see 53 Geo. 3, c. 127, s. 3. Consult *Odgers on Libel*.

Hafne, a haven or port.—*Cowel.*

Haga, a house in a city or borough.

Hagia, a hedge.—*Dugd. Mon.*, tom. 2, p. 273.

Hagne, a little hand-gun.—33 Hen. 8, c. 6.

Hagnebut, a hand-gun of a larger description than the hagne.—2 & 3 Edw. 6, c. 14; 4 & 5 P. & M. c. 2.

Hague Conference. A conference of representatives of different States to consider the question of international peace and kindred subjects. So called because the place of meeting has been The Hague in South Holland (Netherlands). The first Hague Conference was the outcome of a circular letter of the Czar of Russia handed to all the foreign representatives accredited to the Court of St. Petersburg on the 24th August, 1898, and as a result the first Peace Conference met on 18th May, 1899. This Conference brought about the creation of a Permanent Court of Arbitration, and each of the Powers signing the Hague Arbitration Convention could appoint four persons, who constituted a panel or general list of arbitrators from which as occasion arises selec-

tion can be made. The Hague Arbitration Court has dealt with complicated international disputes. A second Peace Conference met at the Hague on 18th June, 1907. Consult Higgins, *Hague Conference.*

Haia, a park enclosed.—*Cowel.* Cf. Fr. '*Haie,*' and 'haha,' a walled trench or embrasure.

Hallworkfolk (i.e., holywork folk), those who formerly held lands by the service of defending or repairing a church or monument.—*Bailey.*

Hainault, Forest of. As to its disafforesting, see 14 & 15 Vict. c. 43; and as to the allotment of commons, 21 & 22 Vict. c. 37.

Haketon, a military coat of defence.

Hale, Sir M., author of a work on the Pleas of the Crown. See PLEAS OF THE CROWN.

Half-blood, relationship through one only and not through both of the parents or other ancestors. By the old law a relative of the half-blood could not inherit real estate, but this was altered by the Inheritance Act, 1833 (3 & 4 Wm. 4, c. 106). In the succession to personal estate there was no distinction between the whole and the half-blood until 1926, when the Admin. of Estates Act, 1925, ss. 46 and 47, enacted that the half-blood are only entitled to the distribution of an intestate estate on the total absence of the whole blood in equal degree; see FRATER FRATRI, etc.

Half-brother, Half-sister, a brother or sister by the father's or mother's side only. Marriage with a half-sister of a deceased wife or half-brother of a deceased husband has been legalized; see Marriage (Prohibited Degrees of Relationship) Acts, 1907–1931.

Half-endeal, a moiety, or half a thing.

Half-mark, a noble, or 6*s.* 8*d.* in money.

Half-notes. Sending the halves of bank notes is no payment, and the property in the meantime remains in the sender: *Smith* v. *Mundy,* (1860) 3 Ell. & Ell. 22. But see *Redmayne* v. *Burton Lloyd & Co.,* (1860) 2 L. T. 324. (*Issuing bankers bound to pay half-notes upon indemnity.*)

Half-seal, that which was used in the Chancery for sealing of commissions of delegates, upon any appeal to the Court of Delegates either in ecclesiastical or maritime causes. Abolished.

Half-timer. A child who, by the operation of the Factory and Education Acts, was employed for less than the full time in a factory or workshop, in order that he might attend some 'recognized efficient school.' It is now illegal to employ a child in a factory under the age up to which his parents are obliged to cause him to receive education (Education Act, 1918, s. 14; Education Act, 1921, ss. 170 (13), 42, 46; Children and Young Persons Act, 1933 (22 & 23 Geo. 5, c. 12), s. 46.

Half-tongue, a jury *de medietate linguæ,* formerly empannelled to try foreigners. An alien is now triable in the same manner as if he were a natural-born British subject; see British Nationality and Status of Aliens Act, 1914, s. 18.

Half a Year, 182 days, and not six lunar months.—*Cro. Jac.* 166. Also two quarters of the year.

Hallmass, or **Hallamass,** the feast of all Saints, on the 1st of November; one of the cross quarters of the year was computed from Halimass to Candlemas.—*Cowel.*

Halke, a hole.—*Jac. Law Dict.*

Hallage, tolls paid for goods or merchandise vended in a hall.—6 *Rep.* 62.

Hallamshire, a part of the county of York, anciently so called, in which the town of Sheffield stands. See *Whalley's Hist. of Hallamshire*; Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 63.

Hall-marking of Foreign Plate Act, 1904 (4 Edw. 7, c. 6). See PLATE, and *Chitty's Statutes.*

Hallmote, or **Hallimote,** a court among the Saxons answering to our court-baron; also the court held by each of the city companies in London.

Halymote, a holy or ecclesiastical court.

Halywerkfolk. See HAILWORKFOLK.

Ham, a place of dwelling; a home close; a little narrow meadow.—*Blount.*

Hambling, or **Hammelling, of Dogs,** expeditation.—*Manwood.*

Hamesoken, the offence of violently invading a man's house.

Hamfare, breach of the peace in a house.

Hamlet, Hemel, Hampsel, a vill or little village.

Hamma, a close joining to a house; a croft; a little meadow.

Hamsoca, or **Hamsoken.** See HAMESOKEN.

Hanaper [fr. *hanaperium,* Low Lat., a hamper], a treasury, answering to our modern term *exchequer.*

Hanaper-office, an office belonging to the Common Law jurisdiction of the Court of Chancery, so called because all writs relating to the business of a subject, and their returns, were formerly kept in a hamper, *in hanaperio.*—5 & 6 Vict. c. 103. See now CENTRAL OFFICE.

Hand-borrow, a surety ; a manual pledge.

Hand-fasting, betrothment.

Hand-grith, peace or protection given by the king with his own hand.

Hand-habend, a thief caught in the very act, having the thing stolen in his hand.

Hand-sale, a custom among the northern nations of shaking hands to bind a bargain or contract.

Handsel, earnest-money.

Handwriting, Comparison of, allowed by s. 8 of the Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), which applies to all Courts of Judicature, as well criminal as others, and to all persons having by law or consent of parties authority to hear, receive, and examine evidence, and enacts that :—

> Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine shall be permitted to be made by witnesses ; and such writings, and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness or otherwise of the writing in dispute.

'Hanged, drawn and quartered.' See TREASON.

Hanging. See CAPITAL PUNISHMENT.

Hanging in Chains. In atrocious cases it was at one time usual for the Court to direct a murderer, after execution, to be hanged upon a gibbet in chains near the place where the murder was committed, a practice abolished by 4 & 5 Wm. 4, c. 26.

Hangwite, or **Hangwit,** a liberty to be quit of a felon or thief hanged without judgment, or escaped out of custody.—*Rastal.*

Hanig, customary labour.

Hansgrave, the chief of a company ; the head man of a corporation.

Hantelode, an arrest.—*Jac. Law Dict.*

Hap, to catch.

Harbinger, an officer of the royal household.

Harbours. See PORT. As to the improvement and management of harbours, docks, and piers, see the Harbours, Docks, and Piers Clauses Act, 1847 (10 Vict. c. 27), and other Acts. As to the constitution of Port Health Authorities, see Public Health Act, 1936, ss. 2–10. By 9 & 10 Geo. 5, c. 50, s. 2, the powers of the Board of Trade over harbours, docks and piers were transferred to the Ministry of Transport. See *Chitty's Statutes,* tit. *'Harbours.'*

Harbouring. This constitutes an offence in the case of (1) constables on duty (see, however, *Sherras* v. *de Rutzen,* 1895, 1 Q. B. 918, and Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 78) ; (2) deserters from merchant ships (see s. 236 (British ship) and s. 238 (foreign ship) of the Merchant Shipping Act, 1894) ; (3) felons with a view to their concealment from justice ; and (4) thieves or reputed thieves under ss. 10 and 11 of the Prevention of Crimes Act, 1871. See ESCAPE.

Hard Labour, a punishment said to have been introduced by 5 Anne, c. 6. By the Criminal Justice Administration Act, 1914, s. 16 (1), 'where a person convicted by or before any court of an offence is sentenced to imprisonment without the option of a fine, the imprisonment may, in the discretion of the court, be either with or without hard labour, notwithstanding that the offence is an offence at common law, or that the statute under which the sentence is passed does not authorize the imposition of hard labour or requires the imposition of hard labour.' Imprisonment for default in payment of a fine is always without hard labour.

Hare, a beast of warren. A hare is 'game' within the Game Acts and Game Certificate Acts (see GAME) ; but by the Hares Act, 1848 (11 & 12 Vict. c. 29), both occupier and owner may kill hares without a certificate, and by the Ground Game Act, 1880 (43 & 44 Vict. c. 47), amended as to moorlands by the Ground Game (Amendment) Act, 1906 (6 Edw. 7, c. 21), the occupier has, 'incident to and inseparable from his occupation,' a concurrent right with any other person to kill hares and rabbits on the land occupied. Any agreement purporting to divest an occupier of this right is by s. 3 void. As to such agreements, see *Stanton* v. *Brown,* 1901, 1 K. B. 671 ; *Sherrard* v. *Gascoigne,* 1900, 2 Q. B. 279. See *Waters* v. *Phillips,* 1910, 2 K. B. 465, and *Aggs on Agricultural Holdings.*

The Hares Preservation (Ireland) Act, 1879 (42 & 43 Vict. c. 23), following 27 Geo. 3, c. 35, an Act of the Irish Parliament repealed in the same year, made the period between 20th of April and 12th of August a close time for hares in Ireland, by making it penal either to *kill* or possess killed any hare or leveret during that period ; but there was no close time for hares in England until 1892, when the Hares Preservation Act, 1892 (55 & 56 Vict. c. 8), prohibited the *sale* of any hare or leveret in any part of Great Britain in March, April, May, or June —with a saving, however, for foreign imported hares. Killing of hares is forbidden on Sundays and Christmas Day (Game Act, 1831 (1 & 2 Will. 4, c. 32), s. 3 ; and on moorlands and unenclosed lands between

April 1st and August 31st by Ground Game (Amendment) Act, 1906 (6 Edw. 7, c. 21), s. 2. As regards coursing, see Protection of Animals Act, 1911 (1 & 2 Geo. 5, c. 27), s. 1 (3).

Harness, all warlike instruments ; also the tackle or furniture of a ship.—*Jac. Law Dict.*

Haro, Harron, an outcry after felons and malefactors.—*Ibid.*

Hasp and Staple, the old form of the entry of an heir into premises held by burgage tenure in Scotland.—*Bell's Dict.*

Hat-money, a small duty paid to the captain and mariners of a ship, called *primage*. In the *Guidon de la Mer* (see that title) it is described as ' la contribution des chausses ou pot de vin du maitre.' See PRIMAGE.

Haugh, or **Howgh,** a green plot in a valley.

Haur, hatred.—*Leg. W.* 1, c. 16.

Hauthoner, a man armed with a coat of mail.—*Jac. Law Dict.*

Haven, that which holds or contains ships ; a port or harbour. See HARBOURS.

Haw, a small parcel of land so called in Kent ; a house.—*Co. Litt.* 5.

Haward. See HAYWARD.

Hawberk, or **Hawbert,** one who held land in France by finding a coat or shirt of mail, with which he was to be ready when called upon. See 13 Edw. 1, c. 6 ; FIEF D'HAUBERT.

Hawgh, a valley.—*Co. Litt.* 5*b*.

Hawkers and **Pedlars,** persons who carry their goods from place to place for sale. In 1810 (50 Geo. 3, c. 41), imposed a licence duty on them, and made various provisions in regard to their trade. After many amending Acts (see, e.g., 52 Geo. 3, c. 108, 26 & 27 Vict. c. 18, Sched. B, 22 & 23 Vict. c. 36) the Hawkers Act, 1888 (51 & 52 Vict. c. 33), has regulated the business of hawkers, defining, for the purposes of the Act, a hawker as a person who travels about selling or exposing samples *with a horse or other beast bearing or drawing burden*, the Pedlars Act, 1871 (34 & 35 Vict. c. 96), for regulating the business of pedlars, having already defined a pedlar for the purposes of that Act as a person travelling about selling or procuring orders for goods or selling his skill in handicraft, *without a horse*, etc. See *Woolwich Local Board* v. *Gardiner*, 1895, 2 Q. B. 497.

A hawker's licence costs 2*l*. a year, and except by way of renewal of a licence for the year immediately preceding, is grantable by the Inland Revenue on the production of a certificate of good character from a clergyman and two householders of the parish of residence, or a justice of the peace or a district superintendent or inspector of police. There are exemptions for the sale of fish, fruit, victuals, or coal, and for sales at markets or fairs.

A pedlar's certificate costs 5*s*. a year, and is grantable by the chief officer of police of the district in which the applicant has resided for a month before the application on being satisfied that the applicant is above seventeen, is of good character, and in good faith intends to carry on the business of a pedlar. There are exemptions for commercial travellers, for the sale of fish, fruit, or victuals, and for sales at markets or fairs.

Hay, a hedge or enclosure ; a net to take game.—*Jac. Law. Dict.*

Hay-bote, a liberty to take thorns and other wood to make and repair hedges, gates, fences, etc., either by tenant for life or years ; also wood for making of rakes and forks. See BOTE.

Hayward, one who keeps a common herd, of cattle of a town, and the reason of his being so called may be, because one part of his office is to see that they neither break nor cross the hedges of enclosed lands ; or because he keeps the grass from hurt or destruction. He is an officer appointed in the lord's court, to look to the fields and impound cattle trespassing thereon ; to see that no pound breaches be made, and if any be, to present them to the leet, etc.—*Kitch.* 46 ; *Scriven on Copyholds.*

Hazard, an unlawful game by 18 Geo. 2, c. 34.

' He ' in Acts includes ' she,' unless the contrary intention appears, in all Acts passed after 1850, and in criminal statutes. See Interpretation Act, 1889, s. 1.

Headborough, the head of a borough ; a constable. See CONSTABLE.

Head-courts, certain tribunals in Scotland, abolished by 20 Geo. 2, c. 50.—*Ersk.* i. 4, 5.

Head-land, the upper part of land left for the turning of the plough, whence the *head-way*.—*Paroch. Antiq.* 587.

Head-pence, an exaction of a certain sum collected by the Sheriff of Northumberland from the inhabitants of that county, without any account thereof to be made to the Crown. Abolished by 23 Hen. 6, c. 7.

Head-silver, dues paid to lords of leets ; also a fine of 40*l*. which the Sheriff of Northumberland exacted of the inhabitants twice in seven years.

Heafodweard, one of the services to be rendered by a thane, but in what it consisted seems uncertain.—*Anc. Inst. Eng.*

Healfang, or **Halsfang** [fr. *hals*, Sax., neck, and *fang*, to seize], the pillory; also a pecuniary mulct, to commute for standing in the pillory.

Healgemote, a court-baron; an ecclesiastical court.

Health. See QUARANTINE; ADULTERATION; VACCINATION; and PUBLIC HEALTH.

Health, Minister of. The Ministry of Health Act, 1919 (9 & 10 Geo. 5, c. 21), provided for the appointment of a Minister of Health, to whom it transferred (s. 3) all the powers and duties of the Local Government Board, Insurance Commissioners and Welsh Insurance Commissioners, and of the Board of Education respecting the medical inspection and treatment of young persons and children, nursing and expectant mothers, and, generally, all the powers of various departments, boards, etc., respecting the preservation of health. Included in these functions is the administration of the Public Health Acts and Housing Acts. The Minister sits in the House of Commons and is a member of the Cabinet.

Hearing, an investigation of a controversy. See TRIAL.

Hearsay Evidence. It is a general principle in the law of evidence that if any fact is to be proved against anyone, it ought to be proved in his presence by the testimony of a witness sworn to speak the truth; and the reason of the rule is, that the person who is to be affected by the evidence ought to have an opportunity of interrogating the witness as to his means of knowledge, and concerning all the particulars of his statement. Hearsay evidence (whether spoken or written) of a fact, therefore, is not admissible. And this rule is extended to affidavits, which, except on interlocutory motions, when statements as to belief with the grounds thereof are admissible, must be confined to facts which the deponent can prove of his own knowledge (R. S. C. 1883, Ord. XXXVIII., r. 3).

Among the exceptions to the general rule as to the inadmissibility of hearsay evidence are the following: (1) dying declarations; (2) hearsay in questions of pedigree; (3) hearsay on questions of public right, customs, boundaries, etc.; (4) admissibility of old leases, rent-rolls, surveys, etc.; (5) admissibility of declarations against interest; (6) admissibility of incumbents' books; (7) res gestæ (*q.v.*)—see EVIDENCE. Consult *Best*, *Powell*, *Roscoe*, or *Taylor on Evid.*

Hearth-money, a tax levied by 14 Car. 2, c. 10. It was productive of great discontent, and was abolished by 1 W. & M. st. 1, c. 10.

Hebbermen were fishermen or poachers below London Bridge, who fished for whitings, flounders, smelts, etc., commonly at ebbing water. Punishable by 4 Hen. 7, c. 15.

Hebberthef, the privilege of claiming the goods and trial of a thief within a certain liberty.

Hebbing-wears, a device for catching fish in ebbing waters.—23 Hen. 8, c. 5.

Hebdomad, a week; a space of seven days.

Hebdomadius, a week's man, canon, or prebendary in a cathedral church, who has the care of the choir and the officers belonging to it, for his own week.—*Reg. Episc. Hereford MSS.*

Heccagium, rent paid to a lord of the fee for a liberty to use the engines called hecks.

Heck, an engine to take fish in the river Ouse.—23 Hen. 8, c. 18, repealed by Salmon Fishery Act, 1861.

Heda, a small haven, wharf, or landing-place.—*Old Records.*

Hedagium, toll or customary dues at the hithe or wharf, for landing goods, etc., from which exemption was granted by the Crown to some particular persons and societies.

Hedge-bote, materials to make hedges, which a lessee for years, etc., may of common right take from the land leased.—See BOTE.

Hedge-priest, a vagabond priest in olden time.

Heir [fr. *heire*, Old Fr.; *hæres*, Lat.], a person who succeeds by descent to an estate of inheritance. It is *nomen collectivum*, and extends to all heirs; and under heirs, the heirs of heirs are comprehended *in infinitum*.

The Admin. of Estates Act, 1925, s. 45, having abolished all modes of descent of real property obtaining before 1st January, 1926, in regard to deaths taking place after 1925, except in a few cases (see DESCENT and DEVOLUTION), the importance of the 'heir' has diminished but the following note has been retained since the word 'heir' will be construed according to its meaning under the general law in force before 1926, in deeds and wills executed after 1925, under which the 'heir' may become entitled to an equitable interest in personalty and realty corresponding to a real estate by purchase under the old law; see Law of Property Act, 1925, s. 132. Sect. 131 of the same Act abolishes the rule in *Shelley's Case*, and provides that a limitation to the heir of a particular person is to be construed in equity as a word of purchase

to the 'heir,' and not of limitation as it was under the general law in force before 1st January, 1926.

The different kinds of heirs were classed and defined :—

(α) Heir *apparent*. He whose right of inheritance is indefeasible, provided he outlive the ancestor: as the eldest son, who must by the course of the Common Law be heir to his father on his death.—3 *Prest. Abst.* 5. Especially the eldest son of the Sovereign as heir to the Crown; or the eldest son of an eldest son who has died during the Sovereign's life.

(β) Heir by *custom*. He who is heir by a particular and local custom, as in borough-English lands, the youngest son succeeds his father, while in gavelkind lands, all the sons inherit as parceners, and make but one heir.—*Co. Litt.* 140.

(γ) Heir by *devise* or *hæres factus*. He who is made, by will, the testator's heir or devisee, and has no other right or interest than the will gives him.

(δ) Heir *general*, or heir *at law*. He who, after his father or ancestor's death, has a right to inherit all his lands, tenements and hereditaments.

(ε) Heir *presumptive*. He who, if the ancestor should die immediately, would be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child; or a daughter, whose present hopes may be hereafter cut off by the birth of a son.

(ζ) *Hæres sanguinis et hæreditatis*. (Heir of the blood and inheritance.) A son who may be defeated of his inheritance by his father's displeasure.

(η) Heir *special*. The issue in tail claiming *per forman doni*.

(θ) *Ultimus hæres*. He to whom lands come by escheat for want of proper heirs. He was either the lord of the manor or the Crown. See ESCHEAT.

In Scots law 'heir' has a more extended significance, comprehending not only those who succeed to lands, but successors to personal property also. See *Erskine's Institutes*, b. 3, tit. 8, ss. 47 *et seq.*

Heirdom, succession by inheritance.

Heiress, a female heir. Where there are several they are called *co-heiresses*.

Heirloom [fr. *hæres*, Lat., heir, and *geloma*, Sax., goods], personal chattels, such as charters, deeds, and evidences of title, coat armour set up in a church, or a tombstone erected there, which go to the heir, together with the inheritance. The ancient jewels of the Crown are heirlooms. Heirlooms strictly so called are now rarely met with. See *Williams on Personal Property; Co. Litt.* 18 *b*, 185 *b*; 2 *Bl. Com.* 428.

The term 'heirlooms' is often applied in practice to the case where certain chattels—for example, pictures, plate, or furniture—are directed by will or settlement to follow the limitations thereby made of some family mansion or estate. But the word is not then employed in its strict and proper sense, nor is the disposition itself beyond a certain point effectual; for the articles will, in such case, belong absolutely to the first person who, under the limitations of the settlement, becomes entitled to the real estate for a vested estate of inheritance; see *Portman* v. *Viscount Portman*, 1922, A. C. 473, and cases there referred to.

The 37th section of the Settled Land Act, 1882 (45 & 46 Vict. c. 38), provided that 'where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of 21 years, or so as otherwise to vest in some person becoming entitled to an estate of freehold inheritance in the land,' a tenant for life could, by order of the Chancery Division of the High Court, sell the chattels or any of them, the proceeds of the sale to be dealt with as 'capital money' under the Act. This section has been replaced by s. 67 of the Settled Land Act, 1925, with amendments in keeping with s. 130, Law of Property Act, 1925, which enables an entailed interest to be created in personal as well as real estate (see TAIL). Under these Acts the word 'heirloom' apparently means a chattel intended to devolve with land. By s. 130 (1), L. P. Act, 1925, entailed chattels which are heirlooms are not subject to the general powers of a tenant for life under the Settled Land Act, 1925, except by an order of the Court under s. 67 of the S. L. Act, 1925. By s. 130 (3), L. P. Act, heirlooms *inter alia* may be entailed by reference to correspond ing settlements of land whenever created. Personal chattels settled upon entail without reference to land may be sold with the consent of the usufructuary for the time being if of full age (*ibid.*, sub-s.-5).

Heirship Movables, those things which the law withholds from the executors and next of kin, and gives to the heir, that he may not succeed to a house and lands completely dismantled. They consist of the best of everything—furniture, horses, cows, oxen,

farming utensils, etc.—but do not include fungibles.—*Scots Law.*

Hell, a place under the Exchequer Chamber, where the king's debtors were confined. —*Richard. Dict.*

Helm, thatch or straw; a covering for the head in war; a coat of arms bearing a crest; the tiller or handle of the rudder of a ship.

Helowe-wall [fr. *hælan*, Sax., to cover], the end-wall covering and defending the rest of the building.—*Paroch. Antiq.* 573.

Helsing, a Saxon brass coin of the value of a halfpenny.

Henchman, a page; an attendant; a herald.

Henedpenny, a customary payment of money instead of hens at Christmas; a composition for eggs.

Henfare, a fine for flight on account of murder.—*Domesday Book.*

Hengen, a position for persons condemned to hard labour.—*Anc. Inst. Eng.*

Hengham, de, Radulph, author of a law treatise composed in the reign of Edward I. If consists of two parts: one called *Summa Magna*, and the other *Summa Parva*. It seems to be a collection of notes relating to proceedings in actions.

Henghen, a prison; a house of correction.

Hengwite. See HANGWIT.

Heordfæte, or **Hudefæst,** a master of a family, keeping house, distinguished from a lower class of freemen, viz., *folgeras* (*folgarii*), who had no habitations of their own, but were house-retainers of their lords.—*Anc. Inst. Eng.*

Heordpenny, Peter-pence.

Heordwerch, the service of herdsmen, done at the will of their lord.

Heptarchy [fr. ἑπτά, Gk., and ἀρχη], a government exercised by seven persons, or a nation divided into seven governments. In the year 560, seven different monarchies had been formed in England by tribes who had crossed over the North Sea from the mainland, namely, that of Kent by the Jutes; those of Sussex, Wessex, and Essex by the Saxons; and those of East Anglia, Bernicia, and Deira by the Angles. To these were added, about the year 586, an eighth, called the kingdom of Mercia, also founded by the Angles, and comprehending nearly the whole of the heart of the kingdom. These states formed what has been designated the Anglo-Saxon Octarchy, or more commonly, though not so correctly, the Anglo-Saxon Heptarchy, from the custom of speaking of Deira and Bernicia under the single appellation of the kingdom of Northumberland.

Herald [fr. *here*, Sax., an army, and *heald*, a champion; *herault*, *heraut*, Fr.; *herald*, Ger.; *araldo*, Ital.; because it was part of his office to charge or challenge unto battle or combat], an officer who registers genealogies, adjusts ensigns armorial, regulates funerals, and carries messages between princes, and proclaims war and peace. Heralds were anciently called *Dukes at Arms*, probably from the Latin *ducere ad arma;* because the conducting of affairs concerning peace and war devolved upon them, their office being to carry messages to the enemy, and to proclaim war and peace. Hence the persons of heralds were deemed sacred by the law of nations, and were received and protected by belligerent powers, as flags of truce are in the present day. The three chief heralds are called *Kings of Arms;* of whom (1) *Garter* is the principal, instituted by Henry V. His office is to attend the Knights of the Garter at their solemnities, and to marshal the funerals of the nobility. (2) *Clarencieux King of Arms*, ordained by Edward IV., so called from the Duke of Clarence. He is to marshal and dispose of the funerals of the inferior nobility on the south side of the Trent. (3) *Norroy* (*North Roy*) *King of Arms* holds a similar department on the north side of the river Trent. These two last are denominated *provincial* heralds, because they divide the kingdom between them into provinces. Besides the Kings of Arms, there are six subordinate heralds, according to their origin, as they were created to attend dukes and great lords in martial expeditions, i.e., *York*, *Lancaster*, *Chester*, *Windsor*, *Richmond*, and *Somerset;* the four former were instituted by Edward III., and the two latter by Edward IV. and Henry VIII. To these upon the accession of George I. to the crown, on account of his Hanoverian dominions, a new herald was added, called *Hanover* herald, and another styled *Gloucester* King of Arms.

To the superior and inferior heralds are added four others, called *Marshals* or *Pursuivants of Arms*, who commonly succeed in the places of such heralds as die or are promoted; they are denominated *Blue-mantle*, *Rouge-croix*, *Rouge-dragon*, and *Portcullis*. See POURSUIVANT and HERALDS' COLLEGE.

Lord Lyon's Office in Scotland and *Ulster King of Arms* in Ireland are distinct and independent. As to Scotland, see *Stevenson's Heraldy in Scotland.*

Heraldry: (1) The science of heralds; see

last title. (2) An old and obsolete abuse of buying and selling precedence in the paper of causes for hearing.—See *North's Life of Lord-Keeper Guilford*, 204.

Heralds' College, or **'College of Arms,'** an ancient royal corporation, first instituted by Richard III., in 1483, situated on St. Bennet's Hill, near St. Paul's, in the city of London. The above-named heralds, together with the earl marshal and a secretary, are the members of this corporation; in all, thirteen persons. The heralds' books, compiled when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, and to register such marriages and descents as were verified to them upon oath, are allowed to be good evidence of pedigrees.—3 *Stark. Evid.* 843; *Hubback on Succession*, pp. 538 *et seq.* See HERALD.

The Heralds' office is still empowered to make grants of arms and to permit change of names. See SURNAME.

Herbagium anterius, the first crop of grass or hay, in opposition to aftermath and second cutting.—*Paroch. Antiq.* 459.

Harbenger, or **Harbinger,** an officer in the royal house, who goes before and allots the noblemen and those of the household their lodgings; also, an innkeeper.

Herbergagium, lodgings to receive guests in the way of hospitality.

Herbergare, or **Herbigare,** to harbour; to entertain.

Herbergatus, spent in an inn.

Herbery, or **Herbury,** an inn.

Herce, Hercia, a harrow.—*Fleta*, l. 2, c. lxxvii.

Herciare, to harrow.—4 *Inst.* 270.

Herdewich, or **Herdewic,** a grange or place for cattle or husbandry.—*Dugd. Mon.*, tom. 3.

Herdwerch, Heordwerch, herdsmen's work, or customary labour, done by shepherds and inferior tenants, at the will of the lord.

Herebannum, a mulct for not going armed into the field when summoned.—*Spelm.*

Herebote, the royal edict, summoning the people into the field.

Hereditaments, every kind of property that can be inherited; i.e., not only property which a person has by descent from his ancestors, but also that which he has by purchase, because his heir can inherit it from him. The two kinds of hereditaments are *corporeal*, which are tangible (in fact, they mean the same thing as land), and *incorporeal*, which are not tangible, and are the rights and profits annexed to, or issuing out of, land. It includes money held in trust to be laid out in land (*Re Gosselin*, 1906, 1 Ch. 120).

The enumeration of incorporeal hereditaments in Hale's *Analysis* (p. 48) is the following:—Rents, services, tithes, commons, and other profits *in alieno solo*, pensions, offices, franchises, liberties, villeins, dignities. But Blackstone enumerates ten principal kinds:—Advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities, and rents.—1 *Bl. Com.* 21.

Although the word 'hereditament' applies both to realty and personalty, yet it is in a different mode of relation. When applied to *realty* it generally denotes the *subject* of property, apart from its nature and extent; but when applied to *personalty*, it does not then denote the *subject*, but signifies some inheritable *right* of which the subject is susceptible.

There is a third application of this word—it is used to denote inheritable *rights* relating to land, or something issuing therefrom or exercisable therein, or having some local connection or relation *distinct* from the enjoyment of the land itself. In this view of the description hereditaments divide themselves into real, personal, and mixed, and therefore, as was said before, they are applicable to all the kinds of property—*Fearne's Reading on the Stat. of Inrolments.*

The L. P. Act, 1925, s. 205 (ix.), defines 'hereditaments' as real property which, on an intestacy, might, before the 1st January, 1926, have devolved on the heir—descent to the heir having been abolished, save in some cases (see HEIR). The word may become obsolete in conveyancing practice, but its former legal meaning and associations are so intimately connected with the subjects which it covers that it still serves to differentiate compendiously and usefully the same class of property; cf. Form No. 5, 5th Sched., L. P. Act, 1925; and L. P. Act, 1925, s. 201 (1); and Rating and Valuation Acts, 1925 (15 & 16 Geo. 5, c. 90); and 1928 (18 & 19 Geo. 5, c. 8), etc.

Hereditary Duties of 1*s.* 3*d.* per barrel of beer or ale above 6*s.* a barrel, 4*d.* per barrel under 6*s.*, and 15*d.* for every hogshead of sider (*sic*) and perry, directed in 1660 by 12 Car. 2, c. 24, to be paid to the king, his heirs and successors for ever, in recompense for the profits of the Court of Wards and other royal privileges abolished by that Act. Surrendered for their lifetimes by succeeding sovereigns (25 Geo. 5, and 1 Edw. 8, c. 15). See CIVIL LIST.

Hereditary Revenues. Crown Lands, escheats (see that title), and certain small branches, such as Post Office profits, enumerated in 1 Anne, c. 1. The Civil List Act, 1910 (10 Edw. 7 & 1 Geo. 5), in substitution for the Civil List Act, 1901, directed (in effect) that the hereditary revenues which were directed by s. 2 of the Civil List Act, 1837, to be made part of the Consolidated Fund, with the addition of the Osborne Estate under the Osborne Estate Act, 1902, were during that reign and for six months afterwards to be 'paid into the Exchequer, and made part of the Consolidated Fund.'

Sect. 2 of the Act of 1837 directed the produce of all the heritous rates, duties, payments, and revenues in England, Scotland, and Ireland respectively, and also the small branches of the hereditary revenues and the produce of the hereditary casual revenues arising from any droits of Admiralty or droits of the Crown, and from the surplus revenues of Gibraltar, or any other possession of her Majesty Queen Victoria out of the United Kingdom, and from all other casual revenues arising either in the foreign possessions of her Majesty or in the United Kingdom (except the hereditary duties on beer, etc.—see last title), to be paid into the Consolidated Fund.

Herefare, a military expedition; a going to war.

Heregeld, a tribute or tax levied for the maintenance of an army.

Heremitorium, a place of retirement for hermits.—*Dugd. Mon.*, tom. 3, p. 18.

Heremones, or **Hereteams,** followers of an army.—*Lamb. Leges Inæ*, cap. 5.

Herenach, an archdeacon.

Hereslita, Heressa, Heressiz, a hired soldier who departs without licence.—4 *Inst.* 128.

Heresy [fr. αἵρεσις, Gk.], according to Blackstone, consists not in a total denial of Christianity, but in a public and obstinate denial of any of its principal doctrines publicly and obstinately avowed. The 1 Eliz. c. 1 repealed all former statutes relating to heresy, leaving the jurisdiction in cases of heresy as it stood at Common Law; that is, it left the simple offence to be visited by spiritual punishment in the Ecclesiastical Courts, which courts have long since ceased to exercise jurisdiction over laymen. Heresy in the clergy is punishable under the Church Discipline Act as an offence against the laws ecclesiastical: see *Noble* v. *Voysey*, (1871) L. R. 3 P. C. 357, in which the Rev. Charles Voysey was deprived of his benefice for contradicting many doctrines set forth in the Thirty-nine Articles (see that title). See also APOSTASY; HÆRETICO COMBURENDO, DE. Consult *Odgers on Libel*, 5th ed. p. 486.

Heretoch [fr. *here*, an army, and *teohan*, to draw or lead], a general, leader, or commander; also a baron of the realm.—*Du Fresne.*

Heretum, a court or yard.—*Jac. Law Dict.*

Herge, offenders who joined in a body of more than thirty-five to commit depredations.—*Ang.-Sax.*

Herigalds, a sort of garment.—*Cowel.*

Heriot [supposed by some to be derived fr. *here*, Sax., an army, and *geat*, provision.—*Willis*, 194. Coke derives it fr. *here*, lord, and *geat*, beste, i.e., the lord's beste.—*Co. Litt.* 185 *b*], the right of the lord of a manor to the best beast of the deceased tenant of a manor, which beast may be seized by the lord, although it has never been within the manor (*Western* v. *Bailey*, 1897, 1 Q. B. 86); but if a customary freehold tenement is mortgaged, and the mortgagor being in possession dies, the heriot is not due because he had no legal seisin at the time of his death (*Copestake* v. *Hoper*, 1908, 2 Ch. 10). Originally a tribute to the lord of the manor of the horse or habiliments of the deceased tenant, in order that the *militiæ apparatus* might continue to be used for national defence by each succeeding tenant.

The extinction of heriots was first attempted by the Copyhold Act, 1841, s. 13. By the Copyhold Act, 1852, s. 16, and the Copyhold Act, 1858, ss. 7 and 8, more effectual provisions were made for this purpose; and s. 6 of the Copyhold Act, 1894, enacts that valuers on a compulsory enfranchisement shall make allowance for heriots amongst other things; while s. 2 of the same Act, re-enacting s. 7 of the Copyhold Act, 1887, enacts that a lord or tenant of any land liable to any heriot may require and compel the extinguishment of the right to it. Heriots were included among the manorial incidents which were saved by the L. P. Act, 1922, s. 128 (2), notwithstanding the enfranchisement of copyholds by that Act, until they are extinguished either by compensation or lapse of time (see s. 138, *ibid.*), but after 1925 (L. P. Act (Postponement Act), 1924 (c. 4)) a sum of money is to be paid equal to the value instead of any chattel liable to seizure, and a heriot became recoverable only as a civil debt, and therefore would be barred by lapse of time (L. P. Act, 1922, s. 130 (5)). See COPYHOLD. Consult *Elton* or *Scriven on Copyholds.*

Herischild, military service or knight's fee.

Heriscindium, a division of household goods.—*Blount.*

Herisilt, laying down of arms.—*Blount.*

Heristall, a castle.—*Spelm.*

Heritable Bond, a bond for money, joined with a conveyance of land or heritage, to be held by a creditor as security for his debt.—*Scots term.*

Heritable Jurisdiction, grants of criminal jurisdiction, anciently bestowed on great families in Scotland, with a view to the more easy administration of justice. Abolished by 20 Geo. 2, c. 43.

Heritable Rights, all rights to land, or whatever is connected with land, as mills, fishing, tithes, etc.—*Scots term.*

Heritable Securities in Scotland. See 23 & 24 Vict. cc. 15, 80.

Heritor, a landholder in a parish.—*Scots term.*

Hermeneutics, the art of interpretation and construction.

Hermer, a great lord.—*Jac. Law Dict.*

Hermitorium, the chapel or place of prayer belonging to a hermitage.

Hermogenian Code. See CODEX JUSTINIANEUS.

Hernescus, a heron.

Hernesium, or **Hernasium,** household goods; implements of trade or husbandry.

Heroudes, heralds.—*Du Cange.*

Herrings. See SEA FISHERIES ACTS.

Herring Silver was a composition in money for the custom of supplying herrings for the provision of a religious house.

Hesla, an easement.—*Du Cange.*

Hesta, Hestha, a little load of bread.

Hestcorn, vowed or devoted corn.

Hetærarcha, [fr. ἑταίρος, Gk., friend, and ἀρχή, government], the head of a religious house; the head of a college; the warden of a corporation.

Heurematic Law [fr. εὑρηματικός, Gk.]. The art or science of so interpreting rules of law as to accord with justice. See *Law Times Newspaper,* 2nd April, 1910, p. 487.

Heuvelborgh, a surety for debt.

Hey. See HAY.

Heybote. See HAYBOTE.

Heyloed, a customary burden laid upon inferior tenants for mending or repairing the heys or hedges.

Heymectus, a hay-net; a net for catching conies.

Hibernagium, season for sowing winter corn.

Hidage, an extraordinary tax, formerly payable to the Crown for every hide of land. This taxation was levied, not in money, but provision of armour, etc.

Hide and Gain, arable land.—*Co. Litt.* 85 *b.*

Hide of Land, such a space as might be-ploughed with one plough, or as much as would maintain a family or mansion-house. According to some it was sixty acres; others make it eighty; and others, again, a hundred. The quantity, probably, was always determined by local usage. See *Co. Litt.* 69 *a.*

Hidel, a place of protection or sanctuary.

Hidgild, or **Hidegild** [fr. *hide,* A.-S., skin, and *gild,* A.-S., a contribution], a sum of money paid by a villein or servant to save himself from whipping.—*Fleta,* l. 1, c. 47, s. 20.

Hierarchy [fr. ἱερός, Gk., sacred, and ἀρχή, government], the body or persons who have the direction in religious concerns and things sacred.

Of whatever denominations may be the persons who take the lead in conducting religious rites, whether they be styled presbyters, elders, ministers, priests, or bishops, they virtually, and according to the true and real meaning of the term, constitute a hierarchy. Hierarchy subsists as much among the chief ministers of the Church of Geneva or of Scotland as in the Church of Rome or of England.

Hierloom. See HEIRLOOM.

High Bailiffs, officers appointed under s. 33 of the County Courts Act, 1888, by the judge of each county court, to attend every sitting of the court, and by themselves, or the bailiffs appointed to assist them, to serve all summonses and orders, and execute all warrants, precepts, and writs of the court except as in the Act provided. By the County Courts Act, 1934, s. 189, references to high bailiff are to be construed as references to the registrar where the office of high bailiff has been vacated.

High Commission Court, established by 1 Eliz. c. 1. It was instituted to vindicate the dignity and peace of the Church by reforming and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities. The powers of this tribunal were directed to tyrannical and unconstitutional purposes; it was therefore abolished by 16 Car. 1, c. 11.—5 *Reeves,* 215.

High Constable, abolished by the High Constables Act, 1869 (32 & 33 Vict. c. 47). See CONSTABLE.

High Constable of England, Lord. His

office has been disused (except only upon great and solemn occasions, as the coronation, or the like) since the attainder of Stafford, Duke of Buckingham, in the reign of Henry VII. See CHIVALRY, COURT OF.

High Court of Chancery. See CHANCERY.

High Court of Justice. The Judicature Act, 1925, has replaced with amendments the Judicature Act, 1873 (36 & 37 Vict. c. 66). The earlier Act abolished the former Superior Courts of Law and Equity, and in their place established a Supreme Court of Judicature (see that title), consisting of the High Court of Justice and the Court of Appeal. The High Court is now a Superior Court of Record, and has vested in it, by s. 16 of the Act of 1873, amended by ss. 9 and 33 of the Judicature Act, 1875, the jurisdiction formerly exercised by the following Courts, viz.: '(1) The High Court of Chancery; (2) The Court of King's Bench; (3) The Court of Common Pleas at Westminster; (4) The Court of Exchequer; (5) The Court of Admiralty; (6) The Court of Probate; (7) The Court for Divorce and Matrimonial Causes; (8) The Court of Common Pleas at Lancaster; (9) The Court of Pleas at Durham; (10) The Courts created by Commissions of Assize, of *Oyer* and *Terminer*, and of Gaol Delivery, or any such Commissions.' The London Court of Bankruptcy, which was first included in and then excluded from the High Court, is now united and consolidated with the Supreme Court and its jurisdiction transferred to the High Court, King's Bench Division, and the County Courts.

With regard to the procedure of the High Court of Justice, see the various titles relating thereto, e.g., EXECUTION; JUDGMENT; PLEADING; TRIAL. See also DIVISIONS OF THE HIGH COURT.

'The High Court of Justice' was also the style assumed by the revolutionary tribunal which sent Charles I. to the scaffold; see *Clarendon's Hist.*, vol. iii. p. 244.

High Court of Parliament. See PARLIAMENT.

High Misdemeanours. See MISPRISION.

High Seas, all the seas which are more than three miles distant from the coast of any country. The territorial jurisdiction of a country does not extend beyond this limit. See *R.* v. *Keyn*, (1876) 2 Ex. D. 63.

High Steward, Court of the Lord, a tribunal instituted for the trial of peers or peeresses indicted for treason or felony, or for misprision of either, but not for any other offence. The office of Lord High Steward is very ancient, and was formerly hereditary, or held for life, or *dum bene se gesserit*; but it has been for many centuries granted *pro hâc vice* only, and always to a lord of parliament. When, therefore, such an indictment is found by a grand jury of freeholders in the King's Bench, or at the assizes before a judge of *oyer* and *terminer*, it is removed by a writ of *certiorari* into the Court of the Lord High Steward, which alone has power to determine it.

The sovereign, in case a peer be indicted for treason, felony, or misprision, appoints a Lord High Steward *pro hâc vice*, by commission under the Great Seal, which, reciting the indictment so found, gives him power to receive and try it *secundum legem et consuetudinem Angliæ*. When the indictment is regularly removed by *certiorari*, the Lord High Steward addresses a precept to a serjeant-at-arms, to summon the lords to attend and try the indicted peer. All the peers who have a right to sit and vote are summoned 21 days before such trial, and every lord appearing and taking the oaths may vote upon the trial. The decision is by the majority, but a majority cannot convict, unless it consist of twelve or more.

During a session of parliament, the trial is not properly in the Court of the Lord High Steward, but before the High Court of Parliament. A Lord High Steward is, however, always appointed to regulate the proceedings; but he is rather in the nature of a speaker or chairman than a judge, for the collective body of the peers are the judges, both of law and fact, and the High Steward has a vote with the rest, in right of his peerage. But in the Court of the Lord High Steward, which is held in the recess of parliament, he is the sole judge of matters of law, as the lords triers are in matters of fact, and he may vote upon the trial and regulate all the proceedings.

The method and regulation of proceeding differs little from trial by jury, except that no special verdict can be given, because the judges are sufficiently competent to deal with the law.

Recent trials before this Court have been that of the Duchess of Kingston, who was convicted of bigamy in 1776; that of the Earl of Cardigan, who was acquitted of murder (in a duel) in 1841; and that of Earl Russell, who was convicted of bigamy on 18th July, 1901, and sentenced to three months' imprisonment. See *The Trial of Earl Russell*, 1901, A. C. 446; and the trial of *Lord de Clifford*, 1936, W. N. 4. A bar-

rister who is also a peer may not appear as counsel to argue before the House of Lords when sitting under the presidency of the Lord High Steward on a criminal case. See also PEER ; FELONY.

High Steward of the Royal Household, Lord, Court of, a tribunal long since fallen into disuse.—9 Geo. 4, c. 31 ; 4 *Inst.* 133. See LORD STEWARD.

High Steward of the Universities, Court of the Lord. By the charter of 7th June, 2 Hen. 4, confirmed by 13 Eliz. c. 29, conusance was granted to the University of Oxford of all indictments of treasons, insurrections, felonies, and mayhem, which should be found in any of the king's courts against a scholar or privileged person ; they were to be tried before the Lord High Steward or his deputy, who is nominated by the Chancellor of the University, and approved of by the Lord High Chancellor of England. See CHANCELLORS OF THE UNIVERSITIES.

High Treason. Since *petit* treason was abolished by 9 Geo. 4, c. 31, s. 2, the correlative term *high* is not now usually retained when speaking of this highest civil crime. It is merely denominated treason. See TREASON.

Highness, a title of honour given to princes. The kings of England, before the time of James I., were not usually saluted with the title of *Majesty*, but with that of *Highness*. By Letters Patent of 11th December, 1917, it was provided that the children of a sovereign, and the children of the sons of a sovereign, and the eldest son of the eldest son of the Prince of Wales shall bear the title of Royal Highness and of Prince or Princess. The children of crowned heads generally receive the style of *Highness*; as also certain rulers of Indian independent states.

High-water Mark, that part of the seashore to which the waters ordinarily reach when the tide is highest.

Highway Rate, a tax for the maintenance and repair of highways, now forming part of the general rate ; see the Rating and Valuation Acts, 1925–1932.

Highway Robbery. See ROBBERY, and Larceny Act, 1861 (24 & 25 Vict. c. 96), ss. 40–43), in which, however, no distinction is drawn between highway and any other robbery.

Highways, all portions of land, any passage which every subject of the kingdom has a right to use. See *Pratt on Highways* ; also defined by the Highway Act, 1835 (5 & 6 Will. 4, c. 50), s. 5, ' All roads, bridges (not being county bridges), carriageways, cartways, horseways, bridleways, footways, causeways, churchways and pavements.' They exist either by prescription, by authority of Acts of Parliament, or by dedication to the use of the public ; and see the Rights of Way Act, 1932 (22 & 23 Geo. 5, c. 45). The right of the public, when once acquired, is permanent and inalienable except by the authority of Parliament—' once a highway, always a highway.' It cannot be lost by abandonment or non-user, and the public retain the right, though they may never have occasion to use it. But the right is only a right of passing and repassing, pausing only for such time as is reasonable and usual when persons are using a highway as such. A man has no right to stand on the highway in order to shoot pheasants flying across it (*R.* v. *Pratt*, (1855) 4 E. & B. 860 ; and see *Fitzhardinge* v. *Purcell*, 1908, 2 Ch. p. 168), or maliciously to interfere with the rights of others (*Harrison* v. *Duke of Rutland*, 1893, 1 Q. B. 142). Where cattle or horses do damage to property adjoining a highway on which they are being lawfully driven, the owner of such cattle and horses is liable only on proof of negligence, and not merely on proof of trespass : see *Gayler and Pope* v. *Davies*, (1924) 40 T. L. R. 591. As to cattle straying on highways, see the Highways Act, 1864 (27 & 28 Vict. c. 101), s. 25.

The liability to keep highways in repair (in whatever manner they may happen to have first originated) is of common right incumbent generally upon the parishes in which they respectively lie ; but in some cases it attaches (by prescription) to particular townships, or other divisions of parishes, and occasionally to private persons bound *ratione tenuræ*, or in right of their estates, to repair some particular highway.

Highways in general are regulated by the Highway Acts, 1835 to 1885 ; the Local Government Acts, 1929 and 1933 ; Road Traffic Acts, 1930–1934 ; and Road and Rail Traffic Act, 1933 ; and other Acts set out in *Chitty's Statutes*, tit. ' *Highways* ' ; and the 11th section of the Local Government Act, 1888, threw the entire maintenance of ' main roads ' upon the County Councils. As to improvements and developments, see Development and Road Improvement Fund Act, 1909, and Roads Act, 1920, and the Roads Improvement Act, 1925 ; and TRUNK ROADS.

The 72nd section of the Highway Act,

1835, penalizes up to 40*s.* any person wilfully riding on a footpath or playing at football or any other game on any part of a highway to the annoyance of any passenger, or wantonly firing off any gun or pistol or letting off any firework within 50 feet, or in any way wilfully obstructing the free passage of a highway, or committing any of the various other offences therein mentioned; and the 78th section of the same Act penalizes up to 5*l.* (or if owner 10*l.*) any driver not keeping his carriage or horse 'on the left or near side of the road,' or riding or driving furiously so as to endanger the life or limb of any passenger, or committing any of the other various offences therein mentioned; and see DRIVER.

The general plan of the Act of 1835 was to place highways under the care of surveyors, to be appointed for the respective parishes, subject to a superintending power to be exercised by the justices of the peace, at special sessions to be holden for the highways. By the Public Health Act, 1875, s. 144 (coming in place of previous enactments to the like effect), the powers and duties of surveyors of highways and vestries under the Act are vested in urban authorities.

The Minister of Transport, under Roads Act, 1920 (10 & 11 Geo. 5, c. 72), has transferred to him powers of the Road Board, and can make advances out of the Road Fund to any highway authority concerning the construction, maintenance or improvement of roads. To assist him there is the Transport Advisory Council (Road and Rail Traffic Act, 1933 (23 & 24 Geo. 5, c. 53), s. 46), and concerning the London Traffic Area there is the London and Home Counties Traffic Advisory Committee (London Traffic Act, 1924 (14 & 15 Geo. 5, c. 34), s. 1 (1); London Passenger Transport Act, 1933 (23 Geo. 5, c. 14), ss. 57–60). See ROAD BOARD; TRANSPORT, MINISTER OF. Consult *Glen* or *Pratt and Mackenzie on Highways*, and see *Chitty's Statutes*, tit. '*Highways*.' As to the use of locomotives on highways, see LOCOMOTIVES.

High-wood, timber.

Higler, a person who carries from door to door and sells, by retail, provisions, etc.

Hikenilde, Ickneal or **Ikenild Street,** one of the four Roman roads of Britain, leading from St. David's to Tynemouth, thus described by Trevisa:—'The fourthe is called *Heykenyldestrete*, and stretcheth forth by Worchestre, by Wycombe, by Byrmyngeham, by Lichefeld, by Derby, by Chestrefeld, by Yorke, and fourth unto Tynmouthe.' *Polychron.*, l. 1, c. xlv.

Hilary Sittings. These take the place, since the Judicature Act, of Hilary Term, beginning on the 11th of January, and terminating on the Wednesday before Easter; see R. S. C. Ord. LXIII., r. 1. It was so called from Hilary, Bishop of Poictiers, in France, a great champion of the Catholic faith against the Arians in the fourth century (see *Gibbon, Dec. and Fall*, c. xxi.). By the Judicature Act, 1873, s. 26 (now obsolete), 'the division of the the legal year into terms was abolished, so far as relates to the administration of justice.' See SITTINGS; TERMS.

Hindeni Homines, a society of men. The Saxons ranked men into three classes, and valued them, as to satisfaction for injuries, etc., according to their class. The highest class was valued at 1200*s.*, and was called *twelfhindmen;* the middle class at 600*s.*, called *sexhindmen;* the lowest at 200*s.*, called *twihindmen*. Their wives were termed *hindas.—Brompt. Leg. Alfred*, c. xii.

Hinde Palmer's Act. The Administration of Estates Act, 1869 (32 & 33 Vict. c. 46), which abolished the priority of specialty (see SPECIALTY) over simple contract debts in the administration of the estates of persons dying after 1st January, 1870. The Act has been replaced and reproduced by the Administration of Estates Act, 1925, s. 32.

Hine, or **Hind,** a husbandry servant.

Hine Fare, the loss or departure of a servant from his master.—*Domesday.*

Hinegeld. See HIDGILD.

Hirelscunda, the division of an inheritance among heirs.

Hire [*locatio, conductio*, Lat.], a bailment for a reward or compensation. It is divisible into four sorts:—(1) The hiring of a thing for use (*locatio rei*). (2) The hiring of work and labour (*locatio operis faciendi*). (3) The hiring of care and services to be performed or bestowed on the thing delivered (*locatio custodiæ*). (4) The hiring of the carriage of goods (*locatio operis mercium vehendarum*) from one place to another. The three last are but subdivisions of the general head of hire of labour and services.

The rights, duties, and obligations of the parties resulting from the contract of bailment for hire may be thus stated:—

(I.) Hire of things. The letting to hire implies an obligation to deliver the thing to the hirer; to refrain from every obstruction to the use of it by the hirer during the period of the bailment; to do no act that

shall deprive the hirer of the thing; to warrant the title and right of possession to the hirer, in order to enable him to use the thing, or to perform the service; to keep the thing in suitable order and repair for the purposes of the bailment; and, finally, to warrant the thing free from any fault inconsistent with the proper use or enjoyment of it. It is the duty of the person letting to hire, according to the Roman Law, to disclose the faults of the thing hired, and practise no artful concealment, to charge only a reasonable price therefor, and to indemnify the hirer for all expenses which are properly payable by the person letting. The rights of the hirer are that he acquires that right of possession only of the thing for the particular period or purpose stipulated (but he acquires no property in it); and that he also acquires the exclusive right to the use of the thing during the time of the bailment. His duties are to put the thing to no other use than that for which it is hired; to use it well; to take care of it; to restore it at the time appointed; to pay the price or hire; and, in general, to observe whatever is prescribed by contract, or by law, or by custom. The contract may be dissolved or extinguished in respect to future liabilities in various ways: (1) by the mere efflux of time or the accomplishment of the object for which the thing is hired; (2) by the loss or destruction of the thing by any inevitable casualty; (3) by a voluntary dissolution of the contract by the parties; and (4) by operation of law, as where the hirer becomes proprietor by purchase or otherwise of the thing hired. How far those principles which are derived altogether from the Roman and foreign laws are to be deemed satisfactorily established in our jurisprudence is a matter for consideration, since the Common Law does not furnish any direct recognition of them. But it may be safely affirmed that they are so consonant with general justice, and with the nature of the contract, that, in the absence of any controlling authority, they may be used as fit guides to assist our general reasoning.

(II.) Hire of labour and services, divisible into two branches: (α) *Locatio operis faciendi*, and (β) *locatio operis mercium vehendarum*, mentioned as the 2nd and 4th divisions of the four sorts of hiring above set forth.

(α) The *locatio operis faciendi* may be subdivided into two kinds: (a) The hire of labour and services, or *locatio operis faciendi*, strictly so called: such are the hire of tailors to make clothes, of jewellers to set gems, and of watchmakers to repair watches; (b) *locatio custodiæ* (the third division first above mentioned), or the receiving of goods on deposit for a reward for the custody thereof, which is properly the hire of care and attention about the goods, as by warehousemen, wharfingers, etc.

(a) In contracts for work it is of the essence of the contract: (1) That there should be work to be done; (2) that it should be done for a price, or reward; (3) that there should be a lawful contract between parties capable and intending to contract. The obligations and duties on the part of the employer, as deduced in the foreign law, are principally these: (1) To pay the price or compensation; (2) to pay for all proper new and accessorial materials; (3) to do everything on his part to enable the workman to execute his engagement; (4) to accept the thing when it is finished. If, before the work is finished, the thing perishes by internal defect, by inevitable accident, or by irresistible force, without any default of the workman, then (1) if the work is independent of any materials or property of the employer, the manufacturer has the risk, and the unfinished work is lost to him; (2) if he is employed in working up the material, or adding his labour to the property of the employer, the risk is with the owner of the thing with which the labour is incorporated; (3) if the work has been performed in such a way as to afford a defence to the employer against a demand for the price, if the accident had not happened (as if it were defectively or improperly done), the same defence will be equally available to him after the loss. The obligations or duties on the part of the workman or undertaker are thus summed up in the foreign law: To do the work; to do it at the time agreed on; to do it well; to employ the materials furnished by the employer in a proper manner; and, lastly, to exercise a proper degree of care and diligence about the work.

(b) The hiring of care and attention. To this class belong agisters of cattle, warehousemen, forwarding merchants, and wharfingers. They are bound to use ordinary diligence, and of course are responsible for losses by ordinary negligence.

(β) The *locatio operis mercium vehendarum*, or the carriage of goods for hire. In respect to contracts of this sort entered into by private persons, who do not exercise the business of common carriers, there does not seem to be any material distinction varying

the rights, obligations, and duties of the parties from those of other bailees for hire. Every such private person is bound to ordinary diligence, and to a reasonable exercise of skill; and of course he is not responsible for any losses not occasioned by the ordinary negligence of himself or of his servants. The exceptions to this general rule are post-masters, innkeepers, and common carriers, who are under peculiar regulations consonant with public policy; see those titles respectively.—*Story on Bailments*, c. vi. Consult *Smith's Leading Cases*, sub tit. *Coggs* v. *Bernard*; *Wyatt Paine on Bailments*; *Addison* or *Chitty on Contracts*.

Hireman. A subject.—*Du Cange.*

Hire-Purchase System. A system whereby the owner of goods lets them on hire for periodic payments by the hirer upon an agreement that when a certain number of payments have been completed, the absolute property in the goods will pass to the hirer, but so that the hirer may return the goods at any time without any obligation to pay any balance of rent accruing after return, until the conditions have been fulfilled, the property remains in the owner. The instrument by which the hire-purchase is effected does not ordinarily require registration under the Bills of Sale Acts (*Ex parte Crawcour*, (1878) 9 Ch. D. 419); and the hirer is 'reputed owner' within the Bankruptcy Act (*Ex parte Brooks*, (1883) 23 Ch. D. 261); but the hirer does not 'agree to buy' within the Factors Act or Sale of Goods Act so as to be able to sell or pledge the goods as if he were a 'mercantile agent' (*Helby* v. *Matthews*, 1895, A. C. 471; *Brooks* v. *Biernstein*, 1909, 1 K. B. 98). Distinguish from agreements such as in *Lee* v. *Butler*, 1893, 2 Q. B. 318, 'which are in fact a sale, the price being paid in instalments with the condition that the property passes when all the instalments have been paid; here there is a binding agreement for the party to purchase, whereas in *Helby* v. *Matthews Agreements*' there is not; this is the real test of a hire-purchase agreement. As to the stamping of a hire-purchase agreement, see s. 7 of the Finance Act, 1907 (7 Edw. 7, c. 13). As to a hire-purchase agreement being a mere cloak for a bill of sale transaction, see *Maas* v. *Pepper*, 1905, A. C. 102.

Goods comprised in a hire-purchase agreement with a tenant do not appear to be protected from distress under the Law of Distress Amendment Act, 1908 (see *Smart Bros.* v. *Holt*, 1929, 2 K. B. 303). A very usual form of evasion of a landlord's right is to make the hirer that one of husband and wife, in whose name the premises have not been taken. To avoid this, landlords should let the premises jointly—or prove that they were in the order and disposition (see that title) of the hirer with the consent of the true owner.

Hirst, or **Hurst,** a wood.—*Domesday*; *Co. Litt.* 4 *b.*

His testibus (these being witnesses), a phrase anciently added in deeds, after *in cujus rei testimonium*. The deed was read in the presence of witnesses, and their names were then written down. The phrase is not now inserted.

Hiwisc, a hide of land.

Hlaf æta, a servant fed at his master's cost.

Hlaford, a lord.—*Ang.-Sax.*

Hlafordsocna, a lord's protection.—*Du Cange.*

Hlasocna, the benefit of the law.—*Ibid.*

Hlothbote, a mulct set on him who commits homicide in a riot or hlothe.

Hlothe [*turma*, Lat.], an unlawful company, from eight to thirty-five inclusive.

Hlytas [fr. *sortes*, Lat.], lots.

Hoastmen, an ancient guild or fraternity in Newcastle-upon-Tyne, engaged in selling or shipping coal.—21 Jac. 1, c. 3, s. 12.

Hobblers, or **Hoblers,** light horsemen or bowmen; also certain tenants, bound by their tenure to maintain a little light horse for giving notice of any invasion, or suchlike peril, towards the seaside.—*Camd. Brit.*

Hobhouse's Act, the Vestries Act, 1831 (1 & 2 Wm. 4, c. 60), an adoptive Act for the better regulation of parish vestries.—Repealed, except as. 39, s. to parish meetings in rural parishes under the Local Government Act, 1894, by s. 89 and Sched. II. of that Act.

Hoccus Saltis, a hoke, hole, or lesser pit of salt.

Hockettor, or **Hocqueteur,** a knight of the post; a decayed man; a basket carrier.—*Cowel.*

Hock-Tuesday Money was a duty given to the landlord, that his tenants and bondmen might solemnize the day on which the English conquered the Danes, being the second Tuesday after Easter-week.—*Ibid.*

Hoga, Hogium, Hoch, a mountain or hill.—*Du Cange.*

Hogaster, a little hog; a young sheep.

Hogenhine, 'rectius Agenhine.' See AGENHINE and THIRD-NIGHT-AWN-HINDE.

Hoggacius, Hoggaster, a sheep of the second year.

Hoggus, or **Hogietus,** a hog, or swine.

Hogshead, a measure containing half a pipe, a fourth part of a tun, or sixty-three gallons.

Hokeday. See HOCK-TUESDAY MONEY.

Hold, to have as tenant.

Of a court or judge, to enounce a legal opinion. In strictness, a court 'holds,' and a single judge 'rules.'

Hold, or **Wold,** a governor or chief officer. —*Gibs. Camd.*

Holder, a payee or indorsee in possession of a bill of exchange or a promissory note.

Holder in due Course is 'a holder who has taken a bill of exchange [cheque or note], complete and regular on the face of it,' under the following conditions, namely :—

(a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact.

(b) That he took the bill [cheque or note] in good faith and for value, and that at the time it was negotiated to him he had no notice of any defect in the title of the person who negotiated it.—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 29.

In *R. E. Jones Ltd.* v. *Waring and Gillow Ltd.*, 1926, A. C. 670, it was held that the original payee of a cheque is not a holder in due course within the meaning of the Bill of Exchange Act, 1882.

Holding. For the purposes of the Agricultural Holdings Act, 1923 (13 & 14 Geo. 5, c. 9), holding is defined (s. 57 (1)) as follows : 'Holding' does not include an allotment garden or include any land cultivated as a garden unless it is cultivated wholly or mainly for the purpose of the trade or business of market gardening but, except as aforesaid, means 'any parcel of land held by a tenant which is either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or in whole or in part cultivated as a market garden, and which is not let to the tenant during his continuance in any office, appointment or employment held under the landlord.' The Agricultural Holdings (Scotland) Act, 1923 (13 & 14 Geo. 5, c. 10), contains a similar definition in s. 49 ; also in Scots law to signify the tenure or nature of the right given by the superior to the vassal.

Holding Out. On the principle of estoppel any representation by words or conduct or knowingly suffered to be made by others that a person is a partner in a firm on the faith of which representation credit has been given to the firm, makes the person so representing himself liable as a partner to that creditor, to the extent of the loss which the creditor has thereby suffered (see *Christopher, Ex parte Harris,* (1816) 1 Madd. 583). See Partnership Act, 1890, s. 3, and PARTNERSHIP.

Holding Over, keeping possession of land by a lessee after the expiration of his term, whereby if the possession is against the will of the landlord, he becomes a trespasser, but if he remains with the consent of the landlord, he becomes a tenant at will or he may simply remain on sufferance ; if subsequent rent is accepted by his landlord he usually becomes tenant from year to year on the terms of the expired lease (*Hyatt* v. *Griffiths,* (1851) 17 Q. B. 505).

A tenant wrongfully holding over premises of which the value does not exceed 100*l.* a year may be ejected by proceedings in the county court, under the County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), or if the term do not exceed seven years, or the rent 20*l.* a year, by proceedings before justices of the peace under the Small Tenements Recovery Act, 1838 (1 & 2 Vict. c. 74). See also DOUBLE RENT ; DOUBLE VALUE.

Holiday, or **Holyday,** a feast day with cessation from labour, as by 5 & 6 Edw. 6, c. 3, all Sundays in the year and also Christmas-day and other days by that Act commanded 'to be kepte holie dayes and none other.'

By R. S. C. 1883, Ord. LXIII., r. 6, it is provided that the several offices of the Supreme Court shall be open on every day of the year except Sundays, Good Friday, Monday and Tuesday in Easter-week, Whit Monday, the first Monday in August, Christmas-day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving ; and the day appointed to be kept as the King's birthday. See also VACATION.

The Bank Holidays Act, 1871 (34 & 35 Vict. c. 17), provides that Easter Monday, the Monday in Whitsun-week, the first Monday in August, and the 26th day of December, if a week day, shall be kept as bank holidays in England and Ireland, and New Year's-day, Christmas-day (or, if either be a Sunday, the following day), Good Friday, the first Monday of May, and the first Monday of August in Scotland ; and also that bills of exchange and promissory notes due on bank holidays shall be payable on the following day. And this is further extended to docks, custom houses, Inland Revenue offices, and bonding warehouses, in

England and Ireland, by the Holidays Act, 1875 (38 & 39 Vict. c. 13); which Act also, when the 26th of December is a Sunday, makes the 27th a holiday.

Holm [fr. *hulmus*, Sax.; *insula amnica*, Lat.], an isle, or fenny ground; a river island; also a hill or cliff.—*Co. Litt.* 5*a*.

Holograph [fr. ὅλος, Gk., all, and γράφω, to write], a deed or writing, written entirely by the grantor himself. In Scotland such a deed is held probative without witnesses, and a holograph will is good, but it must appear *in gremio* to be holograph or must be proved before heritage can be carried by its terms.

Holt, a wood.—*Co. Litt.* 4 *b*.

Holy Orders. These are, in the English Church, the orders of bishops (including archbishops), priests, and deacons. See CLERGY; DEACON; PRIEST.

Homage [fr. *homo*, Lat., a man], the most honourable service and most humble service of reverence that a free tenant might do to his lord. When a tenant performed it, he was ungirt, and his head uncovered, the lord sitting; the tenant then knelt before him on both his knees, and held his hands extended and joined between the hands of his lord, and said thus:—'I become your man from this day forward, of life and limb, and of earthly worship, and unto you shall be true and faithful, and bear to you faith for the tenements that I claim to hold of you, saving the faith that I owe unto our sovereign lord the King.' The lord then kissed him. Homage could only be done to the lord himself, but fealty might to his steward or bailiff.—*Co. Litt.* 64 *a*, 68 *a*. The general name of manorial tenants that do homage. See HOMAGE; JURY.

Homage Auncestral, where a tenant holds lands of his lord by homage; and the same tenant and his ancestors have holden the same land of the same lord, and of his ancestors, immemorially, and have done to them homage.—*Co. Litt.* 100 *b*.

Homage Jury, a court in a court-baron, consisting of tenants that do homage, who are to inquire and make presentments of the death of tenants, surrenders, admittances, and the like.

Homager, one who does or is bound to do homage.

Homagio respectuando (respecting of homage), a writ to the escheator commanding him to deliver seisin of lands to the heir of the king's tenants, notwithstanding his homage not done.—*Fitz. N. B.* 269.

Homagium reddere (to renounce homage), when a vassal made a solemn declaration of disowning his lord; for which there was a set form and method prescribed by the feudal laws.—*Bract.* l. 2, c. XXXV., s. 35.

Homagium non per procuratores nec per literas fieri potuit, sed in propriâ personâ tam domini quam tenentis capi debet et fieri. *Co. Litt.* 68 *a*.—(Homage cannot be done by proxy, nor by letters, but must be paid and received in the proper person as well of lord as of the tenant.)

Home Office, the department of state (in Whitehall) through which the sovereign administers most of the internal affairs of the kingdom, especially the police and communications with the judicial functionaries, and under the general administration of a Secretary of State called the Home Secretary.

Homesoken, Homsoken. See HAMESOKEN.

Homestall, a mansion-house.

Home-trade ship. See SHIP.

Homicide, destroying the life of a human being. In its several stages of guilt, arising from the particular circumstances of mitigation or aggravation which attends it, it is either justifiable, excusable, or felonious.

I. *Justifiable*, of three kinds:—

(α) Where the proper officer executes a criminal in strict conformity with his sentence.

(β) Where an officer of justice, or other person acting in his aid, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing it.

(γ) Where it is committed in prevention of a forcible and atrocious crime.—1 *Hale*, 488.

II. *Excusable*, of two kinds:—

(α) *Per infortunium*, or by misadventure, as where a man doing a lawful act, without any intention of hurt, by accident kills another; but if death ensue from any unlawful act, the offence is manslaughter, and not misadventure.

(β) *Se defendendo*, as where a man kills another upon a sudden encounter in his own defence, or in the defence of his wife, child, parent, or servant, and not from any vindictive feeling.

III. *Felonious*, of two kinds:—

(α) Killing oneself. See SUICIDE.

(β) Killing another, which is either—

(1) Murder (see that title); or

(2) Manslaughter (see that title); and this is either—

(α) Voluntary, where a man doing an unlawful act, not amounting to felony, by accident kills another; or

(β) Involuntary, where, upon a sudden quarrel, two persons fight, and one of them kills the other; or where a man

greatly provokes another by some personal violence, etc., and the other immediately kills him. Consult *Russell on Crimes.*

Hominatio, the mustering of men; the doing of homage.

Homine capto in withernamium, a writ to take him that had taken any bondman or woman, and led him or her out of the country, so that he or she could not be replevied according to law.—*Reg. Brev.* 79.

Homine eligendo ad custodiendam peciam sigilli pro mercatoribus editi, a writ directed to a corporation for the choice of a man to keep one part of the seal appointed for statutes-merchant, when a former is dead, according to the Statute of Acton Burnell.—*Reg. Brev.* 178.

Homine replegiando, a writ to bail a man out of prison.—*Reg. Brev.* 77. All these writs are totally disused.

Homines, feudatory tenants who claimed a privilege of having their causes, etc., tried only in their lord's Court.—*Paroch. Antiq.* 15.

Homiplagium, the maiming of a man.

Homologation, the express or implied ratification of a deed or contract that is defective or voidable.—*Bell's Law Dict.*; *Green's Encyc. of Scots Law.*

Homo trium litterarum (a man of three letters, sc., f, u, r), employed in comedy by Plautus to denote the Latin word *fur,* a thief.

Homstale, a mansion-house.

Hond-habend. See HAND-HABEND.

Honorarium, a recompense for service rendered; a voluntary fee to one exercising a liberal profession—e.g., a barrister's fee. See PHYSICIAN.

Honorarium jus, the law of the prætors and the edicts of the ædiles.—*Civ. Law.*

Honorary Canons, those without emolument.—3 & 4 Vict. c. 113, s. 23. See CANONS.

Honorary Feuds, titles of nobility, descendible to the eldest son, in exclusion of all the rest.

Honorary Freemen. See Honorary Freedom of Boroughs Act, 1885 (48 & 49 Vict. c. 29), by which the council of any municipal borough may admit to be honorary freemen of the borough persons of distinction, and any persons who have rendered eminent services to the borough. The Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), repealed the above Act except as to London, but reproduces the former provisions with amendments in ss. 259–264.

Honorary Services, those incident to grand-serjeanty, and commonly annexed to some honour; services without emolument.

Honorary Trustees, trustees to preserve contingent remainders, so called because they were bound, in honour only, to decide on the most proper and prudential course.—*Lewin on Trusts.*

Honoris respectum, challenge *propter.* See CHALLENGE.

Honour, to honour a bill of exchange or cheque (of the drawee, etc.); to pay.

Honour, a seigniory of several manors held under one baron or lord paramount; also those dignities or privileges, degrees of nobility, knighthood, and other titles which flow from the Crown, the fountain of honour, and see the Honours (Prevention of Abuses) Act, 1925 (15 & 16 Geo. 5, c. 72).

Honour, Judge, His, is the official designation of a county court judge.

Honour, Court of, a branch of the Court of Chivalry. See CHIVALRY, COURT OF.

Honour Courts, tribunals held within honours or seigniories.

Honourable, a title of courtesy given to the children of earls (except the eldest son in cases where the father has a second title), viscounts and barons; Maids of Honour to the Queen; Justices of the High Court; Lords of Session, Scotland; members of certain colonial Governments. In the case of the son of a peer to whom this title is applied, his wife or widow is also entitled to use it. As to Right Honourable, see PRIVY COUNCIL.

Hontfongenethef, or **Honfangenethef,** a thief taken with *hond-habend*—i.e., having the thing stolen in his hand.—*Cowel.* See BACKBERINDE.

Hoo, a hill.—*Co. Litt.* 5 *b.*

Hooland, land ploughed and sown every year.—*Scots term.*

Hopcon, a valley.

Hope, a valley.—*Co. Litt.* 5 *b.*

Hoppo, a collector; an overseer of commerce.—*Chinese.*

Hops. As to the marking and branding of hops, see *Chitty's Statutes,* tit. '*Hop Trade.*'

Hora Auroræ, the morning bell; *Coverfeu* was the evening bell.

Horda, a cow in calf.—*Old Records.*

Hordera, a treasurer.—*Du Cange.*

Horderium, a hoard, treasury, or repository.

Hordeum palmale, beer barley.—*Cowel's Law Dict.*

Horesti, the people of Angus-upon-the Tay, or Highlanders.—*Tomlin's Law Dict.*

Horn. Blowing a horn in London streets is an offence against the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47), s. 54 (14), and this provision has been strengthened by an Act of 1864. See MUSICIAN, LONDON.

Hornagium. See HORNGELD.

Horngeld, or **Hornegeld,** a forest-tax paid for horned beasts.

Horn with Horn, or **Horn under Horn,** the promiscuous feeding of bulls and cows, or all horned beasts that are allowed to run together, upon the same common.—*Spelm.*

Horning, Letters of, warrant for charging persons in Scotland to pay or perform certain debts and duties; so called because they were originally proclaimed by horn or trumpet.—*Bell's Law Dict.*

Hors de son fee (out of his fee), where land is without the compass of a person's fee.—9 *Rep.* 30; 2 *Mod.* 104.

Horseflesh. The sale of horseflesh for human food is regulated by the Sale of Horseflesh, etc., Regulation Act, 1889 (52 & 53 Vict. c. 11), by which no person may sell horseflesh for human food elsewhere than in a shop, on which shall be painted words indicating that horseflesh is sold there.

Horse Power. A unit representing the power required to lift 33,000 lbs. vertically 1 foot per minute or, by electrical measurement, 746 watts, or $\frac{1000}{746}$ of a Board of Trade unit of electricity. As to vehicles driven by mechanical power, see Regulations of the Ministry of Transport.

Horse-racing, a lawful pastime. By 13 Geo. 2, c. 19, no plates or matches at horse-races under 50*l.* value could be run, under penalty of 200*l.* to be paid by the owner of the horse or horses, and 100*l.* by the advertiser of the plate. This was repealed by 3 & 4 Vict. c. 5. Formerly wagers of not more than 10*l.* on a legal horse-race could be recovered by action, but now all wagers are void by the Gaming Act, 1845 (8 & 9 Vict. c. 109), and 'no better illustration can be given of a wagering contract than a bet on a horse-race' (*Carlill* v. *Carbolic Smoke Ball Co.*, 1892, 2 Q. B. 490, per Hawkins, J.). See also RACE COURSE and GAMING.

Horses. The buying of stolen horses is attempted to be checked by 2 & 3 P. & M. c. 7 and 31 Eliz. c. 12, which require a record of sales at markets; see, as to these Acts, *Moran* v. *Pitt*, (1873) 42 L. J. Q. B. 47. As to the limitation of the liability of railway and canal companies for the carriage of horses, see s. 7 of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31). As to larceny of horses, see Larceny Act, 1916, s. 3.

Cruelty to horses is punishable on summary conviction by fine or imprisonment, under the Protection of Animals Act, 1911, s. 1, as amended by the Protection of Animals, etc., Act, 1912, and 9 & 10 Geo. 5, c. 54, requiring the use of anæsthetics in certain cases.

The slaughter of injured horses by, or by order of, the police is authorized by the same Act, s. 11; while the business of a 'knacker,' defined as a person whose trade it is to kill horses, is strictly regulated by ss. 5 and 6 of the Act and the regulations in the First Schedule thereto. As to Scotland, see Protection of Animals (Scotland) Act, 1912 (2 & 3 Geo. 5, c. 14). The Diseases of Animals Act, 1910, provides for the examination of horses before they are exported, and for the slaughter of such as it is cruel to keep alive. The master of a vessel is empowered to kill any horse that is seriously injured during the voyage; and see Exportation of Horses Acts, 1914 and 1937. See ANIMALS. The Horse Breeding Act, 1918, provides for the licensing of stallions by the Ministry of Agriculture and Fisheries, and makes it an offence for any person being the owner of a stallion to travel it for service or to exhibit it on any premises not in his occupation with a view to its use for service unless the stallion is licensed. Consult, generally, *Oliphant on Horses.*

Horstilers, innkeepers.

Hors-wealh, the wealh, or Briton who had the care of the king's horses.

Hors-weard, a service or corvée, consisting in watching the horses of the lord.—*Anc. Inst. Eng.*

Hosiery Manufacture. The Hosiery Manufacture (Wages) Act, 1874 (37 & 38 Vict. c. 48), provides for the payment of wages without certain stoppages theretofore customary.

Hospes generalis, a great chamberlain.

Hospitallers, the knights of the Order of St. John of Jerusalem, so called because they built a hospital at Jerusalem wherein pilgrims were received. On the suppression of the Templars the Pope transferred their property to the Hospitallers, who were in their turn suppressed, and all their lands and goods in England given to the sovereign by 32 Hen. 8, c. 24.

Hospitals, eleemosynary corporations. They are either *aggregate,* in which the master or warden and his brethren have the estate of inheritance; or *sole,* in which the master, etc., only has the estate in him, and the brethren or sisters, having college

and common seal in them, must consent, or the master alone has the estate, not having college or common seal. So hospitals are eligible, donative, or presentative.—*Jac. Law Dict.*

By 39 Eliz. c. 5, made perpetual by 21 Jac. 1, c. 1, any person seised of an estate in fee-simple may, by deed enrolled in Chancery, erect and found a hospital for the sustenance and relief of 'the maimed, poor, needy, or impotent people'; but no such hospital may be erected unless endowed with lands or hereditaments of the yearly value of 20*l.*

For power of local authorities to provide hospitals for their districts, see Public Health Act, 1875, s. 131; Isolation Hospitals Acts, 1893, 1901 (56 & 57 Vict. c. 68; 1 Edw. 7, c. 8), all repealed from Oct. 1937 and replaced by Part VI. of the Public Health Act, 1936; see ss. 181–186.

In general the governors of a hospital will not be liable for negligent medical treatment by the staff employed (*Hillyer* v. *St. Bartholomew's Hospital*, 1909, 2 K. B. 820; *Evans* v. *Liverpool Corporation*, 1906, 1 K. B. 160). As to exemption from land tax, see s. 25 of the Land Tax Act, 1797 (38 Geo. 3, c. 5), and *St. Thomas', etc., Hospitals* v. *Hudgell*, 1901, 1 K. B. 364; and from property tax, see Income Tax Act, 1918, and Finance Acts (13 & 14 Geo. 5, c. 14), s. 21; (15 & 16 Geo. 5, c. 36), s. 19, and (16 & 17 Geo. 5, c. 22), s. 28.—*Royal Antideluvian Society of Buffaloes* v. *Owens*, 1928, 1 K. B. 446.

Hospitium, procuration or visitation-money.

Hospodar, a Turkish governor in Moldavia or Wallachia.

Hostage, a person given up to an enemy as a security for the performance of the articles of a treaty, etc.

Hostalagium, a right to have lodging and entertainment, reserved by lords in their tenants' houses.—*Old Records.*

Hosteler, or **Hostler,** an innkeeper.

Hostels, the Inns of Court. See that title.

Hosterium, a hoe.—*Chart. Antiq.*

Hostiæ [fr. *hostia*, Lat., a victim], host-bread, or consecrated wafers in the Holy Eucharist.

Hostilaria, Hospitalaria, a place or room in religious houses used for the reception of guests and strangers.

Hostilarius, the officer who had the care of an *hostilaria*; an hospitaller.

Hostile Witness, a witness who so conducts himself under examination-in-chief that the party who has called him, or his representative, is allowed to cross-examine him by the Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), which applies to civil actions as well as to criminal trials.

Hostricus, a goshawk.—*Paroch. Antiq.* 569.

Hotchpot [fr. *haché en poche*, Fr., a confused mingling of divers things], a blending or mixing of lands and chattels, answering in some respects to the *collatio bonorum* of the Civil Law. 'And it seemeth that this word [hotchpot] is in English a pudding'; see *Co. Litt.* 177 *a.*

As to *lands*, it only applied to such as were given in frank-marriage, thus: if one daughter have an estate given with her in frank-marriage by her ancestor, then, if lands descend from the same ancestor to her and her sister in fee-simple (not in fee-tail), she or her heirs shall have no share in them unless they will agree to divide the lands so given in frank-marriage, in equal proportions with the rest of the lands descending—i.e., bringing her lands so given into hotchpot.

As to *personalty*. The State of Distributions (22 & 23 Car. 2, c. 10), intended children to take equal shares of the goods and chattels of their intestate ancestor, and it considered that there might be some of the children who had previously received a portion or advancement, but not so much as to make up their full share; in that case such child, so advanced but in part, was allowed so much more out of the intestate's personal estate as would suffice to make his share equal to that of the other children. The Act took nothing away that had been given to any of the children, however unequal that may have been. How much soever that might have exceeded the remainder of the personal estate left by the intestate at his death, the child might, if he pleased, keep it all; if he was not content, but would have more, then he must bring into hotchpot what he had before received. This principle is based upon the equitable doctrine of equality, being perfectly coincident with that conduct that a just parent would pursue towards all his children.

The Statute of Distributions has been repealed by the Administration of Estates Act, 1925, and replaced by ss. 46–47 of this Act; s. 47, assimilating descent and succession to real and personal estate, has given effect to the principle in the distribution of intestate estates.

A settlement of personal estate in favour of children in such shares as the parents may

appoint, and in default of any appointment among the children equally, almost invariably contains what is called a 'hotchpot clause,' i.e., a direction that no child who has received any share under an exercise of the power shall share in the unappointed part of the fund without bringing his appointed share into hotchpot. As to the construction of such a clause where several funds are settled, see *Re Fraser*, 1913, 2 Ch. 224, and cases there cited, and Trustee Act, 1925, s. 31 (2).

Hotel-keeper. See INNKEEPER.

House. As to what will pass under a grant of a 'house,' see *St. Thomas's Hospital* v. *Charing Cross Ry. Co.*, (1861) 1 J. & H. at p. 404, per Wood, V.-C.; *Co. Litt.* 5 *b*. As to a devise of a 'house,' see *Theobald on Wills*; *Jarman on Wills*.

Malicious injuries to houses by tenants, or by means of explosive substances, are punishable by the Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), ss. 9 and 13.

'House' under the Public Health 1936 Act, s. 43, means a dwelling-house, whether private or not; under the Housing Act, 1936, s. 187, includes any yard, garden, outhouses and appurtenances; under the Rent Restriction Acts, 1920–1935, a dwelling-house means a house let as a separate dwelling or a part of a house being a part so let (1933, s. 16); for other definitions, see respective statutes.

Houseage, a fee paid for housing goods by a carrier, or at a wharf, etc.

Housebote, estovers, or an allowance of necessary timber out of the lord's wood for the repairing or support of a house.

House-breaking. See BREAKING-IN; and as to breaking in at night, see BURGLARY.

House-burning. See ARSON.

House duty, a tax on inhabited houses imposed by the House Tax Act, 1851 (14 & 15 Vict. c. 36), in lieu of window duty. The tax varied in amount, according to the annual value of the premises and the purpose for which they were used. Inhabited house duty was abolished by the Finance Act, 1924, s. 20. See *Chitty's Statutes*, tit. '*House Tax*.'

House of Commons, one of the constituent parts of Parliament, being the assembly of knights of shires, or the representatives of counties; citizens, or the representatives of cities; and burgesses, or the representatives of boroughs.

Property Qualification. — The property qualification of members, which was by 1 & 2 Vict. c. 48, amending 9 Anne, c. 5, by allowing personal property to count, fixed at 600*l.* a year for a county, and 300*l.* a year for a borough member, was abolished in 1858 by 21 & 22 Vict. c. 26.

Payment of Members.—Members were from very early times entitled to payment at the rate of 4*s.* a day for county, and 2*s.* a day for borough members, payable by their constituents. This has never been abolished, and is recognized by the unrepealed 6 Hen. 8, c. 16, by which members may not depart from Parliament without licence from the Speaker on pain of losing their 'wages,' though 35 Hen. 8, c. 11, which gave wages to Welsh members as in England, was repealed in 1856 by 19 & 20 Vict. c. 64. The common law right to 'wages,' which Coke says had existed 'time out of mind,' was enforceable by writs to sheriffs, but has not been enforced since about 1860. Lord Campbell, at p. 220, vol. iv. of the 4th ed. (1857) of the *Lives of the Lord Chancellors* (but not in previous editions), wrote that he knew no reason in point of law why any member might not still insist on payment of wages; and see *Chitty's Statutes*, tit. '*Parliament*,' vol. ix. 246; *Solicitors' Journal* for February 25th, 1905; *Law Times* for November 11th, 1905.

As the law stands at present, members who are not in receipt of salaries as ministers of the Crown, as officers of the House itself, or as officers of His Majesty's Household, are paid a salary of 600*l.* a year; in addition, members have a right of free railway travel to and from their constituencies.

Election of Members.—During the last hundred years the House has been reformed on several occasions. In 1832, when Old Sarum and fifty-five other inconsiderable places were deprived of the right of returning members, thirty boroughts were cut down from double to single representation, and Manchester, Birmingham, Leeds, Sheffield, and eighteen other boroughs first obtained representation—having two members each given them, the rights of voting being also very largely extended; in 1867, when a similar but less extensive rearrangement of seats took place, and household and lodger franchise was established in boroughs; and in 1884, when household and lodger franchise was established in counties, and a rearrangement of seats in proportion to population more extensive than that of 1867, but less so than that of 1832, took place.

Under the Redistribution of Seats Act, 1885, the House consisted of 670 members. By the Representation of the People Acts,

1918 to 1926, the number of members was increased to 707, 492 of whom representing England, 36 Wales, 74 Scotland, 105 Ireland. The House is now reduced to 615 members through the decrease of Irish representation from 105 members to 13, who sit for Northern Ireland. As to the redistribution of seats, see 1918 Act, s. 37 and Sched. IX. By 18 & 19 Geo. 5, c. 25, Reading University was added to the combination of Universities referred to in the 9th Sched. of the Act of 1918. As to electors, see ELECTORAL FRANCHISE.

Secret voting at elections was first introduced by the Ballot Act, 1872, which was a temporary Act, continued annually by an Expiring Laws Continuance Act, until made permanent by s. 35 of the Act of 1918.

By the Parliament (Qualification of (Women) Act, 1918 (8 & 9 Geo. 5, c. 47), women became qualified to be members of the House of Commons, and sex disqualifications for office were removed by the Sex Disqualifications (Removal) Act, 1919 (9 & 10 Geo. 5, c. 71); see also the Representation of the People (Equal Franchise) Act, 1928 (18 & 19 Geo. 5, c. 12).

Aliens are not eligible as members, neither are minors, lunatics, English or Scotch peers; but Irish peers, unless representative, may sit for any place in Great Britain. The English, Scotch, and Irish judges are disqualified, also the holders of various offices particularized by statute, government contractors, clergymen, and bankrupts. See House of Commons Disqualification (Declaration of Law) Act, 1931 (21 & 22 Geo. 5, c. 13); and 1935 (25 & 26 Geo. 5, c. 38); *Chitty's Statutes*, tit. '*Parliament*,' and especially Representation of the People Act, 1918.

'*The Six Points of the Charter*.'—The six points of the 'People Charter' demanded by the 'Chartists' at Birmingham in 1838 were :—(1) Universal Suffrage; (2) Vote by Ballot (granted in 1872); (3) Paid Representatives (granted in 1911); (4) Equal Electoral Districts; (5) Abolition of the Property Qualification for M.P.'s (granted in 1858); and (6) Annual Parliaments.

Bowles's Act.—By the Provisional Collection of Taxes Act, 1913 (3 & 4 Geo. 5, c. 3), statutory effect is given for a limited period to resolutions passed by the Committee of Ways and Means of the House of Commons (so long as it is a Committee of the whole House) varying or renewing taxation. The Act also makes provision with respect to payments and deductions made on account of any temporary tax between the dates of the expiration and renewal of the tax; it applies only to duties of customs and excise and to income tax. The Act was passed in consequence of the decision in *Bowles* v. *Bank of England*, 1913, 1 Ch. 57.

The House of Commons acting collectively in a matter falling within the ambit of its domestic affairs is privileged (*R.* v. *Graham Campbell, Ex p. Herbert*, 1935, 1 K. B. 594).

House of Correction, a species of gaol which does not fall under the sheriff's charge, but is governed by a keeper wholly independent of that offence.

Houses of Correction, first established in the reign of Elizabeth, were originally designed for the penal confinement (after conviction) of paupers and vagrants refusing to work; but by 5 & 6 Wm. 4, c. 38, ss. 3, 4, reciting that great inconvenience and expense had been found to result from the practice of committing to the common gaol where it happens to be remote from the place of trial, it is enacted that a justice of the peace, or coroner, may commit for safe custody to any house of correction situate near the place where the assizes or sessions are to be held; and that offenders sentenced in those courts may be committed, in execution of such sentence, to any house of correction for the county; and see the Criminal Justice Administration Act, 1851 (14 & 15 Vict. c. 55), ss. 20, 21, for power of justices to declare when houses of correction are fit prisons to commit to.

House of Lords, a constituent part of Parliament, being composed of the lords spiritual and temporal.

The lords temporal are dukes, marquesses, earls, viscounts, and barons. The number of British peerages of different ranks has been greatly augmented from time to time, and there is no limitation to the power of the Crown to add to it by fresh creation.

The lords temporal consist of: (1) peers of the United Kingdom, of Great Britain, and of England; (2) the representative peers of Scotland and Ireland; (3) life peers, i.e., Lords of Appeal in Ordinary. The Lord High Chancellor presides.

Bankrupts are disqualified from sitting or voting by s. 32 of the Bankruptcy Act, 1883.

The assent of the House of Lords was formerly essential to the passing of any Act of Parliament, but its powers in this respect had been seriously curtailed by the Parliament Act, 1911. See ACT OF PARLIAMENT.

The House of Lords has been for a con-

siderable time—at least since the time of Henry the Fourth—the court of final appeal, having no original jurisdiction over causes, but only upon appeals and proceedings in error to rectify any injustice or mistake of the law committed by the courts below.—3 *Hallam's Constit. Hist.*; consult *Macqueen's Practice of the House of Lords*; *Sugden's Law of Property*, Introd. Chap.

By the Judicature Act, 1873, s. 20, the jurisdiction of the House of Lords as the final Court of Appeal was taken away; but the operation of this section was suspended by the Judicature Act, 1875, s. 2, until the 1st November, 1876, and by the Appellate Jurisdiction Act, 1876, the appellate jurisdiction was restored.

In difficult cases the House of Lords may obtain the opinions of the judges; for a recent instance of this, see *Allen* v. *Flood*, 1898, A. C. 1.

As to the trial of peers indicted for treason or felony by the House of Lords, see HIGH STEWARD, COURT OF THE LORD.

Householder [*paterfamilias*, Lat.], an occupier of a house; a master of a family.

House-tax. See HOUSE DUTY.

Housing of the Working Classes. The Housing Act, 1936 (26 Geo. 5, and 1 Edw. 8, c. 51), replaces with amendments the Housing Acts, 1925, 1930 and 1935, and consolidates the general law on the subject with some exceptions, chiefly relating to agricultural populations and needs, which are also provided for in unrepealed portions of the Acts of 1930 and 1935. Very wide powers are conferred on local authorities over the ownership of land and housing properties, and populations within their districts, enabling those authorities to make bye-laws for houses occupied or adaptable for the working classes; to effect the clearance, demolition, rebuilding, redevelopment or improvement of houses either singly or in whole areas and otherwise regulating sites or houses; to prevent over-crowding, and generally making it incumbent on these authorities to review and provide for the housing conditions of the working classes, and in addition giving powers of compulsory expropriation of private owners from any land subject only to the compensation available under Acquisition of Land (Assessment of Compensation) Act, 1919, and as diminished by the 4th Sched. to the Act of 1936 or otherwise as provided by the Act. At the same time the powers of expropriation of any land which is not comprised in clearance, redevelopment or improvement areas, etc., do not extend over the property of a local authority, or land required for the purposes of a statutory undertaking or being part of any park, garden or pleasure ground or otherwise required for the amenity or convenience of a house (s. 75), and see ss. 142–144 as to other restrictions upon acquisition of land. The Act of 1936 has mitigated some of the hardships to meritorious owners which arose out of the earlier legislation chiefly in regard to the retention of their property if reconditioned or redeveloped according to the requirements of local authorities (ss. 50 and 51). Under ss. 90–92, assistance may be given by local authorities or the Public Works Loan Commissioners to private owners and others desiring to erect or improve houses for the working classes, and s. 123 enables the Public Works Loan Commissioners to lend to local authorities any money which those authorities have power to borrow for those purposes, and the financial provisions (Part VI.) relate to Government contributions, contributions out of rates, borrowing monies, etc. The High Court, the Chancery Courts of Lancaster and Durham, and county courts are provided with powers and jurisdictions ancillary to the purposes of the Act (ss. 160–163). In regard to small houses, not necessarily working-class houses, the Act of 1936, s. 2, replacing preceding enactments, provides an exception to the rule that there is no implied condition of fitness in the letting an unfurnished house. In a contract for letting of a small house or part of a house for habitation a condition is implied that at the commencement of the holding the house (or part) is in all respects reasonably fit for human habitation. As to the liability of the landlord where the tenant undertakes the repairs (fair wear and tear excepted), see *Jones* v. *Geen*, 1925, 1 K. B. 119. As to the necessity for notice, see *Morgan* v. *Liverpool Corporation*, 1927, 2 K. B. 131. The condition is implied only where the rent does not exceed, in London, 40*l*., or 26*l*. elsewhere in England and Wales. These provisions do not apply to a contract made before 31st July, 1923, in the case of houses let at more than 16*l*. per annum and situate out of the administrative County of London or a borough or district with a population of more than 50,000, or to leases for not less than three years where the lessee is under obligation to put in repair.

By s. 4, in the case of any house which is occupied or is of a type suitable for occupation by persons of the working classes, the

name and address of the medical officer of health for the district and of the landlord or responsible person must be entered in the rent-book under penalty of a fine not exceeding forty shillings.

It may also be pointed out that for the special purposes of ss. 38 and 137 of the Act of 1936, the 11th Schedule defines a working man's dwelling as wholly or partly occupied by a person belonging to the working classes, and 'working class' includes mechanics, artisans, labourers and others working for wages, hawkers, costermongers and persons not working for wages, but working at some trade or handicraft without employing others except members of their own family, and persons other than domestic servants, whose income in any case does not exceed an average of 3*l*. per week, and the families of any such persons who may be residing with them. The Act does not give any other or general definition of the working classes and working-class houses or dwellings. The Act of 1936 does not extend to Scotland or Northern Ireland. See, further, CLEARANCE AREA; IMPROVEMENT AREA; REDEVELOPMENT AREA; OVERCROWDING; LANDLORD AND TENANT; and INCREASE OF RENT.

Howe, a hill.—*Co. Litt.* 5 *b.*

Howgh, a valley.—*Ibid.*

Hredige, readily, quickly.—*Leg. Athelstan.* c. 16.

Hudegeld. See HIDGELD.

Hue and Cry [fr. *huer*, Fr., to shout; *crier*, to cry aloud; *hutesium et clamor*, Lat.], the old common law process of pursuing with horn and voice felons and such as have dangerously wounded another. It may be raised by constables, or private persons, or both. If the constable or peace officer concur in the pursuit, he has the same powers, etc., as if acting under a magistrate's warrant. All who join in a hue and cry, whether a constable be present or not, are justified in the apprehension of the person pursued, though it turn out that he is innocent; and where he takes refuge in a house, may break open the door, if admittance be refused; and by the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), re-enacting 3 Edw. 1, c. 9, 'Every person in a county must be ready and apparelled at the command of the sheriff, and at the cry of the country to arrest a felon,' and in default 'shall on conviction be liable to a fine.' But if a man wantonly or maliciously raise a hue and cry, he is liable to fine and imprisonment, and to an action at the suit of the party injured. The Criminal Law Act, 1826 (7 Geo. 4, c. 64), s. 28, provides for compensation to persons who have been active in the apprehension of any person charged with murder, or other offences specified in that section, in order to encourage the apprehension of felons. As to the mode of raising the hue and cry, see *Hawk.* l. 2, c. xii., s. 6. The term is also applied to a paper circulated by order of the Secretary of State for the Home Department announcing the perpetration of offences.

Huisserium, a ship used to transport horses. Also termed *uffer.*

Huissier, an usher of a court.

Hulka, a hulk or small vessel.

Hullus, a hill.

Humagium, a moist place.—*Dugd. Mon.*

Hundred, a subdivision of the county, the nature of which is not known with certainty. In the *Dialogus de Scaccario*, it is said that a hundred '*ex hydarum aliquot centenariis, sed non determinatis constat; quidam enim ex pluribus, quidam ex paucioribus constat.*' Some accounts make it consist of precisely a hundred hides: others, of a hundred tithings, or of a hundred free families. Certain it is that whatever may have been its original organization, the hundred, at the period when it became known to us, differed greatly as to the extent in the several parts of England. This division is ascribed to King Alfred, and he may possibly have introduced it into England, though it was established among the Franks in the sixth century. In the capitularies of Charlemagne we meet with it in the form known among us.—*Capit.* l. 3, c. x. See HUNDREDORS.

Hundred Court, a larger court-baron, being held for all the inhabitants of a particular hundred instead of a manor. The free suitors were here also the judges, and the steward the registrar, as in the case of a court-baron. It was not a court of record; it resembled a court-baron in all points except that in point of territory it was of a greater jurisdiction. It was denominated *hæreda* in the Gothic constitution. Causes were removed by the same writ as from a court-baron, and its proceedings might be reviewed by writ of false judgment. The court is become obsolete, but the County Courts Act, 1888, s. 6, re-enacting s. 14 of the County Courts Act, 1846, still treated it as existing, by providing for the surrender of the right to hold it. The Salford Hundred Court of Record still exists under special statutory provision. See County Courts

(Amendment) Act, 1934 (24 & 35 Geo. 5, c. 17), s. 34, which repealed s. 6 as obsolete.

Hundred-fecta, the performance of suit and service at the hundred court.

Hundred-lagh or **Hundred-law,** a hundred court.

Hundred-penny, the *hundredfeh*, or tax collected by the sheriff or lord of a hundred.

Hundred-setena, dwellers or inhabitants of a hundred.—*Char. Edg. Regis Mon. Glaston. An.* 12 Reg.; *Dugd. Mon.*, tom. i. p. 27, ed. 1817.

Hundredes earldor, Hundredes man [*alder mannus hundredi*], the presiding officer in the hundred court.—*Anc. Inst. Eng.*

Hundredors, men of a hundred.

Until 1886 hundredors were liable for damage done by rioters, under 7 & 8 Geo. 4, c. 31, which superseded all the prior statutes (repealed by 7 & 8 Geo. 4, c. 27) relative to such liability. But the Riot Damages Act, 1886 (49 & 50 Vict. c. 38), has transferred the liability to 'police districts.' See RIOT DAMAGES.

Hurdereferst, a domestic; one of a family.

Hurdle, a sledge used to draw traitors to execution, disused by operation of the Forfeiture Act, 1870 (33 & 34 Vict. c. 23), s. 31.

Hurst, Hyrst, Herst, Hirst, a wood or grove of trees.—*Co. Litt.* 4 *b.*

Hurtardus, Hurtus, a ram, or wether.

Husband of a Ship. See SHIP'S HUSBAND.

Husband and Wife. The Common Law treated them, for most purposes, as one person, giving, with exceptions comparatively unimportant, the whole of a woman's property to her husband for his absolute use, and a husband could not make a grant to his wife at the Common Law, though he might do so: (1) under the Statute of Uses, by granting an estate to another person for her use; (2) by creating a trust in her favour; (3) by the custom of particular places; (4) by surrendering copyholds to her use; and (5) by will.

Equity, however, from very early times, by the doctrines of 'separate use,' 'trusts,' and 'equity to a settlement,' very largely modified the Common Law in favour of the wife; and the statute law has, by s. 1 of the Law Reform (Married Women and Tortfeasors Act), 1935 (25 & 26 Geo. 5, c. 30), almost completely abolished the property distinction between an unmarried and a married woman. See MARRIED WOMEN'S PROPERTY.

At Common Law, a gift of either realty or personalty to a husband and his wife and a third person was construed as a gift to the husband and wife of half and the other half to the other person, see *Re Jeffery*, 1914, 1 Ch. 375, and cases there referred to. It is now provided that the husband and wife shall for all purposes of acquisition be treated as two persons under any disposition coming into operation after 1925 (L. P. Act, 1925, s. 37); and the A. E. Act, 1925, which has substantially altered the rights of husband or wife surviving the other upon intestate succession (see s. 467), provides that a husband and wife shall, for all purposes of distribution and division in an intestacy under that section, be treated as two persons. Under s. 39, *ibid.*, and the 6th Sched. to that Act, Part VI., tenancies by entireties were converted to joint tenancies upon trust for sale, and by s. 184, *ibid.*, in cases where the survival of either husband or wife after the death of the other is uncertain, the younger shall be deemed to have survived the elder.

The general rule is that a husband is not bound by his wife's contracts, unless made by his authority, express or implied. If any articles are supplied to the wife which are not necessaries, the legal presumption is that the husband did not assent to his wife's contract. In the case of necessaries, where husband and wife are living together, the presumption is that the wife has the husband's authority to pledge his credit for necessaries suitable in quality and quantity to their then style of living and belonging to a department of the household customarily managed by a wife: this presumption arises from cohabitation (see *Jolly* v. *Rees*, (1864) 15 C. B. (N. S.) 628). This presumption may be rebutted by proof that the husband prohibited the wife from pledging his credit, or revoked her authority, unless his conduct has been such as to raise an estoppel between himself and the other contracting party. A notice of such a prohibition given to a plaintiff will preclude him from relying on this presumption (see also *Callot* v. *Nash*, 39 T. L. R. 292). Where husband and wife are living apart owing to the former's desertion, or by consent, and the husband fails to maintain her, she has an irrevocable authority, as an agent of necessity, to pledge his credit for necessaries suitable to her position in life.

A policy of insurance taken out by a husband in his wife's name under the Married Women's Property Act, 1882, is the property of his wife and is part of her estate if she predeceases him (*Cousins* v. *Sun Life*

Assurance Socy., 1933, Ch. 126). See INSURANCE.

Sect. 3 of the Law Reform (Married Women and Tortfeasors) Act, 1935, has abolished the husband's liability for his wife's torts and ante-nuptial contracts, debts and obligations.

Previously to this enactment, by the Common Law, in an action in respect of a tort committed by a wife the husband had to be joined as a party, and though by s. 1 (2) of the Married Women's Property Act, 1882, the husband need not be joined, yet he usually was still joined as he was liable in respect of his wife's torts committed during coverture, and the aggrieved party was not limited in his remedy to the wife's separate estate (*Earle* v. *Kingscote*, 1900, 1 Ch. 203), but the husband's liability ceased if, while the action was pending and before judgment, an order for judicial separation was obtained (*Cuenod* v. *Leslie*, 1909, 1 K. B. 880). As to torts in respect of which the husband was not liable, see *Edwards* v. *Porter*, 1923, 2 K. B. 538. As to form of judgment obtained against a married woman, see *Scott* v. *Morley*, (1888) 20 Q. B. D. 120.

Ante-nuptial debts were provided for by ss. 13–15 (now repealed) of the Married Women's Property Act, 1882, which enacted that a wife was to continue liable for such debts to the extent of her separate property, but that a husband was liable for them to the extent of property acquired by him from his wife, and that the husband and wife might be jointly sued in respect of any such debts.

Proceedings in connection with the rights of marriage are regulated by the Matrimonial Causes Acts, 1925 and 1937, and the Judicature Act, 1925. See DIVORCE and MATRIMONIAL CAUSES. Proceedings of husband and wife against each other in respect of property are regulated by the 12th, 16th, and 17th sections of the Married Women's Property Act, 1882. The 12th section, as amended, enacts that 'every married woman shall have against all persons, including her husband, the same civil and (unless they be living together or the act complained of took place when they were living together) criminal remedies for the protection of her property, as if she were unmarried,' but that, 'except as aforesaid, no husband or wife shall be entitled to sue the other for a tort'; the 16th section, that 'a wife doing any act with respect to the property of her husband, which, if done by the husband with respect to the property of the wife, would make the husband liable to criminal proceedings by the wife, shall in like manner be liable to criminal proceedings by her husband' (see also Larceny Act, 1916, s. 36); and the 17th section, that questions arising between husband and wife as to property may be decided in a summary way (privately, if either party so require) by a judge of the High Court, or (at the option of the applicant irrespectively of the amount in dispute) by the judge of the county court of the district in which either party resides.

As to criminal law, if a wife commit a felony, except treason, or murder, or manslaughter, in her husband's presence, the law presumed that she acted under his coercion and excused her, which presumption of coercion was abolished by the Criminal Justice Act, 1925 (15 & 16 Geo. 5. c. 80), s. 47, but it is still a good defence to prove (except in treason or murder) that the offence was committed in the presence of, and under the coercion of, the husband; while if in the absence of her husband she commit the felony—even by his order—her coverture is no excuse.

As to maintenance of the wife by the husband under the Poor Law, by 5 Geo. 1, c. 8, a husband running away and leaving wife or children chargeable to a parish is liable to have his goods seized and sold to pay for their maintenance; and by the Poor Law Act, 1930 (20 Geo. 5, c. 17), s. 19, when a married woman requires relief from the poor rates without her husband, an order may be made upon the husband by justices in petty sessions to maintain his wife by paying towards the cost of her relief such sum, weekly or otherwise, in such manner and to such persons as shall appear to the justices to be proper. Payments under this Act, however, can only be made to the wife as a pauper; and a more liberal scale, which may rise as high as 2*l.* per week, may be given by justices to a deserted or ill-treated wife under the Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), extended by 25 & 26 Geo. 5, c. 46, s. 9; the Married Women (Maintenance) Act, 1920 (10 & 11 Geo. 5, c. 63); and the Summary Jurisdiction (Separation and Maintenance) Act, 1925 (15 & 16 Geo. 5, c. 51). The maintenance of the husband by the wife out of her separate property is provided for by s. 14 of the Poor Law Act, 1930.

At Common Law the husband was (as laid down by Coleridge, J., in *Ex parte Cochrane*, (1840) 8 Dowl. 630) considered to have a

right to the personal custody of his wife; but in 1891 the Court of Appeal (Lords Halsbury and Esher and Sir Edward Fry) disregarded this and all similar authorities and dicta, and held on a return to a *habeas corpus* that where a wife refused to live with her husband he was not entitled to keep her in confinement in order to enforce restitution of conjugal rights (*The Queen* v. *Jackson*, 1891, 1 Q. B. 671.

Consult *Lush on Husband and Wife;* and see ALIMONY; MARRIED WOMEN'S PROPERTY; JUDICIAL SEPARATION; MATRIMONIAL CAUSES; WITNESS; DIVORCE.

Husbandry, farming.

Husbrece, burglary.—*Blount.*

Huscans, buskins.—4 Edw. 4, c. 7.

Huscarle, a menial servant.—*Domesday.*

Husfastne, he who holds house and land.—*Bract.* l. 3, t. 2, c. 10.

Husgablum, house rent or tax.—*Cowel's Law Dict.*

Hush-money, a bribe to hinder information; pay to secure silence.

Husting [fr. *hus-thing*, A.-S.], council, court, tribunal; apparently so called from being held within a building at a time when other courts were held in the open air. It was a local court. The county court in the city of London bore this name. There were hustings at York, Winchester, Lincoln, and in other places, similar to the London hustings.—*Madox, Hist. Excheq.*, c. xx. Also the raised wooden platform from which candidates for seats in parliament, prior to the Ballot Act, 1872, addressed the constituency on the occasion of their public oral nomination, and from which a show of hands was taken by the returning officer.

Hutesium et clamor (hue and cry). See HUE AND CRY.

Hutilan, taxes.—*Dugd. Mon.*, tom. i. 586.

Hwata Hwatung, augury, divination.—*Anc. Inst. Eng.*

Hybernagium, the season for sowing winter corn, between Michaelmas and Christmas. See IBERNAGIUM.

Hyd, hide, skin. See HIDE-GILD.

Hyd, a measure of land, containing, according to some, a hundred acres, which quantity is also assigned to it in the *Dialogus de Scaccario.* It seems, however, that the hide varied in different parts of the kingdom. See HIDE OF LAND; HIDAGE.

Hynden, an association of ten men, first mentioned in *In.* 54, where it signifies the person from among whom the consacramentals were to be chosen in the case of deadly feud. From *Ath.* V. iii. it appears that the members of the 'first-guilds' (*congildones*) were formed into associations of ten, the enactment running thus: 'That we count ten men together, and let the senior direct the nine in all these things that are to be done; and then let them count their hyndens together, with one hyndenman, who shall admonish the ten (i.e., the ten hyndens) for our common benefit.' Hence it would seem that the eleven who are to hold the money consisted of the senior of each hynden, together with the hydenman who presided over the hynden of the hyndens, i.e., ten hyndens. The number XII. mentioned in *Ath.* V. viii. 1 is apparently an error for XI.—*Anc. Inst. Eng.*

Hypobolum, a legacy to a wife above her dower.—*Civ. Law.*

Hypothec, in the law of Scotland, is a security without possession established by law in certain cases in favour of a creditor over the property of his debtor. In the case of a landlord to whom rent is owing it is restricted, as to the right to agricultural produce, by the Hypothec Amendment (Scotland) Act, 1867 (30 & 31 Vict. c. 42), and abolished by the Hypothec Abolition (Scotland) Act, 1880 (42 Vict. c. 12), as to the rent of land, exceeding two acres in extent, let for agriculture or pasture. It is restricted in certain cases by the Housel etting and Rating Act, 1911.

Hypothecation [fr. *hypotheca*, Civ. Law, a pledge in which the pledger retained possession of the thing pledged, as distinguished from *pignus*, where the possession was transferred to the pledgee. See *Sand. Just; Smith's Dict. of Antiq.*, tit. '*Pignus*'], the act of pledging a thing as security for a debt or demand without parting with the possession. There are few cases, if any, in our law where an hypothecation in the strict sense of the Roman Law exists. The nearest approaches, perhaps, are the cases of holders of bottomry bonds, and of seamen to whom wages are due in the merchant service, who have a claim against the ship *in rem.* But these are rather cases of liens or privileges than strict hypothecations. There are also cases where mortgages of chattels are held valid, without any actual possession by the mortgagee, but they stand upon very peculiar grounds, and may be deemed exceptions to the general rule.

Hypothetical Case. It is not the function of a court of law to advise parties what their rights would be under an hypothetical state of facts (*Glasgow Navigation Co.* v. *Iron Ore Co.*, 1910, A. C. 293).

Hypothetical Tenant, a term used in valuations for rating denoting the ideal or imaginary person who would take premises at an average of the rents likely to be paid by all persons who could be regarded as possible tenants, including the owner. 'In my opinion, the rent that the (hypothetical) tenant might reasonably be expected to pay is the rent which, apart from all conditions affecting or limiting its receipt in the hands of the landlord, would be regarded as a reasonable rent for the tenant who occupied under the conditions which the statute . . . imposes,' *per* Lord Buckmaster (*Poplar Union Assessment Committee* v. *Roberts*, 1922, A. C. 93).

Hypothèque, the right acquired by the creditor over the immovable property which has been assigned to him by his debtor as security for his debt, although he be not placed in possession of it.—*Fr. Law.*

Hyrnes [*parochia*, Lat.], parish.

Hythe, a port or little haven at which to lade or unlade wares.—*Jac. Law. Dict.*

I.

Ibernagium [fr. *hibernagium*, Lat.], the season for sowing winter corn.—*Cart. Antiq. MSS.*

Ibidem, Ibid., Ib., Id. [Lat.] (in the same place or case).

Ice. As to the duty of the master of a British ship in relation to dangerous ice, see Merchant Shipping (Safety and Local Law Conventions) Act, 1932 (22 Geo. 5, c. 9), ss. 30, 32; and the Ice Patrol, see Schedule I., Articles 36, 37.

Iceni, the ancient name for the people of Suffolk, Norfolk, Cambridgeshire, and Huntingdonshire.

Icona, a figure or representation of a thing.—*Du Cange.*

I-ctus, an abbreviation of *jurisconsultus*, a lawyer.

Ictus orbus, a maim, bruise, or swelling; a hurt without cutting the skin.—*Cowel's Law Dict.*

Id certum est quod certum reddi potest, that which can be reduced to a certainty is a certainty already.

Idem est non esse et non apparere. *Jenk. Cent.* 207.—(Not to be and not to appear are the same.) See *Hale, de Jure Maris*, pt. I, c. 4, p. 14; *R.* v. *Lord Yarborough*, (1824) 3 B. & C. 96.

Idem per idem, an illustration of a kind that really adds no additional element to the consideration of the question.

Idem sonans (sounding alike). The courts will not set aside proceedings on account of the mispronunciation or mistake of names sounding alike, unless substantial injustice has been done. See *Reg.* v. *Mellor*, (1858) 27 L. J. Q. B. 121, where on a trial for murder it was discovered after conviction that Joseph Henry Thorne and William Thorniley, having both been on the panel, William Thorniley had by mistake answered to the name of Joseph Henry Thorne, and been sworn. Seven judges to six held that the conviction ought not to be set aside, two of them only on the ground of want of jurisdiction in the Court for Crown Cases Reserved (see CROWN CASES RESERVED); and see also *Wells* v. *Cooper*, (1874) 30 L. T. 721, where in an action of trespass Thomas Cox, a special juror, served by mistake for Thomas Fox on a common jury. And see MISNOMER.

Identitate, or **Idemptitate nominis,** an ancient and obsolete writ that lay for one taken and arrested in any personal action and committed to prison for another man of the same name.—*Fitz. N. B.* 267.

Identity. The being the same person or thing as represented or believed to be.

Identitas vera colligitur ex multitudine signorum. Bacon.—(True identity is collected from a multitude of signs.)

See *Hubback on Succession*, pp. 438 *et seq.*; *Best on Evidence*, 10th ed., s. 517, as to identification generally, and ss. 517 A. B. C. for curious cases of mistaken identity—such as the Tichborne Case in 1867–1872, and the Beck Case in 1896 and 1904. For forms of evidence and affidavits of identity, see *Dan. Ch. Pr.*

Ides [fr. *iduare*, obs. Lat., to divide], a division of time among the Romans. In March, May, July, and October the Ides were on the 15th of the month, in the remaining months on the 13th.—*Smi. Clas. Antiq.* This method of reckoning is still retained in the Chancery of Rome, and in the calendar of the Breviary. See NONES.

Idiot. An idiot is a person born without a mind. For Coke's classification of persons of unsound mind, see *Co. Litt.* 247 *a.*

Idiots, imbeciles, feeble-minded persons, and moral defectives constitute the four kinds of persons defined as 'mentally defective' by the Mental Deficiency Act, 1927 (17 & 18 Geo. 5, c. 33), s. 1, idiots being defined (s. 1 (*a*) as 'persons in whose case there exists mental defectiveness of such a degree

that they are unable to guard themselves against common physical dangers.' The M. D. Act, 1913, as amended by the Act of 1927, provides (s. 2) for defectives being dealt with either by being sent to an institution or placed under guardianship. The general superintendence of matters relating to their supervision, training or occupation, protection, and control is vested in a central body styled 'the Board of Control' (ss. 21 *et seq.*), and County Councils and Borough Councils are constituted committees for the purposes of the Act (ss. 27 *et seq.*). The Idiots Act, 1886, is repealed (s. 67), and full provision is made for the care and protection in every way of the persons to whom the Act applies and for the management and administration of their property. The Act does not extend to Scotland or Ireland (s. 72), but provision is made for the former by the Mental Deficiency and Lunacy (Scotland) Act, 1913 (3 & 4 Geo. 5, c. 38). Consult *Archbold's Lunacy and Mental Deficiency; Mills and Poyser's Lunacy Practice.*

Idle and Disorderly Person. See VAGRANT.

Idoneum se facere; **idoneare se,** to purge oneself by oath of a crime of which one is accused.

Idoneus homo (a proper man). He is legally said to be *idoneus homo* who has honesty, knowledge, and ability.

Ignis judicium, the old judicial trial by fire.—*Blount.*

Ignitegium [fr. *ignis*, Lat., fire, and *tego*, to cover], the curfew.

Ignoramus (we are ignorant). The word formerly written on a bill of indictment by a grand jury when they rejected it: the phrase now used is: 'not a true bill,' or 'not found'; or the jury are said to 'ignore' the bill.

Ignorantia facti excusat, ignorantia juris non excusat. (Ignorance of the fact excuses; ignorance of the law excuses not.) The maxim is often cited simply as *Ignorantia legis* [or *juris*] *neminem excusat.* Therefore, first, money paid with full knowledge of the facts, but through ignorance of the law, is not recoverable if there be nothing against conscience in retaining it; and, secondly, money paid in ignorance of the facts is recoverable, provided there have been no laches in the party paying it. See MISTAKE. In criminal cases this maxim applies, as if a man should think he has a right to kill a person excommunicated or outlawed wherever he meets him and does so, this is murder. But a mistake of fact is an excuse, as where a man, intending to kill a thief or house-breaker in his own house, by mistake kills one of his own family, this is no criminal action; see 4 *Bl. Com.* 27. Consult *Broom's Leg. Max.*

Ignoratio elenchi, an overlooking of the adversary's counterposition in an argument.

Ignore, to throw out a bill of indictment.

Ikenild Street. See HIKENILDE STREET.

Illegal Contract, an agreement to do any act forbidden either (1) by the Common Law, such as agreements to commit a crime or tort, or as for rent of lodgings let for prostitution (*Jennings* v. *Brown,* (1842) 9 M. & W. 496); or for price of indecent picture (*Fores* v. *Johnes.* (1802) 4 Esp. 97); or in prejudice to the administration of justice (*Windhill Local Board* v. *Vint,* (1890) 45 Ch. D. 351); or (2) by statute, as by hire of a room for a lecture in contravention of the Blasphemy Act (*Cowan* v. *Milbourn,* (1867) L. R. 2 Ex. 230; but see *Re Bowman,* 1915, 2 Ch. 447), or a contract by a servant of a local authority with such authority, in contravention of s. 193 of the Public Health Act, 1875; also contracts in unreasonable restraint of trade; general restraint of marriage; trading with the enemy; compounding felonies; maintenance or champerty, etc. A breach of promise of marriage by a married man pending divorce after decree nisi may be actionable (*Fender* v. *Mildmay,* (1937) 53 T. L. R. 885). Illegality supervening by act or change in the law terminates the contract. See *Leake* or *Chitty on Contracts; Odgers on the Common Law.* An illegal contract cannot be sued on. See maxim: IN PARI DELICTO MELIOR EST CONDITIO POSSIDENTIS; and CONTRACT; IMPOSSIBILITY.

Illegal Practices. See CORRUPT PRACTICES; CORRUPTION.

Illegitimacy. See BASTARD.

Illeviable, a debt or duty that cannot or ought not to be levied.

Illicit, unlawful, as an illicit sale of intoxicating liquor by retail—e.g., without licence, in contravention of the Licensing (Consolidation) Act, 1910.

Illicite, unlawfully.

Illicitum collegium (an illegal corporation).

Illocable, incapable of being placed out or hired.—*Bailey.*

Illusory Appointments Act, 1830 (11 Geo. 4 & 1 Wm. 4, c. 46). This statute enacted that no appointment made after July 16th, 1830, in exercise of a power to appoint property, real or personal, among several objects, shall be invalid, or impeached in equity, on the ground that an unsubstantial, illusory, or

nominal share only was thereby appointed, or left unappointed, to devolve upon any one or more of the objects of such power; but that the appointment shall be valid in equity as at law. See also the Powers of Appointment Act, 1874 (37 & 38 Vict. c. 37) ('Lord Selborne's Act'), by which appointments were validated, although one or more of the objects may have been excluded. These two Acts were repealed and reproduced by s. 158 of the Law of Property Act, 1925, which extends the rule to appointments whenever made. For the old law, consult *Farwell on Powers*, 8th ed., 938.

Illustrious, the prefix to the title of a prince of the blood.

Images. See ORNAMENTS RUBRIC.

Iman, Imam, or **Imaum,** a Mohammedan prince, having supreme spiritual as well as temporal power; a regular priest of the mosque.

Imbargo. See EMBARGO.

Imbasing of Money, mixing specie with an alloy below the standard of sterling.—1 *Hale's P. C.* 102.

Imbeciles, 'persons in whose case there exists mental defectiveness not amounting to idiocy, yet so pronounced that they are incapable of managing themselves or their affairs, or, in the case of children, of being taught to do so' (Mental Deficiency Act, 1927, s. 1 (1) (*b*)). See IDIOT.

Imbecility. Weakness of tenure, e.g., leasehold contrasted with freehold (*Bredi-man's Case*, 6 Rep. 56 *b*).

Imbezzle. See EMBEZZLE.

Imbracery. See EMBRACERY.

Imbrocus, a brook, gutter, or water-passage.—*Cowel's Law Dict.*

Immaterial Averment, an unnecessary statement. See IMPERTINENCE.

Immaterial Issue, an issue upon a point or ground which will not decide the action. See ISSUE.

Immediately, in a statute, means within a reasonable time. See *Maxwell on Statutes*, 2nd ed. 423.

Immemorial Usage, a practice which has existed time out of mind; custom; prescription.—See MEMORY, TIME OF LEGAL.

Immoral Contracts, contracts founded upon considerations *contra bonos mores*, are void. *Ex turpi contractu non oritur actio.* But where a contract founded upon an immoral consideration has been executed, neither law nor equity will interfere to set it aside if both parties have been equally in fault, for *in pari delicto potior est conditio defendentis.*

Yet a contract under seal, made in consideration of *past* seduction or cohabitation, can be enforced; not because it is binding in honour and conscience, for such a reason is not sufficient, but because it is a specialty (see CONTRACT), and has not been made for an executory consideration of an illegal nature. A covenant to pay money in consideration of future cohabitation is void, though under seal (*Ayerst* v. *Jenkins*, (1873) L. R. 16 Eq. 275). See ILLEGAL CONTRACT.

Immovable, not to be forced from its place, the characteristic of things real, or land. The courts of one country in general have no jurisdiction over immovables situate out of that country (see *British South Africa Co.* v. *Companhia de Mozambique*, 1893, A. C. 602). Also in foreign systems of law a term of the capital division of things into movable and immovable instead of real and personal.

Immunity, exemption.

Impalare, to put in a pound.—*Du Cange.*

Impanel, or **Impannel,** the writing and entering of the names of a jury in a parchment schedule by the sheriff.

Impargamentum, the right of impounding cattle.

Impari, to have licence to settle a litigation amicably, to obtain delay for adjustment.

Imparlance [fr. *licentia loquendi*, Lat.], time to plead; also when a court gives a party leave to answer or plead at another time, without the assent of the other party. Abolished by r. 31, T. T. 1853.

Imparsonee, a clergyman inducted into a benefice. See INDUCTION.

Impatronization, the act of putting into full possession of a benefice.

Impeachment, a prosecution by the House of Commons before the House of Lords of any person, either peer or commoner, for treason, or other high crimes and misdemeanours, or of a peer for any crime; in modern times rarely been resorted to, though in former periods of our history of frequent occurrence. The last memorable cases are those of Warren Hastings, in 1788, and Lord Melville, in 1805.

As to the procedure, see *May's Parliamentary Practice.*

Impeachment of Waste. SEE ABSQUE IMPETITIONE VASTI; WASTE and SETTLED LAND.

Impeshiare, to impeach, to accuse, or prosecute for felony or treason.

Impediatus. See EXPEDITATE.

Impediens, a defendant or deforciant.

Impedimentum dirimens, 'cause or impediment' to marriage which is not removed

by the actual solemnization of the rite, but continues in force and makes the marriage null and void (opposed to *impedimentum impediens*). See *Sanchez de Matrimonio*, lib. 7, disputatio 6.

Imperfect obligations, moral duties, such as charity, gratitude, etc., which cannot be enforced by law. For an instance of payment of a debt of honour out of a lunatic's estate under very special circumstances, see *Re Whitaker*, (1889) 42 Ch. D. 119.

Imperfect Trust, an executory trust, which has not been sufficiently declared or constituted, something remaining to be done to perfect it, will not be enforced in equity if it is purely voluntary; see CONSIDERATION and *Re Pryce, Neville* v. *Pryce*, (1916) 86 L. J. Ch. 383; and see EXECUTED TRUST.

Imperial. Pertaining to the whole Empire as distinguished from the United Kingdom only (see the Imperial Defence Act, 1888), or to the United Kingdom as distinguished from parts of that kingdom, as where it is said that local government may weaken Imperial control.

Imperial Preference. Preferential customs, rates and other trade advantages agreed to be conceded by the British Government of the United Kingdom on goods consigned from and grown, produced or manufactured in the British Empire, i.e. (for this purpose), the Dominions including India, territories under protection and mandated territories, by Order in Council. See Finance Act, 1919, s. 8, as amended by the Import Duties Act, 1932, s. 21; and see the Ottawa Agreements Act, 1932 (22 & 23 Geo. 5, c. 32), giving effect to the Ottawa Conference by modification of customs duties and providing further for Imperial preference; see also Isle of Man Customs Acts, 1933 and 1934.

Imperial Service Order, The. An order founded in 1902 as a reward to civil servants for long and good service.

Imperitia culpæ annumeratur. *Jur. Civ.*—(Want of skill is reckoned as a fault.)

Imperium, right to command, an attribute of executive power.

Impertinence. Not pertinent to the cause of action or to the issues raised in an action. By R. S. C. 1883, Ord. XIX., r. 27, any unnecessary pleading may be struck out by order of the court or a judge: see *Millington* v. *Loring*, (1880) 6 Q. B. D. 190; *Smurthwaite* v. *Hannay*, 1894, A. C. at p. 495.

Impeocatus, impeached or accused.—*Jac. Law Dict.*

Impetitio. See IMPEACHMENT.

Impetration, acquiring anything by request and prayer.—See 38 Edw. 3, st. 2.

Impier, umpire, which see.

Impierment, impairing or prejudicing.—See 23 Hen. 8, c. 9.

Impignoration, the act of pawning or putting to pledge.

Impiead, to sue or prosecute.

Implicata [Ital.]. In order to avoid the risk of making fruitless voyages, merchants have been in the habit of receiving small adventures on freight at so much per cent., to which they are entitled at all events, even if the adventure be lost.—*Merc. Law.*

Implication, a necessary or presumable inference, not directly declared, arising out of acts or words in evidence (see *Jarman* or *Theobald on Wills*). Many implications are statutory. See, e.g., Sale of Goods Act, 1893, the terms implied in a contract for work and labour, and materials supplied are the same as upon a sale of goods under s. 14 of the Sale of Goods Act, 1893 (*Myers & Co.* v. *Brent Cross Service Co.*, 1934, 1 K. B. 46); Law of Property Act, 1925 (implied covenants). An implication may be removed by express words supplying the agreed meaning which would otherwise have been left to inference. See the maxim: EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS.

Implied Condition. See CONDITION.

Implied Contract. A contract which the law infers, from acts, circumstances, or relationships, as that an employer will pay the person employed what his labour was worth; or, as in *Francis* v. *Cockrell*, (1870) L. R. 5 Q. B. 501, that a public platform provided for payment may be used with safety; or that a mesne landlord whose ground-rent has been paid by a sub-tenant to avoid distress will reimburse the sub-tenant. The implied contracts which the law infers are very numerous. See *Chitty*, *Addison*, or *Leake on Contracts*; LANDLORD AND TENANT.

Implied Covenants. See DEMISE; FURTHER ASSURANCE; QUIET ENJOYMENT; and ss. 76 and 77 and 2nd Sched. Law of Property Act, 1925, in regard to assurances as 'beneficial owner.' Formerly, the words 'give' or 'grant' implied covenants for title, see COVENANT; 'demise' in a lease still implies a covenant for title and for quiet enjoyment, but may be modified or excluded by an express covenant.

Implied Grant or Estate. See WILD'S CASE; TAIL; SHELLEY'S CASE; also GENERAL WORDS.

Implied Trusts. An implied trust is one

which arises from an equitable construction put upon the facts, conduct, or situation of parties.

Implied trusts have been distributed into two classes: (1) those depending upon the presumed intent of the parties, as where property is delivered by one to another to be handed over to a third person, the receiver holds it upon an implied trust in favour of such third person; (2) those not depending upon such intention, but arising by operation of law, in cases of fraud, or notice of an adverse equity.

A trust of this kind arises wherever the estate is converted by the trustee from one species of property into another; for if the property, in its original form, were invested with a trust, the *cestui que trust's* interests cannot be affected by any change of that form: and whether the conversion be in pursuance or in breach of the trustee's duty is immaterial; for an abuse of trust cannot confer any right on the party abusing it, or on those who claim in privity with him. See CONSTRUCTIVE TRUST. Consult *Lewin* or *Godefroi on Trusts*.

Importation, the bringing goods and merchandise into this country from abroad.

Imports, goods or produce brought into a country from abroad. See Import Duties Act, 1932.

Imposition, tax, contribution.

Impossibility. If a man contract to do a thing which is absolutely impossible by its nature, such contract will not bind him—*lex non cogit ad impossibilia*, e.g., where the subject-matter has perished before date of contract, or never existed (see Sale of Goods Act, 1893, s. 6; and *Conturier* v. *Hastie*, (1852) 8 Ex. 43 & H. L. C. 673); but where the contract operating as a transfer of real property, e.g., as a demise, is to do a thing which is possible in itself, but which becomes impossible, he will be liable for the breach; thus, where a lessee covenants to repair and to leave in repair the demised premises he is not discharged from his liability because they happen to be destroyed (see *Bullock* v. *Dommitt*, (1796) 6 T. R. 650); or requisitioned by the military (*Whitehall Court Ltd.* v. *Etlinger*, 1920, 1 K. B. 680).

The non-performance of a contract which arises from an act of the law having rendered performance impossible is excused: see *Baily* v. *De Crespigny*, (1869) L. R. 4 Q. B. 180; *Re Shipton*, 1915, 3 K. B. 676.

The perishing of the subject-matter of a contract in cases where it is apparent that the parties contracted on the basis of its continued existence is also an excuse for non-performance; if the event has not been foreseen or expressly provided for in the contract, the event is now called 'frustration' of the contract or adventure: see *Taylor* v. *Caldwell*, (1863) 3 B. & S. 326, where the defendant was held excused from payment of damages for non-performance of an agreement to let a music-hall to the plaintiff for entertainments for four non-consecutive days, by reason of the hall having been burnt down before the first of the days arrived; and the principle of this case was applied in *Krell* v. *Henry*, 1903, 2 K. B. 740, where the contract was to pay for a flat from which to view the Coronation procession on two fixed days. See also *Elliott* v. *Crutchley*, 1906, A. C. 7. In *Minnevitch* v. *Café de Paris* (*Londres*). 52 T. L. R. 413, it was held that the closing of a café during a period of public mourning did not render a contract for band performances there reasonably impossible. As to the effect of a declaration of war upon a contract of agency in an alien territory, see *Jebara* v. *Ottoman Bank*, 1927, 2 K. B. 254; 1928, A. C. 269. A feature of a contract which has been terminated in this way is that money paid or the price of services rendered before the termination cannot be recovered (see *Blakely* v. *Muller*, 1903, 2 K. B. 760, *in notis*, and *Cantiere di San Rocco* v. *Clyde Shipbuilding Co.*, 1924, A. C. 226), unless (presumably), the whole of the contract has been performed on the one side and nothing in consideration thereof has been done by the other. Frustration of a contract by act of the party relying upon it will prevent him from taking any advantage of the circumstance (*Maritime National Fish Co.* v. *Ocean Trawlers Ltd.*, 1935, A. C. 524).

Impossibility owing to illness terminates a contract for personal services. The outbreak of war may terminate an executory contract, but only suspends the remedies if it has been executed.—*Halsb. L. E.*; *Hailsham*, edn., tit. '*Contracts*,' p. 261, and see generally (*ibid.*), pp. 213, etc. See *Addison*, *Chitty*, or *Leake on Contracts*.

Impost [fr. *impôt*, Fr.; *impositum*, Lat.], any tax or tribute imposed by authority; particularly a tax or duty laid by government on goods imported.

Impotence, physical inability of a man or woman to perform the act of sexual intercourse. A marriage is void if, at the time of the celebration, either of the parties to it is incurably impotent, and may be declared

void by a decree in a suit of nullity of marriage. See NULLITY OF MARRIAGE. As to 'Oath of Calumny' (*q.v.*) in Scottish actions of divorce and nullity, see Court of Session Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 69), s. 36.

Impotentia excusat legem. For an instance of the application of this maxim, see *Eager* v. *Furnivall*, (1881) 17 Ch. D. p. 121.

Impotentiam, propter, Property, a qualified property, which may subsist in animals *feræ naturæ*, on account of their inability when they are young: the landowner has a qualified property in them till they can fly or run away, and then such property expires.—2 *Steph. Com.*, bk. ii., ch. i.

Impound, to place a suspected document in the custody of the law, when it is produced at a trial. As to custody of documents impounded by the Court, see R. S. C. Ord. XLII., r. 334.

Impounding Distress. Placing cattle, etc., after they have been distrained, in a pound (see that title) or other safe place for custody, which safe place may, by virtue of the Distress for Rent Act, 1737 (11 Geo. 2, c. 19), s. 10, in the case of distress upon a tenant for rent, be on the demised premises themselves. The Protection of Animals Act, 1911 (1 & 2 Geo. 5, c. 27), obliges the person impounding any animal to provide it with sufficient and wholesome food and water.

Imprescriptable Rights, such as a person may use or not, at pleasure, since they cannot be lost to him by the claims of another founded on prescription.

Impressing Men, compelling persons to serve in the Navy. This practice is allowed at Common Law (see *Ex parte Fox*, (1793) 5 T. R. 277), and was extensively followed until 1815, when it began to be gradually abandoned for the recruiting by voluntary enlistment, which has now entirely displaced it. The practice is still clearly legal, and is recognized impliedly by the Naval Enlisment Act, 1835 (5 & 6 Wm. 4, c. 24), which, however, provides that no person shall be detained in the Royal Navy, against his consent, for a longer period than five years except in case of emergency. See also the Naval Enlistment Act, 1853 (16 & 17 Vict. c. 69), which, perhaps, has the effect of limiting the liability to serve to seafaring men. Under the Army Act (s. 112) and Air Force Act the Crown has power to impress carriages, animals, drivers and aircraft for moving baggage and stores, etc. Compensation is payable, see Army Act, s. 113, and Sched.

Impression. See PRIMÆ IMPRESSIONIS.

Imprest Money, money paid on enlisting soldiers or sailors.

Impretiabilis, invaluable.—*Mat. Paris.*

Imprimatur, a licence to print or publish.

Imprimery, a print or impression.—*Jac. Law Dict.*

Imprimis (in the first place).

Imprisii, adherents or accomplices.—*Mat. Paris*, 127.

Imprisonment, the restraint of a person's liberty under the custody of another. It extends in law to confinement not only in a gaol, but in a house, or stocks, or to holding a man in the street, etc.; for in all these cases the person so restrained is said to be a prisoner, so long as he has not his liberty freely to go about his business as at other times.—*Co. Litt.* 253. See FALSE IMPRISONMENT.

Imprisonment for Crime.—Any common law misdemeanour is punishable after conviction on indictment by fine or imprisonment or both, at the discretion of the Court. Imprisonment for not more than two years is very frequently authorized, as an alternative to penal servitude, by the Offences against the Person Act, 1861, and other Acts set out in *Chitty's Statutes*, tit. '*Criminal Law.*' As to the right of any person convicted by a Court of Summary Jurisdiction to appeal, provided that he did not plead guilty or admit the truth of the information, see ss. 19 and 31 of the Summary Jurisdiction Act, 1879, as amended by Summary Jurisdiction (Appeals) Act, 1933 (23 & 24 Geo. 5, c. 38); this Act now regulates the procedure on appeal to Quarter Sessions; *Chitty's Statutes*, tit. '*Justices.*' Important alterations in the law relating to imprisonment have been introduced by the Criminal Justice Administration Act, 1914; see especially s. 3 and ss. 16–18; and see the Money Payments (Justices Procedure) Act, 1935 (25 & 26 Geo. 5, c. 46), as to imprisonment, detention in a police court, or supervision in case where money is adjudged to be paid by a Court of summary jurisdiction by a conviction.

Imprisonment of Children.—By the children and Young Persons Act, 1933 (23 Geo. 5, c. 22), s. 52, replacing with amendments s. 102 of the Children Act, 1908, a child under 14 cannot be sentenced to imprisonment or penal servitude for any offence, or committed to prison in default of payment of a fine, damages, or costs, and a young person (i.e., one who is 14 but under 17) cannot be sentenced to penal servitude for any offence, and cannot be imprisoned unless

the Court certifies that the young person is of so unruly a character that he cannot be detained in a place of detention provided by the Act or that he is of so depraved a character that he is not a fit person to be so detained. The Prevention of Crime Act, 1908, s. 1, also provides for a person, who is not less than 16 nor more than 21, being sent to a Borstal Institution.

By the Money Payments (Justices Procedure) Act, 1935, a person under 21 is not to be imprisoned for non-payment of a sum payable upon conviction for which he has been allowed time unless he has been placed under supervision (s. 6).

Imprisonment for Debt.—As to this, before 1870, see MESNE PROCESS. The Debtors Act, 1869 (32 & 33 Vict. c. 62) (see *Chitty's Statutes*, tit. '*Debt*'), by s. 4, abolished imprisonment for debt with six exceptions; but, subject to Rules of Court, by s. 5, allows commitment to prison of a judgment debtor for not more than six weeks; this jurisdiction is now exercised only by the Bankruptcy Court and the County Courts (see County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), ss. 96, 143 (5)). Section 4 of the Debtors Act, 1869, enacts that:—

With the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money.

There shall be excepted from the operation of the above enactment:

(1) Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract:

(2) Default in payment of any sum recoverable summarily before a justice or justices of the peace; (see *R.* v. *Pratt*, (1870) L. R. 5 Q. B. 176).

(3) Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a Court of Equity any sum in his possession or under his control; (see *Marris* v. *Ingram*, (1879) 13 Ch. D. 338; *Re Smith*, 1893, 2 Ch. 1).

(4) Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order; (see *Re Strong*, (1886) 32 Ch. D. 342).

(5) Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy is authorized to make an order:

(6) Default in payment of sums in respect of the payment of which orders are in this Act authorized to be made.

As to imprisonment for non-payment of payments in bastardy or under affiliation orders, or of rates under the Bastardy Laws (Amendment) Act, 1872, or the Distress for Rates Act, 1849, respectively, the Money Payments (Justices Procedure) Act, 1935 (25 & 26 Geo. 5, c. 46), provides that the warrant of commitment is not to issue if the justices are of opinion that failure to pay was not due to wilful refusal or culpable neglect with power to remit all or any of the debt under consideration.

Impristl, those who side with or take the part of another, either in his defence or otherwise.

Improbation, the disproving or setting aside of deeds and writings *ex facie* probative on the ground of falsehood or forgery. *Bell's Dict.*

Improper Feuds, derivative feuds; as, for instance, those that were originally bartered and sold to the feudatory for a price, or were held upon base or less honourable services, or upon a rent in lieu of military service, or were themselves alienable, without mutual licence, or descended indifferently to males or females.

Impropriation, the act of employing the revenues of a church living to a layman's use. See APPROPRIATION and LAY IMPROPRIATOR.

Improvement Act District. Defined by the Public Health Act, 1875, s. 4, as 'any area subject to the jurisdiction of any commissioners, trustees, or other persons invested by any local Act with powers of town government and rating.'

Improvement. As to construction of covenant to communicate and give benefit of 'improvements,' see *Hopkins* v. *Linotype Co.* (1910) 101 L. T. 898.

Improvement, Agricultural. See AGRICULTURAL HOLDINGS ACT.

Improvement Area. Local authorities who have passed a resolution under the provisions of the Housing Act, 1930, s. 7, declaring an area (under conditions similar to those indicated in regard to clearance areas) to be an improvement area, may call upon owners to demolish houses which are unfit for habitation or else to execute all necessary works by notice under ss. 9 (1) and 19 of the Housing Act, 1936, and may also purchase land for opening out the area by agreement or compulsorily; see ss. 38 and 39 of the 1936 Act.

Before taking action under the resolution the local authority must give an undertaking to find suitable accommodation for persons who may be displaced from working-class houses. Compensation to owners upon expropriation is provided for by ss. 40 and 42 and the 4th Schedule. Owners may appeal to the county court against demolition orders under s. 15. The general procedure

is regulated by s. 38 and the 1st Sched. See Housing Act, 1936; IMPROVEMENT OF TOWNS.

Improvement of Land. The improvement of Land Acts, 1864 and 1899 (27 & 28 Vict. c. 114, and 62 & 63 Vict. c. 46), enumerate a number of 'improvements' such as the following: (1) Drainage; (2) Irrigation and Warping; (3) Embanking from the sea, etc.; (4) Inclosing, and redivision of fields; (5) Reclamation; (6) Making roads, tramways, railways, and canals; (7) Clearing; (8) Erection and improvement of cottages and farm buildings; (9) Planting for shelter; (10) Construction of mills, etc.; (11) Construction of landing-places; and allowed tenants for life to charge the cost of such improvements upon the fee of a settled estate with the sanction of the Inclosure Commissioners, after notice to persons in remainder, and certain specifications and surveys;—the sanction of the Commissioners to be given 'if they found (s. 25) that the improvements would effect a permanent increase of the yearly value of the lands proposed to be improved.' The Acts have been amended by the Agricultural Credits Act, 1923: see s. 3. The Settled Land Act, 1925, extends the powers of a tenant for life to apply capital money to effect improvements for the benefit of settled land which were conferred by the Settled Land Acts, 1882-1890 without any scheme required by the earlier Acts for approval by the Court or trustees. For the list, see 3rd Sched (*ibid.*), Part I. (cost not replaceable by instalments extending over 25 years or less), Part II. (replaceable by instalments if the Court or trustees so determine), Part III. (replaceable by instalments in any case), and see also Agricultural Holdings Act, 1st Sched., Parts I. and II. See also Universities and College Estates Act, 1925 (15 & 16 Geo. 5, c. 24). The improvements authorized being those mentioned in the Improvement of Land Act, with many additions.

Mansion-houses, by the Limited Owners Residences Acts, 1870 and 1871 (33 & 34 Vict. c. 56, and 34 & 35 Vict. c. 84); works for supply of sewage for agricultural purposes, by Public Health Act, 1875, s. 31; and reservoirs, by the Limited Owners Reservoirs and Water-Supply Further Facilities Act, 1877 (40 & 41 Vict. c. 31), s. 5, are also 'improvements' within the Improvement of Land Act, 1864. See also Housing Act, 1936, and DRAINAGE.

Improvement of Towns. The Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), 'comprises in one Act sundry provisions usually contained in' special Acts of Parliament theretofore passed 'for paving, draining, cleansing, lighting, and improving towns and populous districts,' to avoid the necessity for repeating such provisions in each special Act, and to ensure greater uniformity in the provisions themselves.

Of this Act, ss. 64–83, which relate to the naming of streets and numbering of houses, to the improving the line of streets and removal of obstructions, to the securing or demolition of ruinous buildings, and to the taking precaution during the erection of works, and ss. 125–131, which relate to slaughter-houses, are incorporated with the Public Health Act, 1875, by ss. 160, 169, of that Act.

The Town and Country Planning Act, 1932 (22 & 23 Geo. 5, c. 48), a codifying Act, repealing the Town and Country Planning Act, 1925, authorizes local authorities (defined by s. 2) to make schemes for the development and planning of land, whether urban or rural, whether or not there are buildings thereon in order to control its development, protect existing rural and urban amenities and preserve buildings and other objects of interest and beauty, and for garden cities. Schemes must be approved by the Minister of Health with or without modifications (ss. 6 and 8). By s. 12 schemes may provide for prescribing the space about buildings or limiting their number, regulating their size, height, design and external appearance, user, or prohibiting or regulating building operations with powers of demolition or otherwise effecting the scheme. And the Minister may make orders for the interim development of land (s. 10). Buildings of special interest, and by s. 46, trees or woodlands may be preserved; land required for the purposes of the scheme or for open spaces and playing fields may be acquired, and s. 47 gives powers to control advertisements affecting the amenities of land specified in a scheme. The provisions relating to compensation are elaborate and detailed, and generally require expert assistance in each particular case (ss. 18 *et seq.*). Where, however, land is increased in value under the heading of *betterment* (see *R.* v. *Webster, ex p. Young*, 152 L. T. 535), by the operation of the scheme or works provided for, up to 75 per cent. of the amount of the increase may be recovered from owners (s. 21); see BETTERMENT.

As to reasonableness of byelaws for preserving the amenities of the countryside, see

Baird v. *Glasgow Corporation* (H. L. Scot.), 1936, A. C. 32.

Impruiare, to improve land.

Imputatio [Lat.], legal liability.—*Civ. Law.*

In æquali jure melior est conditio possidentis. *Plow.* 296.—(When the rights are equal the condition of the possessor is the better.)

Inalienable, not transferable.

In alio loco [Lat.] (in another place).

In Angliâ non est interregnum. *Jenk. Cent.* 205.—(In England there is no interregnum.)

In articulo mortis [Lat.] (at the point of death).

Inauguration, the act of inducting into office with solemnity, as the coronation of the sovereign, or the consecration of a prelate.

In auter, or **autre, droit** (in another's right).

In banco, or **banc, Sittings.** See BANC.

Inbound Common, an unenclosed common, marked out, however, by boundaries.

In camerâ. See CAMERA.

Incastellare, to make a building serve as a castle.—*Jac. Law Dict.*

In casu extremæ necessitatis omnia sunt communia. *Hale, P. C.* 54.—(In a case of extreme necessity everything is in common.)

Incaustum, or **Encaustum,** ink.—*Fleta,* 1, 2, c. xxvii., p. 5.

Incendiary. See ARSON.

Incense. The ceremonial use of incense immediately before the celebration of the Holy Communion, so as to be preparatory or subsidiary to the celebration of the Holy Communion is unlawful (*Sumner* v. *Wix,* (1870) L. R. 3 Adm. & Ecc. 58).

Incerta pro nullis habentur. *Dav.* 33.—(Things uncertain are reckoned as nothing.)

Incerta quantitas vitiat actum. 1 *Rol. Rep.* 465.—(An uncertain quantity vitiates the deed.) But see CERTUM EST QUOD CERTUM REDDI POTEST.

Incest, carnal knowledge of persons within the Levitical degrees of kindred, at one time a capital offence (4 *Bl. Com.* 65); but subsequently left to the action of the spiritual courts.—4 *Steph. Com.* It is now within certain relationships, whether legitimate or illegitimate, including a half-brother and half-sister, a misdemeanour, punishable by seven years' penal servitude by virtue of the Punishment of Incest Act, 1908 (8 Edw. 7, c. 45). See *R.* v. *Ball,* 1911, A. C. 47. Sect. 5 of the Criminal Law Amendment Act, 1922, repeals the provision in the Act of 1908 which necessitated the trial of all proceedings under that Act being held *in camerâ* (*q.v.*).

Inchartare, to give or grant, and assure anything by a written instrument.—*Mat. Par.*

Inch of Candle, a mode of sale at one time in use among merchants; the goods to be sold were divided into lots, and at the sale a small piece of candle, about an inch long, was kept burning, and the last bidder, when the candle went out, was entitled to the lot for which he bid.—*Jac. Law Dict.*

Inchoate, begun, but not completed. By the Bills of Exchange Act, 1882, s. 20, 'a simple signature on a blank stamped paper,' delivered by the signer in order that it may be converted into a bill, 'operates as a *primâ facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser.'

Incident, a thing necessarily depending upon, appertaining to, or following another that is more worthy—as rent is incident to a reversion, and as a court-baron is incident to a manor.

Incipitur (it is begun). This was the technical commencement of a declaration, demurrer-book, judgment, etc.

Incite. It is a Common Law misdemeanour to incite any person to commit a crime. If the crime be actually committed, he who has incited another to the deed is, in the case of felony, an accessory before the fact; in the case of treason or misdemeanour, a principal.

Incitement to Disaffection Act, 1934 (24 & 25 Geo. 5, c. 56). This Act provides for the prevention and punishment of endeavours to seduce members of His Majesty's Forces from their duty or allegiance; and it is an offence to distribute literature with such an aim among members of His Majesty's Forces; a search warrant may be granted in certain cases. The penalty on indictment may be two years or a fine up to 200*l.*, or on summary conviction, four months' imprisonment or up to 20*l.*, or in either case to both imprisonment and fine. Cf. Public Order Act, 1936.

Incivile est, nisi totâ sententiâ inspectâ, de aliqua parte judicare. *Hob.* 171.—(It is improper to judge of any part unless the whole sentence be examined.)

Incivism, unfriendliness to the state or government of which one is a citizen.

Inclausa, a home-close, or inclosure near a house.

Inclosure, the fencing in by the lord of a manor of common or waste land for the purpose of cultivation. The Common Law power (see APPROVEMENT) has been extended

and regulated under very numerous private and also by public Acts, with the aid of 'Inclosure Commissioners,' whose powers under the Inclosure Act, 1845 (8 & 9 Vict. c. 118), are now vested in the Ministry of Agriculture. Under the Settled Land Act, 1925, s. 83, and see 3rd Sched., Part I., inclosing is an improvement for which no replacement of money is required and includes inclosing a garden by walls; see *Re Earl of Dunraven's Settled Estates*, 1907, 2 Ch. 417. See *Cooke on Inclosures*, *Chitty's Statutes*, tit. '*Inclosure*'; and COMMONS.

Income-tax, a tax of so much in the pound of income, under five classifications, according as derived from (A) ownership of land or houses, etc., (B) occupation of land or houses, etc., (C) dividends from stocks or shares, (D) professional or trade earnings or profits, and any profit not included in the four previous classifications, and (E) official and other salaries. The Acts on this subject, dating from the Income-tax Act, 1842 (5 & 6 Vict. c. 35), which, to a great extent, repeats the phraseology of Addington's Act of 1806, are very numerous. Voluntary Easter gifts to an incumbent are assessable to income-tax (*Cooper* v. *Blakiston*, 1909, A. C. 104). See *Chitty's Statutes*, tit. '*Property Tax.*'

The tax in 1842, and for many years afterwards, was 7*d.* in the pound; in 1855, the year of the Crimean War, it rose to 1*s.* 4*d.*, and in 1918 to 6*s.* The Finance Act, 1907 (7 Edw. 7, c. 13), for the first time differentiated (ss. 19 *et seq.*) between 'earned income' and income from other sources, and also laid down some stringent provisions with regard to making returns of income. For the present law, and the various abatements and exemptions, which have become extremely complicated, see the current Finance Acts, and consult the latest editions of *Dowell* or *Konstam on Income Tax*. See SUPER-TAX.

In commendam. See COMMENDAM.

In contractibus benigna, in testamentis benignior, in restitutionibus benignissima interpretatio facienda est. *Co. Litt.* 112.—(In contracts the interpretation is to be liberal, in wills more liberal, in restitutions most liberal.)

In contractis tacite insunt quæ sunt moris et consuetudinis. (Persons are presumed to contract with reference to habits and customs).

In conventionibus contrahentium voluntas potius quam verba spectari placuit. (In agreements the intention of the parties, rather than the words actually used, should be regarded.) See *Broom's Leg. Max.*

Incopolitus, a proctor or vicar.

Incorporated. The legal meaning of the term is 'united in a legal body' (*Society of Accountants* v. *Goodway*, 1907, 1 Ch. p. 496, per Warrington, J.).

Incorporated Law Society, now termed the **Law Society,** was founded by Mr. Bryan Holme in 1825, and incorporated in 1831 by Royal Charter; this was surrendered for a new Charter in 1845, by which, as amended by Supplemental Charters in 1872, 1903, and 1909, the Society now remains constituted. The Society was incorporated 'to facilitate the acquisition of legal knowledge, and for better and more conveniently discharging the professional duties of the members of the Society,' under the full title of 'The Society of Attorneys, Solicitors, Proctors, and others not being Barristers practising in the Courts of Law and Equity of the United Kingdom'; since the charter of 1903 it has been officially (as before then commonly) called 'The Law Society.'

The Society first instituted lectures for students in 1833, and was made registrar of attorneys and solicitors in 1843 by the Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 21.

On the decay of the Inns of Chancery, which in their later aspect were the Inns specially appropriated to attorneys, a Society was formed called 'The Society of Gentlemen Practisers in the several Courts of Law and Equity.' It was established in 1739, and was active and prosperous, at least until 1810. Mr. Bryan Holme was a member of this Society, and his portrait now hangs in the Law Society's Hall.

A Metropolitan Law Society was also formed in 1819, and there seems no doubt that the Law Society is the successor both of these two earlier professional Societies and of the Inns of Chancery.

The official account of the objects and constitution of the Society will be found in the Society's Handbook published in 1933.

The Society is, in the first place, a voluntary association of solicitors for their mutual protection and benefit, and in this connection is regulated by its charters and bye-laws. In the second place, it is a body exercising statutory powers affecting the profession generally. In this capacity the Society performs the duties of Registrar of Solicitors, has the custody of the Roll of Solicitors, conducts the examination of articled clerks, deals, subject to appeal, with all applications for admission and for renewal of practising

certificates, and exercises various powers as regards proceedings against unqualified persons: see the Solicitors Act, 1933 (22 & 23 Geo. 5, c. 37). Further statutory powers are vested in the Committee appointed by the Master of the Rolls under s. 4 of the Act, by whom all complaints against Solicitors for professional misconduct are heard. Under s. 5, the Committee can suspend or strike off the roll an offender, subject to a right of appeal to the Court (s. 8); see *Encyclopædia of the Laws of England.*

Every person who is or has been a practising solicitor in England or Ireland, or a writer to the signet, or writer in Scotland, is qualified to become a member of the Society. An applicant for admission must be proposed by a member and balloted for by the council, the governing body of the Society (see Bye-laws of the Society, Nos. 2 and 3). The Council consists of 50 members, of whom 40 are ordinary members, and are elected by the members of the Society. In addition, there are 10 extraordinary members elected by the Council on the nomination of the Provincial Law Societies. The duties of the Council are numerous and important. It examines through various committees all Bills brought into Parliament, and makes such remarks and suggestions as appear to it necessary (see General Regulations, No. 39) and organizes opposition to such as appear to affect injuriously the rights and privileges of members. The Society has long been active in supporting legal reforms, and is now usually referred to for suggestions and remarks on Bills affecting the principles or practice of the law, and upon all new rules and orders. Many reforms in law and practice have been initiated, and numerous Acts of Parliament have originated with or have been supported by the Society. Questions of professional practice and etiquette are almost daily being referred to the Council, and they also assist the members of the Society by giving information on new points of law or practice, and by obtaining judicial decisions on doubtful questions of general interest. The Council also advise members through the Scale Committee on questions relating to costs. A library containing upwards of 67,000 volumes, and a hall supplied with current publications and books of reference, the daily cause lists, telegraphic exchange news and telephone, and a conference-room are open daily for the use of members.

Classes and postal tuition for articled clerks form part of the Society's scheme of legal education.

A Provincial Meeting is usually held in the autumn of each year on the invitation of one of the country Law Societies. At these meetings an address by the President and other papers are read and discussed; and social gatherings, entertainments, and excursions are arranged.

Provincial Law Societies on somewhat similar lines have been established in various parts of the country.

Incorporation, the formation of a legal body, with the quality of perpetual existence and succession, except as limited by the Royal Charter or Act of Parliament effecting the incorporation.

Municipal Boroughs are incorporated by their charters; County Councils by s. 79 of the Local Government Act, 1888 (51 & 52 Vict. c. 41); see also Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 2; Joint Stock Companies either by special Act or under the Companies Acts.

Incorporation by Reference, of an earlier statute by a later, judicially stigmatized in *Knill* v. *Towse*, (1889) 24 Q. B. D. 186. Whether there can ever be incorporation by implication is very doubtful; see per Farwell, L.J., in *Chislett* v. *Macbeth*, 1909, 2 K. B. at p. 815, and Lord Loreburn, L.C., *Ib.*, 1910, A. C. at p. 223. See ACT OF PARLIAMENT.

Incorporeal Chattels, incorporeal rights incident to chattels—e.g., patent rights and copyrights.—2 *Steph. Com.*

Incorporeal Hereditament. See HEREDITAMENT.

Increase, Affidavit of. Affidavit of payment of increased costs, produced on taxation. 'Of the costs of the pleadings, and the office fees of the proceedings, in the cause down to trial, the record will, in general, sufficiently inform the taxing-master; but the amount of the costs of the trial, including the evidence and the subpœnaing of and any payment to witnesses, counsel, and court fees, must be supported by affidavit, commonly called the '*Affidavit of Increase*': *Gray on Costs.* See also *Annual Practice*, 1937, R. S. C. Ord. LXV., r. 16, and note. For forms of affidavit, see *Chitty's Forms* and *Scott on Costs.*

Increase of Rent and Mortgage (Restrictions) Acts. A series of statutes, each of a temporary character, curtailing the contractual rights, in respect of certain classes of property, of landlords and mortgagees. This legislation was rendered necessary, in

the first instance, by the conditions caused by the outbreak of the Great War. The continuance of the protection to tenants and mortgagees of dwelling-houses afforded by the later Acts was made necessary by the housing shortage, caused principally by the economic effects of the war. The Courts (Emergency Powers) Act, 1914 (4 & 5 Geo. 5, c. 78), was the first of such Acts : it restricted the right to levy distress or resume possession of property by landlords and of mortgagees to foreclose or realize their security. This Act was followed by a series of complicated statutes which imposed restrictions on increasing the rent and mortgage interest on properties falling within their scope. The obscure and ambiguous drafting of these Acts has given rise to much litigation : see Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17) ; and parts of the Rent Restrictions (Notices of Increase) Act, 1923 (13 & 14 Geo. 5, c. 13) ; and Rent and Mortgage Interest Restrictions Act, 1923 (13 & 14 Geo. 5, c. 32), and the rules made thereunder ; and also the Prevention of Eviction Act, 1924. The principal Acts now in force are the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 ; the Rent Restrictions (Notices of Increase) Act, 1923 ; the Rent and Mortgage Interest Restrictions Act, 1923 ; the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 ; and the Increase of Rent and Mortgage Interest (Restrictions) Act, 1935, all of which may be cited together as the Rent and Mortgage Interest Restrictions Acts, 1920 to 1935, and the rules and regulations made thereunder in respect of Overcrowding and Housing. See those titles.

In substance the Rent Restriction Acts now affect houses which were erected before 2nd April, 1919, and now called ' Class B ' houses, of which either the rent or the rateable value on 6th April, 1931, in the Administrative County of London (see *Halsb. L. E.*, vol. 20, p. 393, note (*h*)) did not exceed in the metropolitan police district 45*l.* per annum ; in Scotland 45*l.* ; and elsewhere 35*l.* ; and ' Class C ' houses, of which on the same date the rateable value did not exceed in the metropolitan police district or the City of London 20*l.* ; (*b*) in Scotland 26*l.* 5*s.*, or elsewhere 13*l.* Houses in Class B are decontrolled if the landlord was in possession on 31st July, 1923, or the landlord has regained or regains possession, of the whole house at any time after 31st July, 1923, or for other reasons under s. 2 of the Act of 1920, or otherwise under the Acts. But Class C houses, which were let on 24th June, 1933, cannot be decontrolled under s. 2 of 1920, after 24th June, 1933, and if such houses were decontrolled before that date under s. 2 of 1920, and have not been registered as provided by s. 2 of 1933, the decontrol is suspended until registration (see *Stokes* v. *Little*, 1935, 1 K. B. 182).

' *Controlled* ' or ' *statutory tenancy* ' means that the rent is limited by those Acts and that the tenancy cannot be determined unless the conditions specified by the Acts come into existence. The rent is measured by the rent paid or estimated to have been payable for the house on 4th August, 1914. This rent is called the ' *standard rent.*' After deduction of the rates, if any, included in the rent and payable by the landlord at that time the rent is called the ' *net rent,*' and if rates were not so included the net rent is the standard rent (s. 12 of 1920). The landlord is allowed to increase the standard rent (*a*) by the increase of current rates payable by him ; (*b*) by 15 per cent. of the net rent ; and (*c*) by 25 per cent. of the net rent or proportionately smaller percentages, according to whether he is responsible for the whole or any less part of the repairs. He may also charge 8 per cent. on improvements effected after July, 1920. The Acts and Rules and Regulations made thereunder provide for many other matters and should be referred to on any point of detail ; see also the Housing Act, 1936 ; Distress ; Recovery of Land ; Overcrowding ; Local Government ; Public Health. Consult *Rent and Mortgage Interest Restrictions*, published by ' *Law Notes* ' ; *Sophian* or *Safford on the Acts ; Cairn's Leading Cases on Rent Restriction ; Redman's Landlord and Tenant ;* and *Woodfall, Landlord and Tenant.* For Mortgage Restrictions, see Mortgage.

Incrementum, increase or improvement, opposed to *decrementum* or abatement.

Increment Value. The Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), imposed (ss.1–42) a duty charged on the amount, if any, by which the site value of the land on the occasion on which the charge is made exceeds the original site value of the land. This was called the increment value of land. With the exception of mineral rights duty, these duties were abolished by s. 57 of the Finance Act, 1920.

Incroachment. See Encroachment.

Incumbent, a clergyman in possession of an ecclesiastical benefice. As to resignation with pension, see the Incumbents Resigna-

tion Act, 1871 (34 & 35 Vict. c. 44); and the Clergy Pensions Measures, 1926 to 1928; and as to provision by the Public Worship Regulation Act for the better administration of the laws 'relating to the performance of public worship, according to the use of the Church of England,' see PUBLIC WORSHIP REGULATION ACT, 1874; and see, generally, *Chitty's Statutes*, tit. '*Church and Clergy*.'

Incumbrance, a claim, lien, or liability attached to property; as a mortgage, a registered judgment, etc.

Incurramentum, the liability to a fine, penalty, or amerciament.—*Cowel's Law Dict.*

In custodiâ legis [Lat.] (in the keeping of the law), a term used of goods which, from having been already seized by the sheriff under an execution, or being otherwise in the custody of the law, are exempt from distress for rent. By the Landlord and Tenant Act, 1709 (8 Anne, c. 18 [*or* 14]), as amended by the Bankruptcy Act, 1914, s. 35 (2), the sheriff may not take goods on demised premises in execution unless the party at whose suit the execution issued pay to the landlord his arrears of rent, not exceeding six months' rent. As to goods seized under a County Court warrant, see County Courts Act, 1934, s. 134, reproducing with amendments the 1888 Act, s. 160; Bankruptcy Act, 1914, s. 35.

Indebitatus assumpsit [Lat.] (being indebted he undertook), that species of the action of assumpsit in which the plaintiff first alleged a debt, and then a promise in consideration of the debt. Since the Judicature Acts, obsolete as a technical form of action. See PLEADING.

Indecent Advertisement, for the purposes of the Indecent Advertisements Act, 1889, means any advertisement relating to any complaint or debility relating to or arising from sexual intercourse. The Act is directed against the public exhibition of such advertisements, and prohibits, *inter alia*, their display in public urinals and where they can be seen by persons passing along public streets.

Indecent Assault. See Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 52, whereby such an assault on a female is an indictable offence, punishable by imprisonment with or without hard labour up to two years; and s. 62, whereby such an assault on a male is punishable by penal servitude up to ten years, or imprisonment: consent of either girl or boy under sixteen being by the Criminal Law Amendment Act, 1922 (12 & 13 Geo. 5, c. 56), no defence.

Indecent Exposure, an indictable offence at Common Law. Exposure of the person in or in view of any public street or place of resort, with intent to insult any female, is also an offence summarily punishable under the Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4.

Indecent Prints or Books. The sale, or obtaining, or procuring of such prints, with intent to sell, is a misdemeanour. The Obscene Publications Act, 1857 (20 & 21 Vict. c. 83) ('Lord Campbell's Act'), gives summary powers to metropolitan or other stipendiary magistrates, or any two justices of the peace, to issue special warrants to constables for the searching of houses, etc., in which obscene books, pictures, etc., are suspected to be kept, on complaint on oath that the complainant believes that such books are there, and that one or more of the like character have been 'sold, distributed, exhibited, lent or otherwise published,' and on the magistrate, etc., being satisfied that any of the articles are of such a character that the publication of them would be a misdemeanour, and proper to be prosecuted as such—which must be stated (see *Ex parte Bradlaugh*, (1878) 3 Q. B. D. 509)—he may order the seizure and destruction of such books, etc.

Publication is not excused by innocent motives (*R.* v. *Hicklin*, (1868) L. R. 3 Q. B. 360), nor by the fact that the publication is in the form of a report of judicial proceedings (*Steele* v. *Brennan*, (1872) L. R. 7 C. P. 261).

See *Chitty's Statutes*, tit. '*Criminal Law* (*Offences against Peace*, etc.).'

Indecimable, not titheable.

Indefeasible, not to be made void.

Indefinite Payment, where a debtor owes several debts to a creditor, and makes a payment, without specifying to which of the debts it is to be applied. See APPROPRIATION OF PAYMENTS.

Indemnity, a contract, express or implied, to keep a person harmless from loss which that person may incur by reason of some act, omission or event. It differs from a guarantee which requires a writing under s. 4 of the Statute of Frauds in that the latter guarantee contemplates the primary liability of a third person. As pointed out by *Anson on Contracts*, a form of indemnity may be illustrated by 'If you will supply goods to A. I will see you paid.' A guarantee, if 'A. does not pay you, I will.' There is, as a rule, a right of subrogation to all the remedies available to the person indemnified under

an indemnity available to a person indemnifying—a guarantor has the right of subrogation as well as a right of recourse against the person guaranteed unless otherwise agreed. A great number of indemnities are implied at Common Law or statute, and the contract extends to all the loss suffered and is not limited in amount as a contract to pay a sum of money is limited. As to implied indemnities and indemnities of sureties, see *Chitty on Contracts;* THIRD PARTY.

As to indemnity between contractors in the case of accidents to workmen, see s. 6 of the Workmen's Compensation Act, 1926.

Marine and fire insurances are contracts of indemnity; see Marine Insurance Act, 1906 (6 Edw. 7, c. 41); and *Castellain* v. *Preston*, (1883) 11 Q. B. D. 380. Apparently, insurances against accidents to the assured are not contracts of indemnity and do not import the doctrine of subrogation (*Halsb. L. E.*, '*Accident Insurance*'). It should be observed that in contracts of indemnity or where otherwise a right of subrogation arises, any act of the person indemnified, which diminishes or destroys the right of the indemnifier against third parties, either destroys the right to an indemnity or reduces it proportionately; thus a landlord releasing a claim against his tenant for breach of covenant to repair may have to account for the cost of the repairs upon a claim under a policy against loss by fire. For indemnities upon rectification of the Land Register, see Land Registration Act, 1925, ss. 82–85.

Acts of Indemnity for neglect to take oaths of office, etc. (see, e.g., 30 & 31 Vict. c. 88, s. 1), were rendered unnecessary by 31 & 32 Vict. c. 72, s. 16.

Indemnity Acts have also been often passed after insurrections for the relief of those engaged in their suppression; see, e.g., *Phillips* v. *Eyre*, (1869) L. R. 4 Q. B. at p. 243, in which a Jamaica Act indemnifying the governor was held good, and see the Indemnity Act, 1920 (10 & 11 Geo. 5, c. 48); and Restoration of Order in Ireland (Indemnity) Act, 1923; and Under Secretaries of State Act, 1929 (20 Geo. 5, c. 9).

Indenization, the act of making free, or of naturalizing.

Indenture, a deed indented between two or more parties, so called because duplicates of every deed *inter partes* were once written on one skin. The skin was cut in half irregularly or with a jagged edge: so when the duplicates were produced in court they were seen to belong to one another by fitting into one another. By the L. P. Act, 1925, s. 56 (2), reproducing Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 5, it is provided that a deed purporting to be an indenture shall have the effect of an indenture though not indented or expressed to be an indenture. Under s. 57, L. P. Act, 1925, an indenture or any other deed may be described according to the nature of the transaction intended to be effected.

Index. A list in alphabetical order of separate items or subjects contained in any writing or book or otherwise of specified subjects. Under the Companies Act, 1929, ss. 97 and 98, limited companies are required to keep an index of names of registered members; also a list of prohibited books at the Vatican.

Index animi sermo.—(Speech is the exposition of the mind.)

India. In 1876, by the Royal Titles Act, 1876 (39 & 40 Vict. c. 6), Queen Victoria was empowered to add to the style of the Crown, with a view of recognizing the transfer of the Government of India to the Queen by the Government of India Act, 1858 (21 & 22 Vict. c. 106), and the addition of 'Empress of India' was made by Proclamation in April, 1876, with which addition as 'Emperor of India' it has passed to his present Majesty.

In any Act of Parliament passed after 1889 the expression 'British India' means 'all territories and places within her Majesty's dominions which are for the time being governed by her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India,' and the expression 'India' means 'British India together with any territories of any native prince or chief under the sovereignty of her Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India.' The repealed Government of India Act, 1915 (5 & 6 Geo. 5, c. 61), repealed wholly or in part a series of forty-seven earlier Acts from 1770 to 1912, with necessary re-enactments. For the earlier history of the country, see *Mill's History of British India.*

The Government of India Act, 1936 (Geo. 5), now regulates the Government of India, and introduces a Federation of Indian States and Provinces, the executive authority of which shall be exercised by the Governor-General, who has the advice of a Council of Ministers. The Federal Legislature consists of His Majesty represented by

the Governor-General and two Chambers, the Council of State and the House of Assembly, known as the Federal Assembly. The Council of State is a permanent body—one-third of the members retiring in every third year; the Federal Assembly shall continue for five years unless dissolved sooner.

The Government of Burma Act, 1935 (26 Geo. 5, c. 3), regulates the Government of Burma. The executive authority is exercised by the Governor, who has the advice of a Council of Ministers. The Legislature consists of his Majesty, represented by the Governor, and two Chambers known as the Senate, consisting of 36 members, and the House of Representatives of 132 members.

Indian Bishops. See COLONIAL CLERGY, and the Government of India Act, 1915, ss. 115 to 123.

Indicatif, an abolished writ by which a prosecution was in some cases removed from a Court-Christian to the King's Bench.

Indicavit (he has proclaimed), a writ of prohibition that lies for a patron of a church, whose clerk is sued in the spiritual court by another clerk for tithes which amount to a fourth part of the profits of the advowson, when the suit belongs to the Common Law Courts, by West. 2, c. 5, 13 Edw. 1, st. 4. The patron of the defendant is allowed this writ, as he is likely to be prejudiced in his church and advowson if the plaintiff recover in the spiritual court.—*Reg. Brev.* 55.

Indicia [Lat.], signs, marks.

Indicted, charged in an indictment with a criminal offence. See INDICTMENT.

Indictee, a person indicted.

Indictio, an indictment.

Indiction, Cycle of, a mode of computing time by the space of fifteen years, instituted by Constantine the Great; originally the period for the payment of certain taxes. Some of the charters of King Edgar and Henry III. are dated by indictions.—*Jac. Law Dict.*

Indictment [fr. *indico*, Lat., to show], a written accusation against one or more persons of a crime formerly preferred to and presented upon oath by a grand jury. Grand juries were partly abolished by the Administration of Justice (Miscellaneous Provisions) Act, 1933 (23 & 24 Geo. 5, c. 36). The bill of indictment is now preferred by any person before a Court in which a person charged may lawfully be indicted, and the proper officer shall, if the requirements have been complied with, sign the bill and it shall thereupon become an indictment. But bills of indictment may be preferred before grand juries of the Counties of London and Middlesex by virtue of certain enactments set out in the 1st Schedule (high treason and certain other offences triable in the King's Bench Division). Indictments were of a highly technical character until simplified by the Indictments Act, 1915, which directs that the particulars of the offence shall be 'set out in ordinary language.' See also Indictments Procedure Rules, S. R. & O., 1933, No. 745; Indictable Offences Rules, S. R. & O., 1933, No. 832.

Though it is usual to proceed before justices of the peace for commitment of the alleged offender to prison to await his trial at Assizes (see that title) or Quarter Sessions (see SESSIONS OF THE PEACE), or for his admission to bail (see that title), under the Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), before preferring an indictment, it is not obligatory to do so, and s. 9 of the Act leaves it to the absolute discretion (which must be exercised—*Reg.* v. *Adamson*, (1875) 1 Q. B. D. 201) of the justices either to summon the alleged offender before them, or to leave the prosecutor to his remedy by indictment unsupported by the preliminary commitment or admission to bail.

Two prisoners separately indicted cannot be tried together (*R.* v. *Crane*, 1921, 2 A. C. 299; *R.* v. *Dennis*, 40 T. L. R. 420).

Indictment de felonia est contra pacem domini regis, coronam et dignitatem suam, in genere et non in individuo; quia in Angliâ non est interregnum. Jenk. Cent. 205.—(Indictment for felony is against the peace of our lord the king, his Crown and dignity in general, and not against his individual person; because in England there is no interregnum.)

Indictor, he who indicts another for an offence.

Indirect Evidence, proof of collateral circumstances from which a fact in controversy, not directly attested by witnesses or documents, may be inferred. It is also called circumstantial and presumptive evidence. See *Taylor* or *Best on Evidence*.

Indistanter, forthwith; without delay.

Indivisum, that which is held in common without partition.

Indorsee, the person to whom a bill of exchange, promissory note, bill of lading, etc., is assigned by indorsement, giving him a right to sue thereon.

Indorsement [fr. *in*, Lat., upon, and *dorsum*, a back], anything written or printed upon the back of a deed or writing. The requisites

of a valid indorsement of a bill of exchange, promissory note, or cheque, are laid down by the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 32, the principal requisites being that the indorsement must be written on the bill itself (except in the case of an 'allonge' or 'copy' in a country where 'copies' are recognized) and signed by the indorser, his simple signature, without additional words, being sufficient; that it be an indorsement of the entire bill (though indorsement of a blank form may be valid—*Glenie* v. *Tucker*, 1908, 1 K. B. 263); and that where there are two or more indorsements, each is deemed to have been made in the order in which it appears on the bill, cheque, or note, until the contrary is proved. As to the recovery of the amount of the cheque by the drawer, after payment obtained by a forged indorsement, see *North and South Wales Bank* v. *Macbeth*, 1908, A. C. 137. See also DEED; MORTGAGE; RECEIPT.

Indorsement of Address. By R. S. C. 1883, Ord. IV., it is provided that the solicitor of a plaintiff suing by a solicitor shall indorse upon every writ of summons the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from the Royal Courts of Justice, another proper place, to be called his address for service, which shall not be more than three miles from the Royal Courts, where writs, notices, etc., may be left for him; and that if he be agent of another solicitor, he shall add the name or firm and place of business of the principal solicitor. See SUMMONS.

Indorsement of Claim. By R. S. C. 1883, Ord. II., r. 1, every writ of summons in the High Court must be indorsed with a statement of the nature of the claim made, or of the relief or remedy required. And by Ord. III. it is further provided that the indorsement of claim shall be made on every writ of summons before it is issued (r. 1). See, further, LEAVE TO DEFEND.

Indorser, he who indorses, i.e., being the payee or holder, writes his name on the back of a bill of exchange, etc.

In dubio hæc legis constructio quam verba ostendunt. *Jur. Civ.*—(In a doubtful point the construction which the words point out is the construction of the law.)

Inducement, an allegation of a motive; an incitement to a thing; the introductory part of a pleading.

Induciæ legales, the days between the citation of a defendant and the day of appearance.

Induciare, to prorogue, postpone, respite.

Induction [fr. *inductio*, Lat., a leading into], the giving a parson possession of his church.

A clerk is not complete incumbent until induction, which is performed by a mandate from the bishop to the archdeacon, or if the church be exempt from archdiaconal jurisdiction, to the chancellor or commissary, or if it be a peculiar, to the dean or judge, who usually issues a precept to another clergyman to perform it for him.

The person who inducts takes the hand of the clerk, and lays it on the ring, key, or latch of the church-door, or wall of the church, or delivers a clod, turf, or twig of the glebe, and gives corporal possession of the church, saying:—

'By virtue of this mandate I induct you into the real, actual, and corporal possession of the church of [Stow], with all rights, profits, and appurtenances thereto belonging.'

The inductor then opens the doors, puts the clerk into the church, and tolls the bell to make his induction known. After which he indorses a certificate of the induction on the mandate.

Induction is the investiture of the temporal part of the benefice or the corporal seisin, as institution (see INSTITUTION), which may take place anywhere, whereas induction can only take place in the church, is of the spiritual. A clerk thus presented is in full possession of the temporalities.

The oaths and subscriptions taken before induction were altered by the Clerical Subscription Act, 1865 (28 & 29 Vict. c. 122), and now the incumbent on induction must declare—

That he assents to the Thirty-nine Articles and the Book of Common Prayer, and of the ordering of bishops, priests, and deacons, and believes the doctrine of the Established Church to be agreeable to the Word of God: and that he will use the form prescribed in the Book of Common Prayer, and none other save as prescribed by lawful authority; and

That he has in no way made a contract, simoniacal to his knowledge, for the living, and will not perform any promise of that kind, made by others;

And he must take the oath of allegiance to the king. See Clerical Subscription Act, 1865 (28 & 29 Vict. c. 122).

Indulto, a dispensation granted by the

Pope to do or obtain something contrary to the Common Law.

Indument, endowment.

Industrial and Provident Societies. The statutes regulating these societies, 25 & 26 Vict. c. 87, 30 & 31 Vict. c. 117, and 34 & 35 Vict. c. 80, were consolidated by the Industrial and Provident Societies Act, 1876 (39 & 40 Vict. c. 45), which by s. 6 provided for the registration of societies ' for carrying on any labour, trade, or handicraft, including the buying or selling of land, of which no member shall claim an interest in the funds exceeding 200*l.*'

This Act was repealed and re-enacted with amendments by the Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), which provides for the registration as an industrial and provident society of any society for carrying on any ' industries, businesses, or trades specified in or authorized by its rules, whether wholesale or retail, and including dealings of every description with land,' but enacts that no member other than a registered society shall have any interest in the shares exceeding 200*l.*, and contains restrictive provisions as to banking. No society can be registered which does not consist of seven persons at least. The most important privileges of registration are :—Limited liability of members, exemption from income tax, membership of minors, and determination of disputes between members and the society in the manner determined by the rules, including determination, if the rules so provide, by a court of summary jurisdiction. The Act was amended by the Industrial and Provident Societies (Amendment) Act, 1913 (3 & 4 Geo. 5, c. 31), which provides (s. 1) for the registration of a society consisting of two or more other societies, and amends the law as to the audit of the accounts, nominations, and other matters. See also the Industrial Assurance Act, 1923, which provides safeguards for the poorer classes of assured persons. The Industrial and Provident Societies (Amendment) Act, 1928 (18 & 19 Geo. 5, c. 4), provides safeguards for a member when any rules are amended so as to increase his liability to contribute to the share or loan capital, unless his consent to the rule has been obtained in writing.

Compare FRIENDLY SOCIETIES.

Industrial Assurance. See the Industrial Assurance Act, 1923 (repealing the Collecting Societies and Industrial Assurance Companies Act, 1896), which consolidates and amends the law relating to industrial assurance. The Act gives increased protection to the poorer classes of assured persons in respect of life insurance business the premiums upon which are received by collectors at intervals of less than two months. ' Industrial assurance funds ' (life funds) cannot be made security for a loan other than a temporary bank overdraft. The Act contains important provisions as to forfeiture and surrender of policies, accounts and inspection, and the printing of portions of the Act on policies so as to draw the attention of policy-holders to rights conferred by the Act. See the Industrial Assurance and Friendly Societies Act, 1929 (19 & 20 Geo. 5, c. 28), which permits the issue of endowment policies; and see FRIENDLY SOCIETIES.

Industrial Disease. Compensation is provided for a workman under the Workmen's Compensation Act (which see) in respect of certain diseases. As to notification of an industrial disease occurring in a mine, see Coal Mines Act, 1911, s. 79.

Industrial Exhibitions. Inventions and designs exhibited at industrial exhibitions are specially protected by s. 45 and s. 59 respectively of the Patents and Designs Act, 1907 (7 Edw. 7, c. 29), as amended by the Patents and Designs Act, 1932 (22 & 23 Geo. 5. c. 32).

Industrial Schools. References to these words are to be replaced by the words ' Approved Schools ' by the Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 108.

Sect. 44 of the Children Act, 1908 (8 Edw. 7, c. 67), defined an ' industrial school ' as ' a school for the industrial training of children in which children are lodged, clothed and fed as well as taught.' However, as to the present law, see APPROVED SCHOOLS.

Industriam, per, a qualified property in animals *feræ naturæ* may be acquired *per industriam*, i.e., by a man's reclaiming and making them tame by art, industry, and education; or by so confining them within his own immediate power that they cannot escape and use their natural liberty.—2 *Steph. Com.*

In æquali jure melior est conditio possidentis. *Plowd.* 296.—(Where the rights are equal, the condition of the possessor is the better.) ' Hence it is a familiar rule, that in ejectment, the party controverting my title must recover by his own strength and not by my weakness.'—*Broom's Leg. Max.*; and see IN PARI DELICTO, etc.

Inebriate. A drunken person. See DRUNKENNESS.

In esse (actually existing), distinguished from *in posse*, which means that which is not, but may be. A child before birth is *in posse*; after birth, *in esse*.

Inevitable Accident, that which cannot be avoided: used in leases together with fire or tempest as a cause of destruction of the demised premises excusing the payment of rent or an omission by the lessee to repair. The expression is also very commonly used in covenants for production of documents, exempting the covenantor from liability in the event of destruction by fire or other inevitable accident; but as pointed out by Mr. Davidson, *Prec. of Convg.*, vol. ii., pt. i. p. 665, it is not accurate, for such accidents are not *inevitable*, and 'insuperable' is the better term. The word 'inevitable,' however, is used in the L. P. Act, 1925, s. 64 (9), relating to the effect of an undertaking for safe custody and acknowledgment of the right to production of documents.

As to ordering particulars of a defence of 'inevitable accident,' see *Rumbold* v. *L. C. C.*, (1909) 25 T. L. R. 541.

Inewardus, a guard, a watchman.—*Domesday.*

In extenso, from beginning to end, leaving out nothing.

In extremis, at the last gasp.

In faciendo (in doing or in feasance).

Infalistatus, a capital punishment inflicted on the sands or seashore—possibly, hurling down a cliff; cf. 'falaise'—*Sed. qu.* See *Ralph de Hengham, Summa Parva*, cap. 3, and *Selden's* notes thereon.

Infamous Conduct in a Professional Respect. A term used by the General Medical Council to denote contraventions of the practice of the profession, such as advertising as well as disgraceful or incompetent conduct; see Medical Act, 1858 (21 & 22 Vict. c. 90), s. 29.

Infamous Crime. Sending any letter threatening to accuse another of an 'infamous crime,' whether the receiver be innocent or not, with intent to extort money, may be punished up to penal servitude for life by s. 46 of the Larceny Act, 1861 (24 & 25 Vict. c. 96), which defines an infamous crime within the enactment as sodomy, or bestiality, or assault with intent or attempt to commit, or inducement to commit or permit, such crime. This section is repealed by the Larceny Act, 1916, which substantially re-enacts this section without the use of the words 'infamous crime' (s. 29).

Infamy, public disgrace; total loss of character. This does not now incapacitate from giving evidence.—6 & 7 Vict. c. 85, s. 1.

Infangenthef, a privilege of lords of certain manors to judge any thief taken within their fee.—*Anc. Inst. Eng.*

Infant [fr. *infans*, Lat., one who cannot speak], a person under twenty-one years of age, whose acts are in many cases either void or voidable. See AGE.

At *Common Law*, the contracts of infants are divided into three classes: 1st. Those which are absolutely void; such as are positively injurious to the interests of the infant, and can only operate to his prejudice; as a surety-bond, or a release to his guardian.

2nd. Those which are only voidable: such as are beneficial to him, which he may affirm or avoid when he comes of age; as a conveyance of lands, a promissory note, an account stated.

3rd. Those which are binding *ab initio* and need no ratification: such as contracts for the public service, articles of apprenticeship (see *Green* v. *Thompson*, 1899, 2 Q. B. 1), executed contracts of marriage, representative acts as executor or trustee, contracts for necessaries. In an action brought for the price of goods, if the defendant pleads infancy, the onus is on the plaintiff to prove that the goods were necessaries (*Nash* v. *Inman*, 1908, 2 K. B. 1).

By the Infants Relief Act, 1874 (37 & 38 Vict. c. 62), it is enacted (ss. 1 and 2) that:—

1. All contracts whether by specialty or by simple contract henceforth entered into by infants for the repayment of money lent, or to be lent, or for goods supplied, or to be supplied (other than contracts for necessaries), and all accounts stated with infants shall be absolutely void; provided always that this enactment shall not invalidate any contract into which an infant may by any existing or future statute, or by the rules of Common Law or Equity, enter, except such as now by law are voidable.

2. No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age.

The Law of Property legislation of 1925 introduced some modifications into the law relating to infants. By the L. P. Act, 1925, s. 1 (6), a legal estate in land is incapable of being held by an infant. He cannot be appointed trustee of any settlement or trust or become mortgagee of a legal estate (ss. 19 and 20, *ibid.*), or an estate owner

of settled land (Settled Land Act, 1925, ss. 26 and 27), but a married infant can give receipts for income (L. P. Act, 1925, s. 21). By s. 27 of the Settled Land Act, 1925, a conveyance of a legal estate in land to an infant for his benefit shall operate only as an agreement for valuable consideration to execute a settlement as there provided and in the meantime to hold the land in trust for the infant, but an equitable interest in settled land may be vested in or transferred to an infant. Under the Judic. Act, 1925, s. 165, administration with the will annexed is to be granted to the guardian of an infant who has been appointed executor of a will or other person appointed by the Court for him, until the infant attains the age of twenty-one years and probate has been granted to him under s. 47 of the Administration of Estates Act, 1925; infants who do not attain a vested interest, i.e., attain twenty-one years of age or marry, are excluded from the distribution of the residuary estate of an intestate but the statutory powers of advancement and provisions relating to maintenance and accumulation of income are to apply, and infants may be permitted to use personal chattels which form part of the estate.

The 5th section of the Betting and Loans (Infants) Act, 1892 (55 & 56 Vict. c. 4), follows the Act of 1874 as respects loans, while the 1st and 2nd sections of the same Act make it a misdemeanour to invite by circular, etc., an infant to bet or borrow money. See *Milton* v. *Studd*, 1910, 2 K. B. 118.

An infant is liable for torts committed by him unless the tort has arisen out of a contract; see *R. Leslie* v. *Shiell*, 1914, 3 K. B. 607, where the authorities are discussed by Lord Sumner. As to whether a parent can by ratification become liable for the tort of his infant child, see *Moon* v. *Towers*, (1860) 8 C. B. N. S. 611. In that case Willes, J. (*ibid.*, p. 611), said: 'No man ought, as a general rule, to be responsible for acts not his own.' As to the criminal liability of infants, see AGE; CHILDREN.

Ward of Court.—The general superintendence and protective jurisdiction of the Court of Chancery over the persons and property of infants is a delegation of the rights and duties of the Crown—the universal guardian of infants—and is retained for the Chancery Division of the High Court (Jud. Act, 1925, s. 56), and an infant under such guardianship is termed 'a ward of Court.' The Court has jurisdiction to commit a ward of Court to prison for contempt of Court, e.g., marrying without consent (*Re H.'s Settlement*, 1909, 2 Ch. 260).

By the Judicature Act, 1925, s. 44, it is provided that, subject to express provisions of any other Act, in questions relating to the custody and education of infants, the rules of equity shall prevail. The father at Common Law had the right to the custody of his infant child and the right to appoint testamentary guardians. The guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27), and the guardianship of Infants Act, 1925 (15 & 16 Geo. 5, c. 45), place the mother and father in the position of equality, making the welfare of the child 'the first and paramount consideration.'

See, further, GUARDIANSHIP, WARD, and CHILDREN; and consult *Eversley on the Domestic Relations*; *Simpson on Infants*; and *Chitty's Statutes*, tit. '*Infants and Children*.'

Infant Life Protection Act, 1897 (60 & 61 Vict. c. 37), now repealed and replaced by the Children Act, 1908. See CHILDREN.

Infant Settlements Act, 1855 (18 & 19 Vict. c. 43), preserved by the Settled Land Act, 1925, s. 27 (3), but so that a legal estate in land is not vested in an infant. By virtue of the Act of 1855 every infant (if a male of twenty, or if a female of seventeen years, s. 4, and see *Re Phillips*, (1887) 34 Ch. D. 467), upon or in contemplation of marriage, may, with the sanction of the Chancery Division of the High Court, make a valid settlement or contract for a settlement of property. The Act gets rid entirely of the disability arising from infancy, though not of disability on any other ground (*Seaton* v. *Seaton*, (1888) 13 App. Cas. 61). Consult *Seton on Judgments*; *Dan. Ch. Pr.*

Infanticide, the killing of a child immediately after it is born. The felonious destruction of the fœtus in utero is more properly called fœticide, or criminal abortion.

In every case in which an infant is found dead, and its death becomes the subject of judicial investigation, the great questions which present themselves for inquiry are:—

(1) What is the age of the child?

(2) Was the child born alive?

(3) If born alive, how long had it lived?

(4) If born alive, by what means did it die?

If it be proved that its death was owing to violence, it is then to be ascertained who the murderer of it is. If suspicion fall upon the mother, it is to be determined—

(1) Whether she has been delivered of a child; and,

(2) Whether the signs of a delivery correspond as to time, etc., with the appearances developed in the child.

There are two ways in which a child may be born alive: (1) The cord may be pulsate, showing that it is alive, yet it may not respire. (2) It may be born and respire.

When a child is born alive, but has not yet respired, its condition is like that of the fœtus in utero. It lives merely because the fœtal circulation is still going on. In this case none of the organs undergo any change. The case of a child who is born alive and respires is tested by respirations. The proofs of this test are deduced from the changes which take place in the system as soon as respiration commences.

See this subject fully discussed in *Taylor's Med. Jur.* cc. xxxviii. *et seq.*; and *Guy's Foren. Med.* 118 *et seq.*

The Infanticide Act, 1922 (12 & 13 Geo. 5, c. 18), provides that where a woman who has not fully recovered from the effect of giving birth to a child so that the balance of her mind is still disturbed causes the death of such newly-born child, she shall be guilty of infanticide (and not murder) and punishable as for manslaughter. The jury may, however, find the woman guilty of concealment of birth under Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 60, or of an offence under the Children and Young Persons Act, 1933 (23 Geo. 5, c. 12), s. 1, or child destruction, under Infant Life (Preservation) Act, 1929 (19 & 20 Geo. 5, c. 34).

Infectious Diseases. It is an indictable offence to expose in a public frequented highway a person suffering from an infectious disorder (*R.* v. *Vantandillo*, (1815) 4 M. & S. 73). The Public Health Act, 1936 (26 Geo. 5, and 1 Edw. 8, c. 49), ss. 143 to 180, repealing (from October, 1937) ss. 120–143 of the Public Health Act, 1875, contains various provisions calculated to prevent the spread of dangerous infectious diseases.

Notification.—The Public Health Act, 1936, also repeals (from October, 1937) the Infectious Diseases Notification Act, 1889 (52 & 53 Vict. c. 72), and enjoins the notification to the Medical Officer of Health of the district of certain specific diseases therein named, and also of other diseases added to the list by the local authority, s. 343 enacting that 'notifiable disease.'—

means any of the following diseases, namely, small-pox, cholera, diphtheria, membranous croup, erysipelas, the disease known as scarlatina or scarlet fever, and the fevers known by any of the following names, typhus, typhoid, enteric, relapsing, and includes as respects any particular district any infectious disease to which Part V. or corresponding enactment this Act has been applied by the local authority of the district in manner provided by that part or that enactment.

Section 147 of the Act provides for the extension of the application of the Act, and for public notice being given of it.

Prevention.—By s. 143 (*ibid.*) general powers are conferred on the Minister of Health for the prevention and treatment of infectious diseases, including danger to public health from vessels, after consultation with the Board of Trade, and aircraft, after consultation with the Home Secretary. These powers are to be enforced by County Councils, local and port health authorities, Customs and Excise, and the Coastguard, with the consent of the respective departments. By Order in Council, the regulations (including quarantine) may extend to Northern Ireland, if outside the powers of Parliament there, the Isle of Man and the Channel Islands. By s. 151, principals of schools may be required to send to the Medical Officer of Health for the district complete lists of names and addresses of day scholars who may be suffering from a notifiable disease. By s. 152 infected articles may not be sent to a laundry or public washhouse before disinfection or without proper notice. Home work, such as tailoring or other specified work, in any premises in which a notifiable disease occurs may be forbidden by the local authority (s. 154). By s. 155 dealers in rags and old clothes are absolutely prohibited from selling or delivering any article of food or drink to any person, or any article whatsoever to children under fourteen. Under s. 156 infected matter is not to be thrown into dustbins. Sections 157 and 158 provide against the letting of premises or rooms, and for notice to the owner after recent cases of notifiable disease. Other provisions relate to the disinfection and removal to hospitals of patients suffering from such disease, and to removal, burial, or cremation of bodies after death.

Infeoffment, the act or instrument of feoffment, or investiture, synonymous with *sasine*, the instrument of possession.—*Scots term.*

Inferior Courts. They are the court baron, the hundred court, the borough civil court, the county court, the mayor's court, London, and also all courts of a special jurisdiction; but the county courts are by far the most

important of them. They are all controllable by writ of prohibition if they exceed their jurisdiction. See, further, the Borough and Local Courts of Record Act, 1872 (35 & 36 Vict. c. 86); and as to the jurisdiction of such courts, and the rules of procedure in force therein, see also the Judicature Act, 1925, ss. 201–209, and COUNTY COURTS.

The Inferior Courts Judgments Extension Act, 1882 (45 & 46 Vict. c. 31), following the procedure of the Judgments Extension Act, 1868, which applies to superior courts only, renders, to a certain extent, judgments obtained in inferior courts in England, Scotland, and Ireland respectively, effectual in any other part of the United Kingdom; but the working of the Act is very much cramped by the provision of s. 10, that the Act is not to apply against persons domiciled in any of the countries respectively, unless the whole cause of action arose, and the summons was personally served upon the defendant within the district of the inferior court in which the action is brought.

Infeudation, the placing in possession of a freehold estate; also the granting of tithes to mere laymen.

Infidel, one who does not accept the Christian religion.

In fieri [Lat.] (in course of accomplishment).

Infihit, or **Insoena,** violence committed on a person by one inhabiting the same dwelling.

In formâ pauperis (in the character of a pauper). Every poor person, having cause of action, was entitled by 11 Hen. 7, c. 12, which is in affirmance of the Common Law, to have writs according to the nature of the case, without paying the fees thereon, and the judges might assign him counsel and solicitor, who acted gratis. This discretionary indulgence was confined to plaintiffs at Common Law, but was extended by Courts of Equity to defendants.

The statute 11 Hen. 7, c. 12, is repealed by the Statute Law Revision and Civil Procedure Act, 1883, but its provisions and those of the Chancery Orders and Common Law Rules (which gave effect to it in somewhat different terms) are thrown into one code by R. S. C., Ord. XVI., rr. 22–31 G., by which a person may be admitted to sue or defend as a poor person on proof that he has a reasonable cause of action or defence and that his means do not exceed 50*l.*, his clothes, household goods, tools of trade, and the subject-matter of the cause excepted, or such larger sum not exceeding 100*l.* as the judge in special circumstances may direct. In London and the District Registries lists are kept of counsel and solicitors willing to undertake conduct of actions on behalf of poor persons without remuneration.

Appeals *in formâ pauperis* to the House of Lords are checked by the Appeal (Formâ Pauperis) Act, 1893 (56 & 57 Vict. c. 22), which gives the House power to refuse a petition for leave to sue.

Informal, deficient in legal form.

Informality, want of legal form.

Information, an accusation, or complaint; also, communicated knowledge.

Information in Chancery. Where a suit was instituted on behalf of the Crown or Government, or of those of whom it had the custody by virtue of its prerogative (such as idiots and lunatics), or whose rights are under its particular protection (such as the objects of a public charity), the matter of complaint was offered to the Court by way of information by the Attorney- or Solicitor-General, and not by way of petition. When a suit immediately concerned the Crown or Government alone, the proceeding was purely by way of information, but where it did not do so immediately, a 'relator' was appointed who was answerable for costs, etc.; and if he were interested in the matter in connection with the Crown or Government, the proceeding was then by information and bill. Informations differed from bills in little more than name and form; and the same rules were substantially applicable to each.—*Story's Eq. Plead.* The procedure is now by ordinary action in the High Court; see R. S. C. 1883, Ord. I., r. 1; but the term 'information' is still used to designate an action by the Attorney-General in his official capacity.

A Crown information (which was formerly filed in the Court of Exchequer, but is now instituted on the Revenue side of the King's Bench Division) is a suit for recovering money or other chattels, or for obtaining satisfaction, in damages, for any personal wrong committed in the lands or other possessions of the Crown. It is instituted to redress private wrongs, while criminal informations are resorted to to punish public wrongs, or heinous misdemeanours. See EX OFFICIO INFORMATIONS; and Crown Suits Act, 1865 (28 & 29 Vict. c. 104). The most usual informations are, in cases of intrusion, for trespasses on Crown lands; debt, for Crown moneys due upon breaches of penal statutes; and *in rem*, when any goods are supposed to become the property of the Crown, no one claiming them, as treasure-trove, wrecks, waifs, and estrays.

See R. S. C. 1883, Ord. LXVIII., r. 2, and consult *Robertson on the Crown.*

Information and complaint for an indictable offence has to be sworn before a justice of the peace: Indictable Offences Act, 1848 (11 & 12 Vict. c. 42), s. 1 (where it is termed 'charge or complaint'), and Sched. A (where it is termed 'information and complaint'). —*Chitty's Statutes*, tit. '*Criminal Law.*'

Informations before a justice of the peace against a person alleged to have committed an offence punishable on summary conviction must be laid within six months, and need not be in writing or on oath unless some Act of Parliament (i.e., the Act under which the particular offence is punishable) otherwise require, and must be for one offence only, and not for two or more offences.—Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), ss. 1, 10, 11; s. 11 is extended as to the time within which proceedings under Road and Rail Traffic Act, 1933 (23 & 24 Geo. 5, c. 53), s. 112, may be brought by the Road Traffic Act, 1934 (24 & 25 Geo. 5, c. 50), s. 33 (1).—*Chitty's Statutes*, tit. '*Justices.*'

As to criminal, English, and Latin informations, see those titles; also QUO WARRANTO; NUISANCE.

Informatus non sum (I am not informed, or, I have no instructions).

Informer, a person who prosecutes those who break any law or penal statute; also an approver. See QUI TAM; APPROVER; COMMON INFORMER.

Infortunium, Homicide per, where a man doing a lawful act, without intention of hurt, unfortunately kills another. See HOMICIDE.

Infra, in a book, refers the reader to a subsequent page or part of the book.

Infra annum luctûs (within the year of mourning). The phrase is used in reference to the marriage of a widow within a year after her husband's death, which was prohibited by the Civil Law. See *Cod.* 5, 9, 2.

Infringement [fr. *infringo*, Lat., to break], breach or violation, applied to the breach of a law or violation of a right, as of copyright or patent right.

Infugare, to put to flight.—*Leg. Canuti*, c. 32.

Infula, a coif, or a cassock.—*Jac. Law Dict.*

Inge, meadow, or pasture.—*Ibid.*

Ingenuitas, liberty given to a servant by manumission.—*Leg. H.* 1, c. 89.

Ingenuitas regni, the commonalty of the kingdom.

In gremio legis [Lat.] (in the bosom or protection of the law).

Ingress, Egress, and Regress, free entry into, going forth of, and returning from a place.

Ingressu, an abolished writ of entry. It was also called *præcipe quod reddat.*—*Cowel.*

Ingressus, the relief which an heir at full age paid to the head lord for entering upon the fee, etc.—*Blount.*

In gross. See GROSS.

Ingrossator magni rotuli, clerk of the pipe; a former Exchequer officer.

Ingrossing, writing the fair copy of a deed or instrument for the formal execution of it by the parties thereto. See ENGROSSING.

Inhabited House Duty. See HOUSE DUTY.

In hæc verba, in these very words.

Inheritance, or hereditary succession, is the title whereby a man, on the death of his ancestor, acquires his estate by right of representation as his *heir at law.*

The 'canons of inheritance' are the rules directing the descent of real property throughout the lineal and collateral consanguinity of the owner dying intestate.

These rules have been abolished in the case of deaths after January 1st, 1926, with a few exceptions (see HEIR), by the Administration of Estates Act, 1925, s. 51, but they still affect the devolution before 1926 of all titles to estates of inheritance.

Inheritance Act.—The Inheritance Act, 1833 (3 & 4 Wm. 4, c. 106), materially altered the old canons of real property descent, but because the Act does not extend to any descent which took place on the death of any person who died before the 1st of January, 1834, it is deemed expedient to give both old and new:—

Old Canons.—The old Canons, which obtain in cases of ancestors dying *before* the 1st of January, 1834, are the following:—

(1) That inheritances shall lineally descend to the issue of the person who last died actually seised, *in infinitum*, but shall never lineally ascend.

(2) That the male issue shall be admitted before the female.

(3) That where there are two or more males in equal degree, the eldest only shall inherit; but the females all together.

(4) That the legal descendants *in infinitum*, of any person deceased, shall represent their ancestor; that is, shall stand in the same place as the person himself would have done had he been living.

(5) That on failure of lineal descendants, or issue of the person last seised, the inheritance shall descend to his collateral relations being

of the blood of the first purchaser, subject to the three preceding rules.

(6) That the collateral heir of the person last seised must be his next collateral kinsman of the whole blood.

(7) That in collateral inheritances the male stocks shall be preferred to the female (that is, kindred derived from the blood of the male ancestors, however remote, shall be admitted before those from the blood of the females, however near), unless where the lands have in fact descended from a female.

Present Canons.—The Canons according to the new law grafted upon the old are the following :—

(1) That inheritances shall, in the first place, lineally descend to the issue of the last purchaser *in infinitum ;* by ' purchaser ' being meant the person who last acquired the land otherwise than by descent.

(2) That the male issue shall be admitted before the female.

(3) That where two or more of the male issue are in equal degree of consanguinity to the purchaser, the eldest only shall inherit, but the females all together.

(4) That all the lineal descendants, *in infinitum,* of any person deceased, shall represent their ancestor ; that is, shall stand in the same place as the person himself would have done had he been living.

(5) That on failure of lineal descendants or issue of the purchaser, the inheritance shall descend to his nearest lineal ancestor.

(6) That the father and all the male paternal ancestors of the purchaser, and their descendants, shall be admitted before any of the female paternal ancestors, or their heirs ; all the female paternal ancestors and their heirs before the mother, or any of the maternal ancestors, or her or their descendants ; and the mother and all the male maternal ancestors, and her and their descendants, before any of the female maternal ancestors, or their heirs.

(7) That a kinsman of the half blood shall be capable of being heir ; and that such kinsman shall inherit next after a kinsman in the same degree of the whole blood, and after the issue of such kinsman when the common ancestor is a male, and next after the common ancestor when such ancestor is a female.

(8) That in the admission of female paternal ancestors, the mother of the more remote male paternal ancestor and her heirs shall be preferred to the mother of a less remote male paternal ancestor and her heirs ; and in the admission of female maternal ancestors, the mother of the more remote male maternal ancestor and her heirs shall be preferred to the mother of a less remote male maternal ancestor and her heirs.—*Williams' Real Property ; Watkins on Descents ; Sugden's Real Property Statutes.*

(9) Where there shall be a total failure of heirs of the purchaser, or where any lands shall be descendible, as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then, and in every such case, the land shall descend, and the descent shall thenceforth be traced from the person last entitled to the land as if he had been the purchaser thereof ; see s. 19 of the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), which is to be read as a part of s. 20 of the Inheritance Act, 1833.

Inhibition. An ancient synonym for PROHIBITION, which see.

In the Ecclesiastical Law, the command of a bishop or ecclesiastical judge that a clergyman shall cease from taking any duty. See, e.g., Sequestration Act, 1871 (34 & 35 Vict. c. 45), s. 5 ; Benefices (Ecclesiastical Duties) Measure, 1926 (16 & 17 Geo. 5, No. 8) ; *Dale's Case,* (1881) 6 Q. B. D. 376.

Under the Land Registration Act, 1925, an order of Court or entry by the chief land registrar inhibiting temporarily the registration or any dealing with registered land or a registered charge ; see L. R. Act, 1925, s. 58, L. R. Rules 230–234, and 237, and *Fortescue-Brickdale and Stewart Wallace,* ' *Land Registration.*'

In the Scots Law : (1) A writ whereby the debtor or party inhibited is prohibited from contracting any debt which may become a burden on his heritable property. See 31 & 32 Vict. c. 101, s. 156, and Sched. (2) A writ prohibiting and discharging all persons from giving credit to a man's wife.—*Bell's Law Dictionary.*

In his quæ de jure communi omnibus conceduntur, consuetudo alicujus patriæ vel loci non est alleganda. 11 *Co.* 85.—(In those things which by common right are conceded to all, the custom of a particular district or place is not to be alleged.)

Inhoc, or **Inhoke** [fr. *in,* within, and *hoks,* a corner], corner or part of a common field ploughed up and sowed with oats, etc., and sometimes fenced in when the rest of the field lies fallow.—*Kenn. Glos.*

In invidiam, to excite a prejudice.

Iniquum est aliquem rei suæ esse judicem. In propriâ causâ nemo judex sit.—12 *Co.* 13.

See NEMO DEBET ESSE JUDEX IN PROPRIÂ CAUSA.

Initialia testimonii. In former times, before examining a witness in chief in Scotland, he was first examined as to his disposition towards the parties, whether he bore ill-will to either of them, or had been prompted what to say, or had received any bribe.—*Bell's Law Dict.* It is somewhat similar to our *voir dire*, which see.

Initials, the first letters of names. By the Civil Procedure Act, 1833 (3 & 4 Wm. 4, c. 42), s. 12, it was directed that in all actions upon bills of exchange, promissory notes, or other written instruments, any of the parties to which were designated by the initial letter or letters, or some contraction of the Christian or first name or names, it should be sufficient to designate such persons by the same initial letter or letters, instead of stating them in full.

Signature by initials is a good signature within the Statute of Frauds (*Phillimore* v. *Barry*, (1808) 1 Camp. 513); a good signature of a will (*In the goods of Wingrove*, (1851) 15 Jur. 91; *In the goods of Hinds*, (1851) 16 Jur. 1161); and a good subscription as regards interlineations in a will (*In the goods of Blewitt*, (1880) 5 P. D. 116). Under the Companies Act, 1929, s. 145, 'initials' includes a recognized abbreviation of a Christian name.

Initiate, tenant by courtesy, the husband is so called when a child is born—capable of inheriting the land subject to his courtesy.

In invitum [Lat.], against an unwilling party.

In judicio non creditur nisi juratis. *Cro. Car.* 54.—(In a trial credence is given only to those who are sworn.) For admission of unsworn evidence of a child, however, in case of cruelty, etc., to child, see Children and Young Persons Act, 1933 (23 Geo. 5, c. 12), s. 38. See CHILDREN (*Evidence*).

Injunction. This is the discretionary process of preventive and remedial justice, whereby a person is required to refrain from doing a specified meditated wrong, not amounting to a crime. It is either (1) *interlocutory*, i.e., provisional or temporary, until the coming in of the defendant's answer, or until the hearing of the cause; or (2) *perpetual*, i.e, forming part of a decree made at a hearing upon the merits, whereby the defendant is perpetually inhibited from the assertion of a right, or perpetually restrained from the commission of an act contrary to equity and good conscience. As to mandatory injunctions, see *post*.

Prior to the Judicature Act injunctions were grantable by the Court of Chancery only (except to prevent the repetition of a breach of contract or injury under s. 79 of the C. L. P. Act, 1854, or the infringement of a patent, for which purposes a Common Law court might grant them), and injunctions, called 'common injunctions,' were frequently granted by that court to stay a suitor from proceeding in a court of Common Law to assert a right which it was contrary to equity that he should assert. Such an injunction might, upon a proper case being presented to the Court, be granted at any stage of the proceedings at law. Thus an injunction would be granted to stay trial; after verdict to stay judgment; or after judgment to stay execution.

By s. 41 of the Judicature Act, 1925, however, it is enacted that no proceeding in the High Court of Justice, or before the Court of Appeal, shall be restrained by injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if the Act had not passed, may be relied on by way of defence thereto, it being provided, however, that the Court may direct a 'stay of proceedings.'

Amongst public nuisances, restrainable either upon information or at suit of a private person immediately grieved by them, may be enumerated obstructions to highways and bridges, public rivers and harbours, and everything that renders the enjoyment of life and property hazardous and uncomfortable. In the case of a private nuisance, there must be such an injury as from its nature is not susceptible of being compensated by damages, or as from its continuance or permanent mischief must occasion a constantly recurring grievance which cannot be otherwise adequately prevented than by an injunction; as where the injury is irreparable or where injury to health or trade, destruction of the means of subsistence, or permanent ruin to property may ensue—e.g., from the obstruction of ancient lights of a dwelling house, blocking up of water-courses, diversion of streams from mills, the back flowage on mills, pulling down of the banks of rivers and exposing adjacent lands to inundation, or neighbouring mills to destruction, etc.

The piracy of a copyright, or the invasion of a patent, can be restrained, and the Court will direct an account of the books printed, and the profits made by the infringer.

A special injunction may be obtained

whenever a proper case can be made for it; thus injunctions have been granted to restrain the following acts: the publication of letters, for the writer of a letter has a joint property in it with the person to whom it is addressed, the receiver having only a special property in it; the publication of a libel; the proper use by one man of the trade-marks or name of another person; the disclosure of secrets acquired in the course of a confidential employment; the alienation of property; the negotiation of bills of exchange and promissory notes obtained by fraud or collusion; the transfer of stock; the receipt of dividends; the sale of specific chattels; the vexatious alienation of real property *pendente lite;* the sale of trust property; the improper presentation to a benefice; the appointing of a minister to a dissenting chapel; the dealing with or the sailing of a ship; the breach of covenants; and see *Shelfer* v. *City of London Electric Lighting Co.*, 1895, 1 Ch. at pp. 322, 323.

In a proper case damages may be awarded either in addition to or in substitution for an injunction (see *Gilling* v. *Gray*, (1910) 27 T. L. R. 39). As to the recovery of damages in lieu of an injunction for an injury which is threatened but not yet done, see *Leeds Industrial Society* v. *Slack*, 1924, 40 T. L. R. 745. By s. 25, sub-s. 8, an injunction may be granted by an interlocutory order 'in all cases in which it shall appear to the Court to be just or convenient that such order should be made'; and see Ord. L., r. 6.

In addition to the injunctions mentioned above, which have for their object the restraining of the defendant from committing some apprehended wrong, there is a third class called mandatory injunctions, where the Court goes further and compels a defendant who has actually completed the wrongful act to undo what he has done and restore matters to their former condition; thus, in a proper case a defendant may be ordered to pull down a building which he has erected in defiance of the plaintiff's rights, even though the building has been completed before the writ was issued. As to the principles on which the Court proceeds in such cases, see *Daniel* v. *Ferguson*, 1891, 2 Ch. 27; *Van Joel* v. *Hornsey*, 1895, 2 Ch. 774; *Woodward* v. *Battersea Corporation*, (1911) 104 L. T. 51; and as to the form of the order, see *Jackson* v. *Normanby Brick Co.*, 1899, 1 Ch. 438. Consult *Kerr* or *Joyce on Injunctions*.

In jure, non remota causa sed proxima spectatur. *Bacon, Max.*, reg. 1.—(In law, the proximate, and not the remote, cause is regarded.) The maxim is chiefly applied to cases of marine insurance, as to which it was held by the House of Lords in *Dudgeon* v. *Pembroke*, (1877) 2 App. Cas. 284, that any loss caused by perils of the sea is within the policy though it would not have happened but for the concurrent action of some cause, as unseaworthiness, which is not within it.

The maxim is also frequently applied to measure of damages, as to which see *Hadley* v. *Baxendale*, (1854) 9 Ex. 341, where it was laid down that only such damages are recoverable for breach of contract as (1) arose naturally from the breach itself, or (2) might reasonably be supposed to have been in the contemplation of both contracting parties at the time of the contract as resulting from breach. See CAUSA CAUSANS and *Broom's Leg. Max.*

Injuria. Injury; a wrongful act done. See DAMNUM ABSQUE INJURIA.

Injuria non excusat injuriam.—(One wrong does not justify another.) See *Hilton* v. *Eckersley*, (1856) 25 L. J. Q. B. 199.

Injuria non præsumitur. *Co. Litt.* 232 *b.*—(Injury is not presumed).

Injury, any damage done to another, either in his person, rights, reputation, or property, for which an action lies at law.

Inlagare, to admit or restore to the benefit of the law; to in-law, or render law-worthy.

Inlagary, or **Inlagation,** a restitution of an outlaw to the protection and benefit of the law.—*Bract.* l. 3, tr. 2, c. 14.

Inlagh, a person within the law's protection, contrary to *utlagh*, an outlaw.

Inland, demesne land; that which was let to tenants being denominated outland (*utland*).—*Domesday.*

Inland Bill of Exchange, 'a bill which on the face of it purports to be (*a*) both drawn and payable within the British Islands; or (*b*) drawn within the British Islands upon some person resident therein.'—Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), s. 4. Any other bill is a foreign bill, but unless the contrary appear on the face of the bill the holder may treat it as an inland bill.—*Ibid.*

Inland Revenue. That portion (by far the largest) of the public revenue (which is derived from the taxation of home commodities and duties on property and income, houses, stamps, probates, legacies, etc., as distinguished from the portion derived by customs duties (see CUSTOMS) from imported commodities—such as foreign wine and spirits, tea, etc. It is supervised by Inland

Revenue Commissioners (the number of whom, now four, is not limited by statute, and the quorum of whom is two), and a large number of enactments relating to its regulation are contained in the consolidating Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21). By s. 39 of that Act 'inland revenue' means 'the revenue of the United Kingdom collected or imposed as stamp duties, taxes, and duties of excise' (see that title), 'and' placed under the care and management of the Inland Revenue Commissioners.' By 8 Edw. 7, c. 16, the management of excise duties were transferred to the Commissioners of Customs and Excise.

The High Court has power to make the Commissioners pay costs (*Re Hardy's Brewery*, 1910, 2 K. B. 257).

A 'Customs and Inland Revenue Act' was for many years passed annually, for the purpose of imposing the taxes proposed in the Annual Budget of the Chancellor of the Exchequer, and sanction by vote of the House of Commons; and in and since 1894 a 'Finance Act' has been passed for the same purpose.

Inland Trade, trade wholly carried on at home, as distinguished from Commerce, which see.

Inlantal, Inlantale, demesne or inland, opposed to *delantal*, or land tenanted.—*Cowel's Law Dict.*

Inleased, insnared.—*Co.* 2 *Inst.* 247.

Inlegiare, to admit a person to the protection of the law, after undergoing a legal punishment for a delinquency.

In limine (at the outset), preliminary.

In loco parentis (in the place of a parent). A person undertaking the responsibility, care and duty to make provision of a father towards others who are not his children (*Powys* v. *Mansfield*, (1837) 3 My. & Cr. 359).

In malam partem, in a bad sense, so as to wear an evil appearance.

In medias res, into the heart of the subject, without preface or introduction.

Innamium, a pledge.

Inner House. See SESSION, COURT OF.

Innings, lands recovered from the sea; when rendered profitable they are termed *gainage* lands.—*Jac. Law Dict.*

Innkeeper, proprietor of a common inn for the accommodation of travellers in general.

All persons are deemed innkeepers who keep houses where a traveller is furnished, for profit, with everything which he has occasion for whilst on his way. They are bound to take in all travellers and wayfaring persons, and to entertain them for a reasonable time (see *Lamond* v. *Richard*, 1897, 1 Q. B. 541) if they can accommodate them, at a reasonable charge, provided they behave themselves properly; and they have a lien upon the goods of their guests for board and lodging, but may not detain their persons or seize their clothing in actual wear. They are also liable for any loss of or injury to goods, money, and baggage of their guests; and responsible for the acts of their servants and domestics, as well as for the acts of other guests (*Calye's case*, (1584) 8 Rep. 32, and 1 *Smith's L. C.*); and the liability arises as soon as the relationship of guest and innkeeper begins, and is irrespective of the fact that some one other than the particular guest is going to pay for the accommodation (*Wright* v. *Anderton*, 1909, 1 K. B. 209). But the liability of innkeepers at the Common Law having been found to press hardly upon them, the Innkeepers Act, 1863 (26 & 27 Vict. c. 41) (as to which see *Spice* v. *Bacon*, 1877) 2 Q. B. D. 463), provided that no innkeeper should be liable to make good to any guest any loss or injury to goods or property brought to his inn, not being a horse or other live animal, or any carriage, to a greater amount than the sum of 30*l.*, except—

1. Where such goods have been stolen, lost, or injured through the default or neglect of the innkeeper or his servants.

2. Where such goods have been deposited expressly for safe custody with the innkeeper.

By 'expressly' is meant that the bailor's intention must be brought to the mind of the bailee or his agent in some reasonable and intelligible manner (*Whitehouse* v. *Pickett*, 1908, A. C. 357). A copy of the Act must be exhibited in the inn to entitle the innkeeper to the benefit of its provisions.

And it has been further provided by the Innkeepers Act, 1878 (41 & 42 Vict. c. 38), that in addition to his right of lien, the innkeeper may, after six weeks, sell by public auction all goods (advertised at least one month beforehand), horses, etc., left with him by a person leaving the inn in his debt. See also Public Health Act, 1936, s. 157 (3), as to notifiable diseases. See *Mews's Digest*, tit. '*Innkeeper*.'

Innocent Conveyances, a covenant to stand seised; a bargain and sale; and release; so called because, since they convey the actual possession by construction of law only, they do not confer a larger estate in property than the person conveying possesses, and

therefore, if a greater interest be conveyed by these deeds than a person has, they are only void, *pro tanto*, for the excess. But a feoffment of such larger estate was a *tortious* conveyance, and therefore, under such circumstances, would have been void altogether, and produced a forfeiture. But by the 4th section of the Real Property Act, 1845 (8 & 9 Vict. c. 106), a feoffment made after October 1st, 1845, shall not have any tortious operation. It is, therefore, an innocent conveyance.

Innominate Contracts, those which had no particular names, as permutation and transaction.—*Civ. Law.*

Innonia, an inclosure.—*Spelm.*

Innotescimus [fr. *innotesco*, Lat., to make known], a kind of letters patent.—*Jac. Law. Dict.*

In notis, in the notes.

Innovation, an exchange of one obligation for another, so as to make the second come in place of the first.

In novo casu novum remedium apponendum est. 2 *Inst.* 3.—(A new remedy is to be applied to a new case.)

Innoxiare, to purge one of a fault and make him innocent.—*Leg. Ethelred.* c. 10.

Inns of Chancery, so called because anciently inhabited by such clerks as chiefly studied the framing of writs, which regularly belonged to the cursitors, who were officers of the Court of Chancery. There were nine of them—Clement's, Clifford's, Lyon's, Furnival's, Thavies', Symond's, New Inn, and Barnard's and Staple Inn. These were formerly preparatory colleges for students, and many entered them before they were admitted into the Inns of Court. See 3 *Rep.*, Pref., p. 18; *Report of Royal Commission*, 1855.

Inns of Court. The four bodies which exercise the right of admitting persons to practise at the Bar, viz., the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn.—2 *Reeves*, 360; 3 *Rep.*, Preface, p. 18. No means of obtaining the rank of barrister-at-law exists but that of becoming enrolled as a student in one or other of these Inns, and afterwards applying to its benchers for a call to the Bar. After the passing of the Sex Disqualification (Removal) Act, 1919 (9 & 10 Geo. 5, c. 71), women have been admissible to practise at the Bar.

The Inns of Court from time to time agree on certain 'Consolidated Regulations,' as to the admission of students, the mode of keeping terms, the education and examination of students, the calling of students to the Bar, and the taking out of certificates to practise under the Bar. These Regulations, a copy of which can be obtained on application to any one of the Inns, contain full information as to the steps necessary to be taken in order to being called to the Bar. See BENCHERS; and consult *Six Lectures on the Inns of Court and of Chancery*, by W. Blake Odgers, K.C., and others.

Innuendo [fr. *innuo*, Lat., to nod], a word used in statements of claim, indictments, and other pleadings, to ascertain a person or thing named before, or to connect an expression with a certain person; as to say, he (*innuendo*—i.e.. meaning the plaintiff) did so and so.—4 *Rep.* 17. Its ordinary use is in actions of libel and slander, where it may be defined as 'a statement by the plaintiff of the construction which he puts upon the words himself, and which he will endeavour to induce the jury to adopt at the trial' (*Odgers on Libel*). Where the words *primâ facie* are not actionable, an innuendo is essential to the action (*ibid.*). As to interrogatories for the purpose of establishing an innuendo, see *Heaton* v. *Goldney*, 1910, 1 K. B. 754.

Inofficious Testament, a will not in accordance with the testator's natural affection and moral duties.

Inops consilii (lacking advice).

Inordinatus, an intestate.

In pacato solo, in a country which is at peace.

In pari delicto potior est conditio possidentis.—(In equal fault, the condition of the possessor is the more favourable.) Where both parties are equally in the wrong, the defendant holds the stronger ground. The law will take notice of an illegal transaction to defeat a suit, not to maintain one. Thus, in *Taylor* v. *Chester*, (1869) L. R. 4 Q. B. 309, the plaintiff failed to recover the half of a 50*l.* note deposited with the defendant as a security for a debt contracted for wine and suppers supplied to the plaintiff by the defendant for consumption in a brothel kept by her, inasmuch as the plaintiff could not recover without showing the true character of the deposit. And see IN ÆQUALI JURE MELIOR EST CONDITIO POSSIDENTIS.

In pari materiâ [or *materie*], in an analogous case or position.

Inpeny, and **Outpeny,** customary payments on alienation of tenants, etc.

In Person. A party, plaintiff or defendant, who sues out a writ or other process, or appears to conduct his case in Court himself, instead of through solicitor or counsel, is

said to act and appear in person. Any party except one suing or defending *in formâ pauperis*, or a corporation (*Re London County Council, etc., Arb.*, (1897) 13 T. L. R. 254), may do this.

In personam. All civil actions are either *in personam* or *in rem;* actions at law *in personam* are those which seek recovery of damages, etc. So in equity the Court acts *in personam;* thus it will make a decree against a defendant provided he is within the jurisdiction although the subject-matter of the suit may be situate abroad. 'The strict primary decree in this Court,' said Lord Hardwicke, 'as a Court of Equity, is *in personam*'; see *Penn* v. *Lord Baltimore*, (1750) 1 Ves. Sen. 444; W. & T. L. C. See IN REM.

In pleno lumine, in public; in common knowledge; in the light of day.

In posse (in a state of possibility).

In præsenti (at the present time).

In promptu, in readiness; at hand.

In propria personâ (in one's own proper person).

Inquest, judicial inquiry.

Inquest, Coroner's. See CORONER.

Inquest of Office, an inquiry made by the king's officer, his sheriff, coroner, or escheator, *virtute officii*, or by writ sent to them for that purpose, or by commissioners specially appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels. See *Hubback on Succession*, p. 80; and ESCHEATS.

Inquilinus, the hirer of a house.—*Civil Law.*

Inquirendo, an authority given to some official person to institute an inquiry concerning the Crown's interests.

Inquiries. Under the Tribunals of Inquiry (Evidence) Act, 1921 (11 Geo. 5, c. 7), upon resolution by both Houses of Parliament, His Majesty or a Secretary of State may appoint a tribunal with all the powers of the High Court, or in Scotland the Court of Session, to inquire into a definite matter of urgent public importance under various statutes. Departmental inquiries may or must in certain circumstances be instituted, e.g., inquiries under the Factory, Local Government, Merchant Shipping (Wreck Inquiries), Housing, Town and Country Planning, Road Traffic and other Acts.

Inquiry, Court of, frequently appointed by the Army authorities to ascertain the propriety of resorting to ulterior proceedings against a person charged before it. The 4th section of the Army (Annual) Act, 1901 (1 Edw. 7, c. 2), allows the evidence (previously unsworn) to be given on oath. The person charged (if the report of the Court be against him) has no right to a court-martial, nor to redress from the Courts of Law.

Inquiry, Writ of. This is a writ addressed to the sheriff of the county in which the venue is laid, stating the proceedings in an action, and 'because it is unknown what damages the plaintiff has sustained,' commanding the sheriff that, by the oath of twelve men of his county, he diligently inquire into the same, and return the inquisition into Court. The writ is necessary after an interlocutory judgment, the defendant having let judgment go by default, to ascertain the *quantum* of damages.

By R. S. C. 1883, Ord. XIII., r. 5, it is provided that where the defendant fails to appear and the plaintiff's claim is for detention of goods and damages, or either of them, interlocutory judgment may be entered, and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be; see also Ord. XXXVI., r. 57. By Ord. XXXIII., r. 2, the Court or a judge may at any stage of the proceedings in a cause or matter direct any necessary inquiries or accounts to be made or taken. Inquiries may be made in district registries (Jud. Act, 1873, s. 66).

Inquisitio post mortem (inquest after death). This was an inquisition taken after the death of a tenant *in capite* (a class comprising at one time almost all the men of property in the kingdom) in which the death of the deceased tenant and the name and age of his heir were found by a jury and returned of record. As evidence of pedigrees these inquisitions were of the utmost value. See *Hubback on Succession*, p. 584.

Inquisition, inquiry, inquest; the finding of a tribunal charged to inquire. The three best known inquisitions are:—

1. A coroner's inquisition, which is (see Coroners Act, 1887, s. 4, sub-s. 3) a certificate of the verdict of the jury, 'setting forth, so far as such particulars have been proved to them, who the deceased was, and how, when, and where the deceased came by his death; and if he came by his death by murder or manslaughter, the persons, if any, whom the jury find to have been guilty of such murder or manslaughter, or of being accessories before the fact to such murder.' The inquisition must be signed by the jurors. A form is given in the Third Schedule of the Coroners Rules, 1927 (S. R. & O. 1927, No. 344/L. 13). See also CORONER.

2. Inquisition as to lunacy, which is an inquiry directed by the judge in lunacy, as to whether a person is of unsound mind and incapable of managing his affairs. It is held before a jury, if the person alleged to be of unsound mind demands a jury, unless the judge is satisfied by personal examination that he is not mentally competent to form and express a wish to that effect. See Lunacy Act, 1890, ss. 90–107. By s. 90, sub-s. 2, the jury may specially find that the person is incapable of managing himself, but capable of managing his affairs. And see PERSON OF UNSOUND MIND and *Mills' and Poyser's Lunacy Practice.*

3. Inquisition under the Lands Clauses Acts, which is the verdict and judgment, after an inquiry before a sheriff and jury, as to the amount of purchase-money or compensation due to a claimant under those Acts. See s. 50 of the Lands Clauses Act, 1845, which, however, uses the term 'verdict and judgment,' and not 'inquisition.'

Inquisitor, any officer, as a sheriff, coroner, etc., having power to inquire into certain matters.

In re (in the matter of). An expression used in intituling matters other than actions, in which there is not any plaintiff and defendant, especially in the Court of Bankruptcy.

In rem. Civil actions are divided into actions *in rem* and actions *in personam.* A judgment *in rem* is a judgment pronounced on the status of some particular subject-matter. Such are actions for the condemnation of a ship in the Court of Admiralty; suits for nullity of marriage, etc. See IN PERSONAM; ADMIRALTY; ss. 22 & 23 Judic. Act, 1925.

Inrolment [fr. *irrotulatio,* Lat.]. See ENROLMENT.

Insanity. See PERSON OF UNSOUND MIND.

Inscriptiones, written instruments by which anything was granted.

Insetenta, an inditch, or grave in a ditch.

Insidiatores varium, way-layers.

Insignia, ensigns or arms.

Insillarius, an evil counsellor.

Insilium, evil advice or counsel.

In simili materiâ, dealing with the same or a kindred subject-matter.

Insimul computasset (he accounted together), a writ of action of account which lay for things uncertain. Obsolete.

Insimul tenuit, a species of the abolished writ of formedon, brought against a stranger by a co-parcener on the ancestor's possession.

Insinuatio, registration amongst the public records.—*Civ. Law.*

In solido, in the whole, applied to a joint contract.

Insolvency, the state of one who has not property sufficient for the full payment of his debts. An insolvent, as distinguished from a bankrupt, was an insolvent who was not a trader: for until the passing of the Bankruptcy Act, 1861, only a trader could be made bankrupt in the sense of obtaining an absolute discharge from his debts, while the future estate of an insolvent remained liable for his debts even after his discharge. The Acts from time to time in operation for the relief of insolvent debtors were 53 Geo. 3, c. 102; 1 & 2 Vict. c. 110, ss. 23–120, 5 & 6 Vict. c. 122; 7 & 8 Vict. c. 96; 8 & 9 Vict. c. 127; 10 & 11 Vict. c. 102; and the Bankruptcy Act, 1861 (24 & 25 Vict. c. 134), s. 230. By the Bankruptcy Repeal and Insolvent Court Act, 1869 (32 & 33 Vict. c. 83), all the enactments on this subject theretofore existing were repealed, and provision was made for winding up and terminating all matters pending under the Acts for the relief of insolvent debtors. For administration of insolvent estates of a deceased person by the Chancery Division, see Administration of Estates Act, 1925, s. 34 and 1st Sched. And under the Law Reform (Married Women and Tortfeasors) Act, 1935, a woman may be made bankrupt, even though she is not carrying on a trade except in respect of any contracts entered into, or debt or obligation incurred before 2nd August, 1935, if she was not then carrying on a trade (s. 125 of the Bankruptcy Act, 1914). See BANKRUPT.

In specie, in its own form and essence, not in the form of an equivalent: in coin, as distinguished from paper money.

Inspectator, a prosecutor or adversary.

Inspection, examination.

Trial by Inspection was resorted to when, for the greater expedition of a cause, some point or issue, being either the principal question, or one arising collaterally out of it, was decided by the judges of the Court upon the evidence of their own senses. Obsolete. See 3 *Bl. Com.*. 331. As to inspection by a judge or jury, see R. S. C., Order L.

Inspection of Written Documents. It was provided by the Evidence Act, 1851 (14 & 15 Vict. c. 99), s. 6, that in any action or other proceeding the Court or a judge might, on application by either party, compel the opposite party to allow the party making

the application to inspect all documents in the custody or under the control of such opposite party relating to such action or other legal proceeding, and if necessary to take examined copies of the same, or to procure the same to be duly stamped. Even prior to this Act the Court would, in certain cases, in the exercise of its equitable jurisdiction, order inspection of specific documents.

By R. S. C. 1883, Ord. XXXI., rr. 15–18, either party is *primâ facie* as a matter of right entitled to inspect (after notice) documents referred to in the pleadings or affidavits of the other, and may, by leave of a judge, and upon an affidavit, inspect other documents in possession of the other; and by Ord. L., r. 3, any party to a cause may, by order of the Court or a judge, inspect any property or thing which is the subject of the cause. By rr. 4 and 5 of the same Order, both a judge and a jury (see also VIEW) have powers of inspection of such property or things. There are similar provisions in the County Court Rules.

Inspector, an overseer, examiner and reporter. There are government and local authority inspectors of factories, mines, shops, weights and measures, ancient monuments, schools, explosives, inebriate reformatories, railways, food, housing and sanitation, Health and Unemployment Insurance, to name a few only of the extensive powers of investigation and inspection by government and other public bodies. As to Board of Trade inspectors to investigate the affairs of a company, see Companies Act, 1929, s. 135; and inspectors appointed by the company itself by special resolution (s. 137, *ibid.*).

Inspector-General of the Forces. An officer originally appointed in 1904, whose duty it is to inspect the Army and report upon its efficiency to the Army Council. The office is now in abeyance.

Inspectorship, Deed of, an instrument entered into between an insolvent debtor and his creditors, appointing one or more person or persons to inspect and oversee the winding up of such insolvent affairs on behalf of the creditors. See COMPOSITION; and the repealed Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), ss. 125, 127. Compare 'committee of inspection'; as to which, see Bankruptcy Rules, 1915, r. 294, and in companies (winding up by the Court), under the Companies Act, 1929, ss. 198–201, and, upon voluntary winding up, appointed by creditors, s. 240 (*ibid.*).

Inspeximus (we have inspected), the first word of an ancient charter, or royal grant. An exemplification of the enrolment of a charter or of letters-patent is so called.—*Co. Litt.* 225 *b.*

Installation, the ceremony of inducting or investing with any charge, office, or rank, as the placing of a bishop into his see, a dean or prebendary into his stall or seat, or a knight into his order.

Instalment, a portion of a debt. When a debt is divided into two or more parts, payable at different times, each part is called an instalment, and the debt is said to be payable by instalments. A provision making the balance of instalments payable on default in payment of one instalment is not a penalty, and there is no objection to it in point of law (*Wallingford* v. *Mutual Society*, (1880) 5 App. Cas. 685). Where, in a county court, judgment has been obtained for not more than 20*l.*, exclusive of costs, the Court may order payment by instalments.—County Courts Act, 1934, s. 96, replacing County Courts Act, 1888, s. 105, as amended by s. 18 (1) of the County Courts Act, 1919.

As to delivery by instalments of goods sold, see s. 31 of the Sale of Goods Act, 1893, by which, 'unless otherwise agreed, the buyer is not bound to accept delivery by instalments'; and see HIRE PURCHASE.

An instalment due according to the terms of an allotment of shares in a limited company is not a 'call' (*Croskey* v. *Bank of Wales*, (1863) 4 Giff. 314).

Instance Court of Admiralty. See ADMIRALTY.

Instanter, immediately; at once.

Trial *instanter* was had where a prisoner between attainder and execution pleaded that he was not the same who was attainted.

When a party is ordered to plead *instanter* he must plead the same day.

Instar dentium [Lat.] (like teeth). See INDENTURE.

In statu quo (in the condition in which it was). See STATUS QUO.

Instaurum, a stock of cattle.

In stipulationibus cum quæritur quid actum sit verba contra stipulatorem interpretanda sunt. *D.* 45, l. 38, *s.* 18. (When questions arise in the construction of agreements, words are to be construed against the person using them); thus the construction of the *stipulatio* is against the *stipulator*, and the construction of the *promissio* against the *promissor*.

Institor, a consignee or factor; one who superintends the business of a store or shop.

Institorial Power, the charge given to a

clerk to manage a shop or store.—1 *Bell's Com.* by *McLaren*, 506, 507.

Institute, a commentary, a treatise. In Scotland, a person to whom an estate is first given by destination or limitation.

Institutes of Lord Coke, four volumes by Lord Coke (more properly called Sir Edward Coke), published A.D. 1628, and very frequently edited. The first is an extensive comment upon a treatise on tenures compiled by Littleton, a judge of the Common Pleas, *temp.* Edward IV. This comment is a rich mine of valuable Common Law learning, collected and heaped together from the ancient reports and year-books, but greatly defective in method. It is usually cited by the name of *Co. Litt.*, or as 1 *Inst.* The second volume is a comment upon Magna Charta and other old Acts of Parliament, without systematic order; the third, a more methodical treatise of the pleas of the Crown; and the fourth, an account of the several species of courts, including the High Court of Parliament and of the House of Commons as well as the House of Lords under that title. These are cited as 2, 3, or 4 *Inst.*, without any author's name.

Institution, used in several senses: e.g. (1) Laws, rites, and ceremonies enjoined by authority, as permanent rules of conduct or of government. (2) A commitment of the cure of souls by the bishop to the incumbent, whereby the benefice becomes filled. The clerk kneels before the bishop or his deputy, who reads the words of the institution out of a written instrument, drawn for this purpose, with the episcopal seal appended, which the clerk holds in his hand during the ceremony. Notice, one month before institution, must be given by the bishop to the churchwardens of the name of the person whom he proposes to institute: Benefices Act, 1898 (61 & 62 Vict. c. 48), s. 2 (2). The clerk by institution (which may take place anywhere) becomes parson as to the spirituality, may celebrate Divine service, enter on the parsonage house and glebe, and take the profits of the benefice as from the death of his predecessor; though he cannot grant, or let, or claim a freehold in them, or bring an action for them till induction, which can take place only in the church to which the clerk is inducted. See INDUCTION. Institution being given to a clerk, a particular entry of it should be made in the register of the ordinary, not only that such a clerk received institution on such a day and year, but if the clerk were presented, at whose presentation, and whether in his own right or in another's, and if collated or presented by the Crown, then whether *jure pleno* or *per lapsum temporis*. Such entries should be carefully preserved, for the letters of institution may be destroyed or lost, and the patron's title may suffer from want of evidence upon whose presentation institution was given (*Mirehouse on Advow.*, p. 187). (3) A society for promoting any public object, as a charitable or benevolent institution, or literary and scientific institutions. (4) In the Civil Law, the appointment of a debtor as heir—i.e., to carry on the legal existence, the *persona* of the testator.

By the Factory and Workshop Act, 1907 (7 Edw. 7, c. 39), an institution (s. 5) carried on for charitable or reformatory purposes where 'any manual labour is exercised in or incidentally to the making, altering, repairing, ornamenting, finishing, washing, cleaning, or adapting for sale, of articles not intended for the use of the institution,' is within and has to conform to the provisions of the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), unless it carries on the work under a scheme approved by the Secretary of State.

Institutiones. It was the object of Justinian to comprise in his Code and Digest, or Pandects, a complete body of law. But these works were not adapted to the purposes of elementary instruction, and the writings of the ancient jurists were no longer allowed to have any authority, except so far as they had been incorporated in the digest. —*Smith's Dict. of Antiq.* It was therefore necessary to prepare an elementary treatise, and the Institutes were published a month before the Pandects, A.D. 533, and designed as an elementary introduction to legal study (*legum cunabula*). The work was divided into four books, subdivided into titles.

The Institutes are the elements of the Roman Law, and were composed at the command of the Emperor Justinian, by Trebonian, Dorotheus, and Theophilus, who took them from the writings of the ancient lawyers, and chiefly from those of Gaius, especially from his Institutes and his books called *Aureorum* (i.e., of important matters).

The Institutes are divided into four books, each book into several titles, and each title into several parts—the first of which is called *Principium*, and those which follow, paragraphs. The first book of the Institutes has twenty-six titles, the second twenty-five, the third thirty, and the fourth eighteen; in all, ninety-nine titles. First, it is to be observed that the division is triple—Persons,

Things, and Actions—under which the subject-matter of the four books of the Institutes is comprised. The first book treats of the rights of Persons; the second, third, and five first titles of the fourth, of Things; and Actions are the subjects treated of from the sixth title of the fourth book to the end. The first book treats of Persons, but it is from Title III. only; for the first two, which are by way of introduction, explain Justice, Law, and Right; the meaning of the Right or State of Persons follows in two divisions, which complete the remaining part of the first book.

According to the chief Division of Persons treated of from Titles III. to VIII. of the first book, men are either Free or Slaves. The condition of all slaves is the same, but it is not so with free men, of whom some are free by birth, others by emancipation.

The second Division of Persons begins at Title VIII. of the first book, and is explained in the following titles of that book. It is of independent persons, and of such as are under the power of another. The power of masters over their slaves, and of fathers over their children, is treated of; after which is shown the manner of acquiring paternal power—viz., by marriage, legitimation, and adoption, and how that power may be lost.

Title XIII. to the end of the first book treats of Pupils, or such as have Tutors; of Minors, or such as have Curators appointed to them; and lastly, of persons who are of age and masters of their own actions.

In Title XX. matters relating to Curators, and in the last three of this book, three things, common to Tutors and Curators, are treated of. These are: the security they are obliged to give to indemnify Pupils and Minors; the lawful causes exempting persons from being Tutors or Curators, and those for which they may be deprived of their offices.

Things are treated of in Title I. of the second book to Title VI. of the fourth, under three heads—their divisions, the way of acquiring them, and the means by which they become due to us. The divisions are principally two; by the first, things are divided into those which belong to individuals and those which do not; by the second, they are corporeal or incorporeal. The property in things is acquired either by Natural Law or by Civil Law.

Title II. explains the second Division of Things, which are either corporeal or incorporeal: and here real or personal services, as being incorporeal things, are treated of. The modes of acquisition introduced by the Civil Law follow; and the property of Things, according to the Civil Law, acquired either by particular or universal title.

Title VII. treats of Usucaption or just Usurpation and the conditions which it requires, and Title VII. of Donations; Titles VIII. and IX. of those who have the power of alienation, and those through whom property may be acquired.

Title III. shows how a Testament made in the form prescribed by law, and not invalidated, may be carried into execution, which is done by the heir accepting the succession.

Fiduciary Bequests are treated of in Titles XXIII. and XXIV.

Testamentary Successions, which take place before others, are explained in the last fifteen titles of the second book.

Title I. of the third book, and those that follow, treat of Legal Successions, admissible only in default of Testamentary.

Title V. treats of the Succession to Intestates, to which the *cognati*, or female side, were admitted by the Prætorian equity, according to the degree of cognation.

The Title, in conclusion, treats of those who were excluded from this Prætorian succession, because allied to the deceased only by a servile relation.

The succession of Freemen is the subject of Title VII., and the assignment of Freemen that of Title VIII.

After disposing of the question of Succession, which by the Civil Law is the first mode of acquiring property by universal title, the other five modes which followed, by the Prætorian succession, are called *bonorum possessio;* acquisition by abrogation; the adjudication of the goods of a deceased person, in order to make the enfranchisement of slaves effectual; and the two abrogated successions, *per bonorum venditionem* and *ex Senatus-Consulto Claudiano*, Titles IX.–XII.

We then come to the last point relating to Things—viz., Obligations—being the means whereby things accrue to us. The principal division of them is into two kinds—*Civil*, or those constituted by the laws, or at least recognized by the Civil Law, and *Prætorian*, or those which the Prætor has established by his own authority, also called honorary. There is a further division of obligations into four kinds, for they arise: (1) *ex contractu;* (2) *quasi ex contractu;* (3) *ex maleficio;* (4) *quasi ex maleficio*.—Title XIII., 1 and 2. First it is shown what an Obligation is, and the causes producing a mixed Obligation—

that is, partly natural and partly civil, as a contract, quasi-contract, crime or offence.

Contracts made by words are called Stipulations, the general principles of which are first explained, in order to arrive at the chief divisions of that kind of contract. The first division is of the Stipulation made between the person who demands and him that promises, and of that made between several who stipulate or promise together.

The second is of the Stipulation made by free persons or slaves.

The third is of Stipulations that are called judicial, Prætorian, common, or conventional.

The fourth is of Stipulations called equitable (*utiles*), or good in law, and of Stipulations which are *inutiles*.

The fifth is of Principal and Accessory Stipulations, called sureties or cautions.

Title XXII. treats of Written Contracts. The five following titles explain contracts made by the sole consent of the contracting persons, which are the contracts of purchase, of hire, of partnership, and of mandate.

Title XXVIII. treats of Quasi-Contracts; the next shows how Obligations are to be acquired; and the last, in what manner they may be extinguished. Having spoken of Obligations which arise from contracts or quasi-contracts, the first five titles of the fourth book treat of obligations arising out of faults and quasi-faults—*delicta* or *quasi delicta*. The rest of the book, from Title VI. to Title XVI., is devoted to the treatment of Actions. It begins with the definition of an Action, which is followed by several divisions explained in Title VI., according to the chief and principal of which Actions are either real, personal, or mixed. The second is of Actions derived from the Civil Law, and such as have their foundations in Prætorian equity. The third is of Actions by which the plaintiff seeks to recover a thing belonging or due to him, and of those by which the punishment of the offender only is aimed at, and of such actions by which both are intended. The fourth division is of Actions by which the plaintiff sued for the single, double, treble, or quadruple value of the thing he would recover. The fifth is of Actions of good faith, strict law, and arbitrary.

The sixth is of Actions in which the total of what is due is sued for, and in which the defendant is either not sued for the whole, or in consequence of which he is condemned to pay only so much as his circumstances will allow.

After these divisions of actions are explained, Title VII. treats of certain Prætorian Actions which are liable to, and which proceed from, contracts made by slaves or children under power, or else by persons to whom they have committed the management of their affairs.

Title VIII. speaks of Actions that may be brought against a master for an error committed by his slave.

Title IX. of Actions to which the owner is liable for the hurt or damage done by a beast.

Title X. directs what persons are to be employed in carrying on lawsuits.

Title XI. treats of the security required of the parties to a suit, or such as appear for them.

Title XII. sets forth the nature of temporary or perpetual Actions, and what Actions the law affords to or against heirs; which those are which lie in their favour and not against them; and lastly, those which are neither allowed for nor against them.

Title XIII. treats of Exceptions, and Title XIV. of Replications.

Title XV. of Injunctions, or Actions to put the party injured into possession.

Title XVI. declares the Penalty against such as commence vexatious suits.

Title XVII. prescribes rules to be observed by judges in the several suits brought before them.

And Title XVIII., the last, shows what were the Roman public prosecutions, which every one had free liberty to institute, and of which the penalties were established by the laws called *Judiciorum Publicorum Leges*.

The Institutes are quoted in the same manner as the Code and Pandects, with the letter *I.* or *Inst.*: thus, § *si adversus* 12, *I. De Nuptiis*, is nothing more than the twelfth paragraph of the Title *De Nuptiis*, which, on reference to the index, will be found to be the tenth of the first book. This is usually now cited *I.* 1, 10, 12.—1 *Colqu. R. C. L.* s. 61.

Instruct, to convey information—as a client to a solicitor, or as a solicitor to a counsel; to authorize one to appear as advocate.

Instrument [*instrumentum*, Lat., fr. *instruo*, to prepare or provide], a formal legal writing—e.g., a record, charter, deed or transfer, or agreement. By s. 205 (1) (viii.) of the Law of Property Act, 1925, 'Instrument' (for the purposes of the Act) 'does not include a Statute, unless the Statute creates a Settlement.' See also Settled Land Act, 1925, s. 117; see also TRUST INSTRUMENT; VESTING INSTRUMENT. A telegram and an envelope with a falsified

postmark have been held to be ' instruments ' within the meaning of the Forgery Act, 1861, s. 38, now replaced by s. 7, Forgery Act, 1913 (*R.* v. *Riley* 1896, 1 Q. B. 309; *R.* v. *House*, 28 T. L. R. 186); also an engine.

Instrumenta, writings not under seal.

In subsidium (in aid).

Insucken multures, a quantity of corn paid by those who are thirled to a mill. See THIRLAGE.

Insufficiency, an answer in Chancery was said to be insufficient when it did not specially reply to the specific charges in the bill.

If a plaintiff conceived an answer to be insufficient, he might take exception to it in writing, stating the parts of the bill which he alleged were not answered, and praying that the defendant might in such respect file a further and full answer to the bill. Scandal and impertinence in an answer must have been disposed of before its sufficiency could be considered. See INTERROGATORIES; and *Dan. Ch. Pr.*

Insuper, debiting or charging a person in an account.—*Exchequer term.* See an example of its use in Taxes Management Act, 1880 (43 & 44 Vict. c. 19), s. 112.

Insurance, the act of providing against a possible loss, by entering into a contract with one who is willing to give assurance, that is, to bind himself to make good such loss should it occur. In this contract, the chances of benefit are equal to the insured and the insurer. The first actually pays a certain sum, and the latter undertakes to pay a larger, if an accident should happen. The one renders his property secure; the other receives money with the probability that it is clear gain. The instrument by which the contract is made is called a policy; the stipulated consideration, a premium. As to what is known as a coupon policy, i.e., a coupon cut out of a diary, etc., see *General Accident, etc., Assce. Corpn.* v. *Robertson*, 1909, A. C. 404.

Insurable Interest must be possessed by the person taking out a policy; he must be so circumstanced as to have benefit from the existence of the person or thing insured, and some prejudice from its destruction (*Lucena* v. *Crauford* (1806), 3 Bos. & P. 75; 2 Bos. & P. N. R. 269); a mere hope of profit is not insurable (*ibid.*). See also the Assurance Companies (Gambling Policies) Act, 1909, as to marine policies. The interest of the insured must exist (*a*) *marine insurance*, at the time of loss; (*b*) *life*, at time of effecting the insurance; (*c*) *fire*, throughout the period insured.

Insurances generally provide either against risks at *sea*, or losses by *fire*, *death*, or *accident*; but losses by burglary or by default of clerks, and, in fact, almost all kinds of risk, chance and liability, are now commonly insured against.

Insurances are effected sometimes by companies or societies, and sometimes by individuals, the risk being in either case diffused amongst a number of persons. Companies formed for carrying on this business have generally a large subscribed but uncalled capital, so as to enable them to raise large sums to make good extraordinary losses.

Marine Insurance.—The practice of marine insurance is older than insurance against fire and upon lives, and the whole of the law is now codified in the Marine Insurance Act, 1906 (6 Edw. 7, c. 41). The Act renders void any policy of marine insurance in which the insured has not an ' insurable interest,' or expectation of such interest, as being in the nature of gaming or wagering. The Marine Insurance Act, 1745, which it repeals, made provision much to the same effect, and the Life Assurance Act, 1774 (14 Geo. 3, c. 48), has similar enactments as to assurances on lives ' or on any other event or events whatsoever '; see these statutes and the cases on them in *Chitty's Statutes*, tits. ' *Insurance (Life and Accident)* ' and ' *Insurance (Sea).*' An attempt is also made still further to restrain gambling by the Marine Insurance (Gambling Policies) Act, 1908 (9 Edw. 7, c. 12), under which ' p. p. i.' (policy proof of interest) policies are prohibited. There is an *ad valorem* duty on policies of sea insurance.

While all fire and life insurances are made at the risk of companies, which include within themselves the requisites of security, wealth, and numbers, a large proportion of marine insurances is made at the risk of individuals called underwriters.

The underwriters meet in a subscription room at Lloyd's, at the back of the Royal Exchange. The joint affairs of the subscribers to these rooms are managed by a committee chosen by the subscribers. Agents (who are commonly styled Lloyd's agents) are appointed in all the principal ports of the world, who forward regularly to Lloyd's accounts of the departures of ships from, and arrivals at, such ports, as well as of losses and other casualties; and, in general, all such information as may be supposed of importance towards guiding the judgments of the underwriters. These accounts are regularly filed, and are accessible to all the

subscribers. The principal arrivals and losses are besides posted in two books, placed in two conspicuous parts of the room; and also in another book, which is placed in an adjoining room, for the use of the public at large.

The rooms are open from 10 a.m. till 5 p.m.; but the most considerable part of the business is transacted between one and four.

Merchants and shipowners who manage their own insurance business procure blank policies, which they fill up to meet the case, and submit them to underwriters, by whom they are subscribed or rejected. Each policy is handed about in this way until the amount required is complete. Merchants and shipowners also give orders to insurance brokers, who undertake and are responsible for the business of insuring; and to them likewise are transmitted the orders for insurance from the outports and manufacturing towns.

The common form of policy is 'Lloyd's Policy,' and it has been twice scheduled to statutes, viz., to 35 Geo. 3, c. 63, and to 30 Vict. c. 23, both of them Revenue Acts. The policy was settled in its present form in 1779, but most of its provisions are of much earlier date. Many of the insurance companies have slightly altered some of its provisions, but it is recognized as the typical British policy. Every line, and almost every word of it, has been judicially construed, and has now acquired a conventional meaning.—*Chalmers and Owen on Marine Insurance.*

The policy is very badly drawn, and has more than once been described in words of well-merited judicial abuse: Buller, J., e.g., speaking of it in *Brough* v. *Whitmore*, (1791) 4 T. R. 210, 2 R. R. at p. 364, as 'always described in Courts of Law as an absurd and incoherent instrument.'

'Lloyd's Policy' is set out in the schedule to the Act of 1906, which also gives Rules for its construction.

Besides individual underwriters and companies, there are associations formed by shipowners, who agree, each entering his ships for a certain amount, to divide the losses sustained by any of them. These are institutions of long standing, but since the alteration of the law in 1824, appear to be on the decline. The formation originated in a twofold reason: 1st, that the underwriters charged premiums more than commensurate with the risk; and, 2ndly, that they did not afford adequate protection.

The losses against which a merchant or shipowner is not protected by insurance in this country in usual form are the following:—

(1) Acts of our own Government. (2) Breaches of the Revenue laws. (3) Breaches of the law of nations. (4) Consequences of deviation. (5) All losses arising from unseaworthiness. Unseaworthiness may be caused in various ways—such as want of repair, want of stores, want of provisions, want of nautical instruments, insufficiency of hands to navigate the vessel, or incompetency of the master. (6) All loss arising from unusual protraction of the voyage. (7) All loss to which the shipowner is liable when his vessel does damage to others. (8) Average clause.

Average is a name applied to a certain description of loss, to which the merchant and shipowner are liable. There are two kinds of average—general and particular.

(*a*) General average comprehends all loss arising out of a voluntary sacrifice of a part of either vessel or cargo, made by the captain for the benefit of the whole. If a captain throw part of his cargo overboard, cut loose an anchor and cable, or cut away his masts, the loss is distributed over the value of the ship and cargo as general average.

(*b*) Particular average comprehends all loss occasioned to ship, freight, and cargo, which has not been wholly or partly sacrificed for the common safety or which does not otherwise come under the heading of general average or total loss.

Losses where the goods are saved, but in such a state as to be unfit to forward to their destination, and where the ship is rendered unfit to repair, are called 'partial or salvage loss.' The leading distinction between particular average and salvage loss is, that in the first, the property insured remains the property of the assured, the damage sustained being made good by the insurer; in the second, the property is abandoned to the insurer, and the value insured claimed from him, he retaining the property so abandoned. See CONSTRUCTIVE TOTAL LOSS.

All the elements of general average may be classed under four heads: (1) Sacrifice of part of the ship and stores. (2) Sacrifice of part of the cargo and freight. (3) Remuneration of service required for general preservation to be distinguished from the *sue and labour clause* (*q.v.*) in Marine Insurance policies, which does not cover general average contributions or salvage, see Marine Insurance Act, 1906, s. 78 (2). (4) Expense of raising money to replace what has been

sacrificed, and to remunerate services. See *Arnould on Marine Insurance.*

Fire Insurance.—Insurance against fire is a contract of indemnity (*Farrell* v. *Tibbits*, (1880) 5 Q. B. D. 560), by which the insurer, in consideration of a certain premium received by him in a gross sum or by annual payments, undertakes to indemnify the assured against all loss or damage to houses or other buildings, stock, goods, and merchandise, by fire during a specified period.

Insurances against fire are hardly ever made by individuals, but almost always by corporations or joint-stock companies, of which there are several in all the considerable towns throughout the Empire.

The conditions on which the different offices insure are contained in the proposals printed on the back of the policies, and it is in most instances expressly conditioned that they undertake to pay the loss, not exceeding the sum insured, 'according to the exact tenor of their printed proposals.'

Sometimes no one office will insure to the amount required; and in such a case it is done by different offices. To prevent frauds by insuring the full value in various offices, there is, in the proposals issued, an article requiring notice of any other insurance upon the same houses or goods, that the same may be specified and allowed by indorsement, so that each office may bear its proportion of loss; and unless such notice is given, the insurance is void.

The risk commences in general from the signing of the policy, unless there be some other time specified. Policies of insurance may be annual, or for a term of years at an annual premium; and it is usual for the office, by way of indulgence, to allow a period of fifteen days or longer after the expiration of each year for the payment of the premium for the next year; and provided the premium be paid within that time, the insured is considered as within the protection of the office. As to the rights as between vendor and purchaser of land to the benefit of a policy effected by the vendor before alienation, see Law of Property Act, 1925, s. 47, &c. See DAYS OF GRACE.

Insurances are generally divided into common, hazardous, and doubly hazardous.

(α) *Common* insurances.—(1) Buildings covered with slates, etc., and built with brick or stone, etc., and wherein no hazardous trade or manufacture is carried on, or hazardous goods deposited. (2) Goods in buildings as above described—such as household goods, plate, etc. The premium upon these, with certain exceptions, is usually 1*s.* 6*d.* per cent. per annum.

(β) *Hazardous* insurances.—(1) Buildings of timber or plaster, or not wholly separated by partition-walls of brick or stone, or not covered with slates, etc., and thatched barns having no chimney, but in which hazardous goods are deposited, etc. (2) Ships and craft, with their contents (lime-barges, with their contents, alone excepted).

(γ) *Doubly Hazardous* insurances. — (1) Thatched buildings having chimneys, etc., and hazardous buildings in which hazardous goods are deposited, etc. (2) All hazardous goods deposited in hazardous buildings and in thatched buildings having no chimney nor adjoining to any building having a chimney.

The stamp-duty of 1*s.* 6*d.* formerly payable in respect of insurances against fire has been abolished by 32 & 33 Vict. c. 121, s. 12.

As to relief against forfeiture for not insuring against fire according to covenants in a lease, see Law of Property Act, 1925, s. 146, and FORFEITURE. For insurances under mortgages, see that Act, ss. 101, 108.

Life Insurance. A risk in respect of the life of a human being is very ordinarily called Life *Assurance* in distinction to other kinds of insurance; but the distinction has no legal significance, and is by no means strictly adhered to. As to the necessity for an 'insurable interest,' see the Life Assurance Act, 1774, mentioned above. There are three classes of life insurance companies. The first class consists of corporations or joint-stock companies, who undertake to pay *fixed* sums upon the death of individuals insuring with them; the profits made by such companies being wholly divided among the proprietors. The second class are also corporations, or joint-stock companies, with proprietary bodies; but instead of undertaking to pay specified sums upon the death of the assured, they allow the latter to participate to a certain extent in the profits of the business. The mode is not the same in all; in some the principle on which the allotment is made is not disclosed. The third species of company is that which is formed on the basis of mutual insurance. In this there is no proprietary body distinct from the assured; the latter share among themselves the whole profits of the concern, after deducting the expenses of management.

Accident Insurance.—This is a contract under which the insurer in consideration of an annual premium undertakes to pay the

assured a certain sum per week during such time as he is incapacited by an accident, or a capital sum in the event of the accident proving fatal, the terms depending on the wording of the particular policy. As to the meaning of 'accident,' see *Re Scarr*, 1905, 1 K. B. 387 ; *Macgillivray on Insurance Law*.

The Assurance Companies Act, 1908 (9 Edw. 7, c. 49), repeals earlier Acts and consolidates and amends the law as to all persons or bodies who carry on business of all or any of the following classes :—

(*a*) Life assurance business ; that is to say, the issue of, or the undertaking of liability under, policies of assurance upon human life, or the granting of annuities upon human life ;

(*b*) Fire insurance business ; that is to say, the issue of, or the undertaking of liability under, policies of insurance against loss by or incidental to fire ;

(*c*) Accident insurance business ; that is to say, the issue of, or the undertaking of liability under, policies of insurance upon the happening of personal accidents, whether fatal or not, disease, or sickness, or any class of personal accidents, disease, or sickness ;

(*d*) Employers' liability insurance business ; that is to say, the issue of, or the undertaking of liability under, policies insuring employers against liability to pay compensation or damages to workmen in their employment ;

(*e*) Bond investment business ; that is to say, the business of issuing bonds or endowment certificates by which the company, in return for subscriptions payable at periodical intervals of two months or less, contract to pay the bond-holder a sum at a future date, and not being life assurance business as hereinbefore defined.

and, under the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 42 :—

(*f*) Motor vehicle insurance business, that is to say, the business of effecting contracts of insurance against loss of, or damage to, or arising on and of or in connection with the use of motor vehicles, including third party risks (as amended as to third party risks by the R. T. Act, 1934 (24 & 25 Geo. 5, c. 50), ss. 10—17.

The most important provision perhaps is (s. 2) the requirement of a deposit of 20,000*l*. in respect of each class of business, and see the Road Traffic Act, 1930, ss. 42 and 43, as to third party and motor vehicles insurance with a deposit of 15,000*l*. This deposit (under the Assurance Companies Act, 1909, as amended by the Road Traffic Act, 1930, s. 42) is, upon a winding-up, not earmarked for risks but available for the general creditors of the company (*South-East Lancashire Insurance Co.*, 1935, Ch. 225). Other provisions require the separation (s. 3) of funds, and regulate the keeping of accounts and preparing of balance sheets (s. 4) as well as the audit of such accounts (s. 9).

Schedules to the Act give the forms applicable to the various classes of businesses. The Industrial Assurance Act, 1923, as amended by the Industrial Assurance Acts, 1926 and 1929 (14 & 15 Geo. 5, c. 11 and 19 & 20 Geo. 5, c. 28), applies the Act of 1909 to Industrial Assurance Companies with certain modifications. The Acts of 1926 and 1929 consolidate and amend the law relating to industrial assurance. See that title and the Acts.

Compulsory Insurance.—Motor vehicles must be insured against third party risks : see Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 35. See *Monk* v. *Courbey*, 1935, 1 K. B. 75 (owner permitting passenger to drive so that car was uninsured, liable in damages for breach of statutory duty).

The Third Parties (Rights against Insurers) Act, 1930 (20 & 21 Geo. 5, c. 25), gives third parties right to direct recourse against the insurers where the insured has insured against liabilities to third parties and the insured has become bankrupt or, if a company, is being wound up, or in the hands of a receiver or debenture holders.

By the Married Women's Property Act, 1882, s. 11, where a married man or woman insures his or her life expressly for the benefit of his or her wife, husband, or children, the policy moneys are not subject to his or her debts, unless an intent to defraud creditors be proved. A husband has an insurable interest in the life of his wife (*Griffiths* v. *Flemming*, 1909, 1 K. B. 805). Money paid as premiums and obtained by misrepresentation of a company's agents can be recovered (*Refuge Assurance Co.* v. *Kettlewell*, 1909, A. C. 243). Consult *Porter*, *Bunyon* or *Macgillivray on Insurance*. And see NATIONAL INSURANCE.

Insured. The person assured against loss.

Insurer. The person assuring against loss.

Intakers, receivers of stolen goods.

Intendent, a person who has the charge, direction, and management of some office or department.

Intendment, the true meaning.

Intentio, a count.—*Bract.*

Intention. See ACTUS NON FACIT REUM ; MALICE.

Intentione, a writ that lay against him who entered into lands after the death of a tenant in dower or for life, etc., and held out to him in reversion or remainder.—*Fitz. N. B.* 203.

Inter alia (amongst other things).

Inter canem et lupum (between the dog and the wolf), twilight ; called also mock

shadow, daylight's gate, and betwixt hawk and buzzard.

Intercedere, to become bound for another's debt.—*Civ. Law.*

Intercommoning, where the commons of two manors lie together, and the inhabitants of both have time out of mind pastured their cattle promiscuously in each. See COMMON.

Interdict, Interdiction, an ecclesiastical censure prohibiting the administration of the offices of religion, either to particular persons or in particular places, or both, but usually the latter; see *Hall. Mid. Ages*, ch. vii., pt. i. This severe censure has been long disused. In the Civil Law interdicts were certain formulæ by which the process ordered or forbade something to be done; they were chiefly employed in disputes as to possession, or *quasi*-possession, and were nearly equivalent to our writ of injunction. For a division of them, see *Sand. Just.* Also, in Scots Law, an injunction.

Interdiction of Fire and Water [*interdictio ignis et aquæ*, Lat.], banishment by an order that no man should supply the person banished with fire or water, two of the necessaries of life.

Interesse termini, an executory interest, being a right of entry which a lessee acquired in land by virtue of a demise. It could not, before entry, be enlarged by a release from the lessor (except the term be created by an assurance under the Statute of Uses, which does not require an entry), because the lessee had no actual estate; yet such a release would extinguish the rent and also the *interesse termini*. The lessee could assign this interest, but it did not merge in the freehold subsequently acquired. A person having a mere *interesse termini* had no estate, could not bring an action of trespass, or for damages, or on a covenant for quiet enjoyment; see *Wallis* v. *Hands*, 1893, 2 Ch. 75, and cases there cited by Chitty, J.

The doctrine of *interesse termini* has been abolished by the L. P. Act, s. 149, which provides that, as from the commencement of the Act (1st January, 1926), all terms of years absolute shall (whether the interest is created before or after such commencement) be capable of taking effect at law or in equity, according to the estate, interest or powers of the grantor, from the date fixed for the commencement of the term, without actual entry.

Interest. 1. Money paid at a fixed rate per cent. for the loan or use of some other sum, called the principal. It is distinguished into simple and compound. (*a*) Simple interest is that which is paid for the principal or sum lent, at a certain rate or allowance made by law, or agreement of parties. (*b*) Compound interest is when the arrears of interest of one year are added to the principal and the interest for the following year is calculated on that accumulation.

By the Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), s. 3 (1): 'In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given, interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.

'Provided that nothing in this section—

'(*a*) shall authorize the giving of interest upon interest; or

'(*b*) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

'(*c*) shall affect the damages recoverable for the dishonour of a bill of exchange.'

2. Sects. 28 and 29 of the Civil Procedure Act, 1933, shall cease to have effect. For the law on these repealed ss. 28 and 29, see *L. C. & D. Ry. Co.* v. *S. E. Ry. Co.*, 1892, 1 C. H., p. 146; *Re Edwards*, (1891) 61 L. J. Ch. 22; and *London, Chatham & Dover Rail Co.* v. *South Eastern Rail. Co.*, 1893, A. C. 429.

Judgments and, under the Arbitration Act, 1934 (24 & 25 Geo. 5, c. 14), s. 11, sums due under arbitrators' awards carry interest at four per cent.: (1 & 2 Vict. c. 110), s. 17.

By the Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37), s. 63 (3), (1), the taxing officer may allow interest on moneys disbursed by a solicitor for his client, and on moneys of the client in the hands of the solicitor and improperly retained by him. And see r. 7 of the G. O. under the Solicitors Remuneration Act, 1881 (44 & 45 Vict. c. 44).

See also MORTGAGE; PAWNBROKER; USURY.

3. Interest is vulgarly taken for a terme or chattel real and more particularly for a future tearme or, in pleading, *interesse termini*. *Ex vi termini*, it extendeth to estates, rights and titles that a man hath of, in, to or out of lands.—1 *Inst.* 345 *b*.

4. Equitable interests, all estates, interests, and charges in or over land or in the proceeds of sale thereof *not being legal estates*.

An equitable interest 'capable of subsisting as a legal estate' means such as could validly subsist or be created as a legal estate under the Law of Property Act, 1925; see s. 205 (*x*), *ibid.*

4. Such a personal advantage derivable from his judgment as disqualifies a judge from hearing the cause by virtue of the rule: '*Nemo debet judex esse in causâ sua propria,*' as where the judge is a shareholder in a company which is plaintiff or defendant in an action; thus, in *Dimes* v. *Grand Junction Canal Co.*, (1852) 3 H. L. C. 759, in which Lord Chancellor Cottenham, a shareholder in the defendant company, had given judgment in its favour, the judgment was on that account set aside by the House of Lords.

See also *Reg.* v. *London County Council*, 1892, 1 Q. B. 190; and other cases in *Mews's Digest*, tit. '*Public Officer.*'

The right to take objection to hearing by a judge on the ground of interest is often waived by counsel on the judge announcing his interest; see, e.g., *Law Times* newspaper of June 30, 1906, at p. 222.

The Companies, the Railways (see *Wakefield Local Board* v. *West Riding and Grimsby Ry. Co.*, (1865) L. R. 1 Q. B. 84), and the Lands Clauses Acts, by their definition of 'Justices,' express the implied disqualification by interest; so, with an extension and an exception, does s. 40 of the Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24) (see *A.-G.* v. *Cozens*, (1934) 50 T. L. R. 320); and so, with a positive injunction upon the Railway Commissioners to sell railway stock, etc., does s. 5 of the Regulation of Railways Act, 1873; but the Jurisdiction in Rating Act, 1877 (40 & 41 Vict. c. 11), and the Public Health Act, 1936, s. 304, remove the disqualification from judges of the High Court or Court of Appeal.

It is also provided by many statutes (see, e.g., the Municipal Corporations Act, 1882, s. 12, as extended by Local Government Act, 1894. See now Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 76, that members of local authorities shall be disqualified from voting, etc., at meetings if they be interested in any contract which is the subject for consideration. See BIAS.

Interest reipublicæ ut sit finis litium. *Co. Litt.* 303.—(It concerns the state that there be an end of lawsuits.) See LIMITATION, and *Brown* v. *Dean*, 1910, A. C. at p. 374, per Lord Loreburn, L.C.

Interest Suit. An action in the Probate Division of the High Court of Justice, in which the question in dispute is as to which party is entitled to a grant of letters of administration of the estate of a deceased person.

Interest upon Interest, compound interest.

Interested Witness, a witness is not excluded from giving evidence by reason of his interest in the matter in question.—6 & 7 Vict. c. 85, s. 1.

Interim Order. One made in the meantime, and until something is done.

Interlineation, the insertion of any matter in a written instrument after it is engrossed or executed. A deed may be avoided by interlineation, unless a memorandum be made thereof at the time of the execution or attestation. If there be any interlineation or erasure in the *jurat* of an affidavit, the affidavit cannot be read, unless authenticated by initials of officer, etc.—R. S. C. 1883, Ord. XXXVIII., r. 12.

Interlineations in a will after execution, except so far as not 'apparent' (as to which see *Ffinch* v. *Combe*, 1894, P. 191), must, by s. 21 of the Wills Act, 1837 (7 Wm. 4 & 1 Vict. c. 26), be executed as the Will itself (see WILL), but the signature of the testator and the subscriptions of the witnesses may be by initials. See INITIALS.

Interlocutor. In Scotland, the pronouncement of any order of a Court.

Interlocutory. An interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties—e.g., an order appointing a receiver or granting an injunction, and a motion for such an order is termed an interlocutory motion. For rules as to interlocutory orders in proceedings in the Supreme Court, see R. S. C., Ords. L., LII.

Interloper [fr. *inter*, Lat., between, and *loopen*, to run], a person who intercepts the trade of others.

Interment. See BURIAL.

International Copyright. See Copyright Act, 1911, s. 29; and COPYRIGHT.

International Law. I. Public Law: The law of nations, strictly so called, was in a great measure unknown to antiquity, and is the slow growth of modern times, under the combined influence of Christianity, intercourse, commerce and war.

II. Private Law (Conflict of Laws): It is plain that the laws of one country can have no intrinsic force, *proprio vigore*, except within the territorial limits and jurisdiction of that country. They can bind only its own subjects and others who are within its jurisdictional limits; and the

latter only while they remain therein. No other nation, or its subjects, is bound to yield the slightest obedience to those laws. Whatever extra-territorial force they are to have is the result not of any original power to extend them abroad, but of that respect which, from motives of public policy, other nations are disposed to yield to them, giving them effect, as the phrase is, *sub mutuæ vicissitudinis obtentu*, with a wise and liberal regard to common convenience and mutual benefits and necessities.

The first and most general maxim stated in international jurisprudence is that every nation possesses an exclusive sovereignty and jurisdiction in its own territory.

Another maxim is, that no state or nation can, by its laws, directly affect or bind property out of its own territory, or persons not resident therein, natural-born subjects or others. This is a natural consequence of the first proposition.

From these two maxims flows a third, that whatever force the laws of one country have in another depends solely upon the municipal law of the latter.

Huberus has laid down that all persons who are found within the limits of a government, whether their residence is permanent or temporary, are to be deemed subjects thereof: and that the rulers of every empire, from comity, admit that the laws of every people, in force within its own limits, ought to have the same force everywhere, so far as they do not prejudice the powers or rights of other governments, or of their citizens. One exception to this doctrine is that the courts of this country will not enforce the penal laws of another country. The King of Spain's fortune having been forfeited by the Spanish Government, any situate here remains his property (*Banco de Vizcaya* v. *Don Alfonso de Bourbon*, 151 L. T. 499). The same principle applies to the practice, procedure, and rules of evidence in a foreign court. Lib. 1, title 3, *De Conflictu Legum*, s. 2, p. 538. Consult *Story's Conflict of Laws*, cc. i. and ii.; *Wheaton's International Law*; *Westlake's Pr. Intern. Law*; *Dicey's Conflict of Laws*; and *Hall's International Law*.

Internuncio, or Internuncius, a messenger between two parties; also, the pope's representative in other countries.

Interpellation, a citation or summons.

Interpleader, the process whereby a person, who is or expects to be sued by two or more parties, claiming adversely to each other, for a debt or goods in his hands, but in which he himself has no interest, obtains relief by procuring such parties to try their rights between or amongst themselves only. Where the applicant is a sheriff, and claim is made to goods seized in execution by any other than the person against whom the execution issued, the process is called a 'sheriff's interpleader.' At one time an independent suit in Equity, called a 'bill of interpleader,' had to be brought against the two rival claimants by the person having no interest, but the Interpleader Act (1 & 2 Wm. 4, c. 58), instituted a more simple and expeditious procedure, whereby the Court in which such person was sued might call the rival claimants before it, and stay the action against such person; and this Act, with its amendments under the C. L. P. Act, 1860, was incorporated, but by reference only, into the Rules of Court of 1875. In 1883 the two Acts were thrown expressly into the form of rules by R. S. C. 1883, Ord. LVII., the Acts themselves being repealed by the Statute Law Revision and Civil Procedure Act of the same year.

Interpolate, to insert words in a complete document. See INTERLINEATION.

Interpolation, the act of interpolation; the words interpolated.

Interpretatio fienda est ut res magnis valeat quam pereat, that interpretation is to be made that the thing may rather stand than fall.

Interpretation. See CONSTRUCTION.

Interpretation Act, 1889 (52 & 53 Vict. c. 63). A most important statute, repealing and re-enacting Lord Brougham's Act of 1850 (13 Vict. c. 21), 'for shortening the language used in Acts of Parliament' and other similar Acts, and further shortening such language. By this Act, in Acts passed after 1850, words importing the masculine gender include females, words in the singular include the plural, and words in the plural include the singular: also, definitions are provided of 'month,' 'land,' 'parish' (see those titles), and other terms.

The Act also provides that:—

> In this Act and in every other Act, whether passed before or after the commencement of this Act, references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being, and this Act shall be binding on the Crown (s. 30).

Statutory powers to make rules, etc., may be exercised from time to time, and the power to make rules, etc., includes a power to rescind or amend them (s. 32).

Where an offence is committed against more Acts than one, the offender may be prosecuted under any such Acts (s. 33).

The repeal, in any Act passed after 1850, of repealing enactments, does not revive the enactments repealed (s. 11).

Statutory powers to make rules, etc., may be exercised at any time after the passing, and before the commencement, of any Act which does not, by virtue of the Acts of Parliament (Commencement) Act, 1793 (33 Geo. 3, c. 13), commence on the day of the Royal Assent, s. 37 enacting that :—

> Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that it to say, any Order in Council, order, warrant, scheme, letters-patent, rules, regulations, or bye-laws, to give notices, to prescribe forms or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

It is also provided by s. 38 that :—

> Where this Act or any Act passed after the commencement of this Act (i.e., after 1st January, 1890) repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

This is a generalization of a modern form in consolidating Acts : see, e.g., s. 313 of the Public Health Act, 1875.

For further provisions of the Act, see DISTANCE ; MONTH ; PARISH ; REPEAL ; SERVICE ; STATUTORY DECLARATIONS.

Interpretation Clause, a clause of an Act of Parliament or document which defines the meaning of certain words occurring frequently in other clauses of the Act or document ; see, e.g., s. 334 of the Public Health Act, 1936, replacing s. 4 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), and see also Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 305. Almost all modern Acts define the sense in which certain terms are used for the purposes of the Act.

Interpretation clauses have been much complained of by judges : see *Mews's Digest*, tit. '*Statute*,' p. 1886 ; but they make an Act, by shortening, much easier to read, and indeed in their complicated matters with which modern legislation deals, their use is absolutely indispensable. It should, however, be observed that the definitions in such clauses are generally exclusively referable to the Statute, or Part, or Section to which they are expressed to relate and do not necessarily govern the meaning of the term in any other context.

Interpreters, persons sworn at a trial to interpret the evidence of a foreigner or a deaf and dumb person to the Court. As to the liability of an interpreter for perjury, see Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), s. 1.

Interregnum, the time during which a throne is vacant in elective kingdoms : for in such as are hereditary, as in England, there can be no interregnum, the sovereign in his artificial capacity never dying.

Interrogatories, written questions addressed on behalf of one party to a cause, before the trial thereof, to the other party, who is bound to answer them in writing upon oath.

In the Courts of Equity either party could from very early times interrogate the other. In the Courts of Law this power was first given by the Common Law Procedure Act, 1854, s. 51, which, however, only allowed it to be exercised by leave of the Court or a judge. Under the present practice interrogatories can only be administered in the High Court by leave of the Court, i.e., a Master at Chambers, and the particular questions proposed to be asked must be submitted for his approval ; a sum, generally 5*l.*, may be ordered to be paid into Court as security for costs. See R. S. C. 1883, Ord. XXXI., and consult *Bray* or *Ross on Discovery*. As to interrogatories in the County Courts, see C. C. Rules, 1903, Ord. XVI. An order for interrogatories cannot be made in an arbitration under the Workmen's Compensation Act, 1906 (*Sutton* v. *G. N. Ry.*, 1909, 2 K. B. 791). But see 1925 Act, Sched. I., s. 6.

In terrorem (by way of terrifying). Where a condition which the law will not carry out is attached to a gift or a legacy without a gift over, as where a legacy otherwise lawful is left so that it shall be avoided upon the happening of a condition such as disputing the will, this condition is said to be *in terrorem* only, and is void.

Interruption, a term applied in Scots Law to the step requisite by law to stop the running of the period of limitation.

Intervention. A third person not origin-

ally a party to a suit, but claiming an interest in the matter, may interpose at any stage of the suit in defence of his own interest, whenever affected either as to person or property. This is called intervention, and was peculiar to the Ecclesiastical and Admiralty Courts. It is now practised in actions or suits in the Probate, Divorce, and Admiralty Division of the High Court. An intervener must take the cause as he finds it at the time of his intervention, and can only do what he might have done had he been a party in the first instance; but the Court may relax this rule under special circumstances.

In probate actions, any person not named in the writ may intervene and appear in the action as heretofore on filing an affidavit showing that he is interested in the estate of the deceased (R. S. C., Ord. XII., r. 23). And in an Admiralty action *in rem* any person not named in the writ may intervene and appear as heretofore on filing an affidavit showing that he is interested in the *res* under arrest, or in the fund in the registry (*ibid.*, r. 24). As to actions for the recovery of land, see *ibid.*, r. 25.

By the Judicature Act, 1925, s. 181, the king's proctor, or any other person, may intervene in any suit for the dissolution of marriage, on the ground that the parties have been guilty of collusion, or that material facts have been suppressed.

Intestate, one who has left no will. In regard to all the deaths before 1925, if he left no heir, his real property escheated (see ESCHEAT) to the Crown or lord of the manor, and his personal property was administered by a nominee of the Crown for the benefit of the Crown. The A. E. Act, 1925, s. 51, abolished the old rules of descent, and the intestate estates of persons dying after 1925 are, with some exceptions, administered and distributed according to the provisions of that Act. See DISTRIBUTION and ADMINISTRATOR; WIDOW.

Swinburne, Godolphin, and others of the early writers on the subject apply the term to one who dies leaving a will, but not appointing an executor; the term *testament* being formerly applied only to a will which appointed an executor. See *Swinburne,* pt. 1, s. 1; and 1 *Williams on Executors.*

Intestates Estates Act, 1884 (47 & 48 Vict. c. 71), ss. 2 and 3, whereby administration for the Crown of the personal estate of an intestate is conducted on similar principles to those of an ordinary administration. The sections have been reproduced and amended by ss. 30 and 57, A. E. Act, 1925. The other provisions of the Intestates Estates Act, 1884 (except s. 55), have been repealed by the A. E. Act, 1935. By the repealed sections, when a person died intestate and without an heir, his estate, legal or equitable, in any incorporeal hereditament, and any equitable estate in any corporeal hereditament, escheated to the Crown. Provision was also made for the waiver of the rights of the Crown in certain cases. See ESCHEAT.

Intestates Estates Act, 1890 (53 & 54 Vict. c. 29), repealed and not re-enacted by the A. E. Act, 1925, in the case of persons dying intestate after 1925. See WIDOW. By the Act of 1890 the real and personal estate of every man dying wholly intestate after September 1, 1890, leaving a widow but no issue, is directed to belong to his widow if the net value should not exceed 500*l.*, while if it should exceed 500*l.* the widow obtains 500*l.* and a charge upon the whole of the estate for that term, in addition to her interest and share in the remainder of the estate, 'with interest thereon from the date of the death of the intestate, at 4 per cent. per annum until payment.' As to the meaning of 'intestate,' see *Re Cuffe,* 1908, 2 Ch. 500.

As to Scotland, see the Intestate Husband's Estate (Scotland) Act, 1911 (1 & 2 Geo. 5, c. 10), as amended by 9 & 10 Geo. 5, c. 9, which is framed on the lines of the English statute.

Intol and **Uttol,** toll or custom paid for things imported or exported.

In totidem verbis (in so many words).

In toto, altogether.

Intoxicating liquors. The sale of intoxicating liquors by retail in England and Wales is now mainly regulated by the Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), which repealed (see Sched. VII.) the whole or part of thirteen earlier Acts. The effect of this statute is shortly as follows:—

1. *Grant of Licence.*—Defining 'intoxicating liquor' as meaning 'spirits, wine, beer, porter, cider, perry, and sweets, and any fermented, distilled, or spirituous liquor which cannot, according to any law for the time being in force, be legally sold without an excise licence'; two licences are in every case required (except where the sale is in theatres or on packet-boats, railway restaurant cars, or canteens, or of methylated spirits or spruce, or by the holders of wholesale spirits or wine licences)—one from the

justices of the peace, and one from the Inland Revenue, the first discretionary, and the second obtainable as of right, on production of the justices' licence. The justices' licence is grantable only at a 'general annual licensing meeting,' held in every division of a county, and in every borough having a separate commission of the peace, in the first fourteen days of February (s. 10). The Licensing Act, 1921, s. 11, provides that any liquor found on analysis at any time to be of an original gravity not exceeding 1,016 degrees and to contain not more than 2 per cent. of proof spirit, which may be sold under the excise laws without an excise licence, is not to be deemed beer or an intoxicating liquor within the meaning of the Act of 1910.

2. *Character of Licence.*—The licences are either (*a*) general, authorizing the sale of any kind of liquor to be drunk either on or off the premises where sold, or (*b*) particular, authorizing the sale of only wine or beer or spirits, as the case may be, to be drunk on and off, or only off the premises where sold, as the case may be.

The general licence is commonly called an 'alehouse licence' or a 'public-house licence,' the licence for sale for consumption on or off the premises an 'on-licence,' and that for sale for consumption off the premises only an 'off-licence.'

3. *Duration of Licence.*—Each licence (except 'a new licence,' see below) is expressed (see s. 4) to be for one year only, commencing from the 5th of April, and a licence is not extended by transfer or special removal.

4. *Renewal.*—A licence granted by way of renewal requires no confirmation. From a refusal to renew, the grounds of which must be specified in writing (s. 18 (2)), there is (see s. 29) an appeal to quarter sessions. Holders of certain wine and beer licences, if first granted before 1869 (before which year wine and beer might be sold without a justices' licence), have special privileges (see Sched. II.)

Before 1904 justices had an absolute discretion (subject to compliance with procedure as to notices, etc.) to refuse to renew the general 'public-house licence' (*Sharpe* v. *Wakefield*, 1891, A. C. 173), though prior to that decision the usual practice was to renew such licences in all cases except where actual misconduct on the part of the holder was shown.

Since the passing of the Licensing Act, 1904 (4 Edw. 7, c. 23), this absolute discretion has been taken away and the power in the licensing justices to refuse the renewal of an old 'on-licence' is confined to certain grounds specified in the First and Second Schedules to the Act of 1910. These 'specified grounds' vary according to whether the licence in respect of the premises in question was in force on (1) 1st May, 1869, called 'old' beer-house licences, (2) 25th June, 1902, or (3) 15th August, 1904. Licences first granted since that date can never be the subject of renewal. Their continuance will be dealt with in the same way as the grant of a new licence.

The owners of premises licensed before 1869 under special Acts for the sale of beer or wine no longer enjoy the privilege of renewal as of right in the absence of ground for refusal affecting the character of the licensee or his house. One important distinction, however, between these *ante*-1869 licences and other existing on-licences is drawn by the Act: the renewal of them cannot be refused without compensation on the grounds of structural deficiency or unsuitability, as can the renewal of other existing on-licences.

In the case of other 'on-licences' the grounds of non-renewal must rest mainly on misconduct, but it is further provided that in every case of the refusal of the renewal of an 'on-licence' existing at the time of the passing of the Act by licensing justices they are to state in writing the grounds of refusal, and also (indirectly and clumsily) that renewals may be refused without compensation on the ground of an habitual and persistent refusal 'to supply suitable refreshment (other than intoxicating liquor) at a reasonable price,' or because 'the holder of the licence has failed to fulfil any reasonable undertaking given to the justices on the grant or renewal of the licence.' See *R.* v. *Dodds*, 1905, 2 K. B. 40.

5. *Transfer* and *Removal.*—For the purposes of transfer the licensing justices at the general annual licensing meeting appoint (s. 22) not less than four or more than eight transfer sessions. The cases in which and the persons to whom a transfer can be granted are set out in Sched. IV.

A removal of the licence is the removal from the premises in respect of which it was granted to other premises. Such a removal is either an 'ordinary removal,' and is in the discretion of the licensing justices, and the procedure is similar to that required for the grant of a 'new licence' (see below) and must be confirmed by the 'confirming authority' (s. 26); or is a 'special removal,' i.e.

one which was necessary because the premises are about to be pulled down for some public purpose or have been rendered unfit for use by reason of fire (s. 24), and then the procedure is similar to that for a transfer (s. 27).

6. *Compensation for Non renewal.*—The power of the licensing justices of any licensing district to refuse a renewal on the ground that the licences in that district have become too many is transferred from the licensing justices to quarter sessions, and they are constituted the compensation authority (s. 2); but quarter sessions can exercise such power only (1) on a reference from the licensing justices (s. 19), and (2) on payment of compensation to the dispossessed licensees (s. 20).

The reference is obligatory on the licensing justices when they are of opinion that the question of renewal requires consideration on other than the 'specified grounds' (s. 19), and a consideration of their reports is obligatory on quarter sessions, which may refuse the renewal. The compensation is a sum equal to the difference between the value of the licensed premises as licensed and their value as unlicensed, together with any depreciation in trade fixtures. It is to be paid to 'the persons interested,' and in default of agreement between them and quarter sessions the amount of it is to be determined by the Commissioners of Inland Revenue subject to appeal to the High Court of Justice, but the compensation authority has power to refer questions to the county court.

The moneys required for these payments are to come out of a compensation fund to be constituted by quarter sessions annually imposing, 'unless they certify to the Secretary of State that it is unnecessary to do so in any year,' charges on all old 'on-licences' renewed within their area. The charges are in proportion to the value of the licensed premises and at rates not exceeding certain *maxima* set out in Sched. III., ranging from 1*l.* on premises under 15*l.* yearly value to 100*l.* on premises of 900*l.* yearly value or more. If the tenure of the holder of the licence is leasehold, he may deduct (s. 21 (3)) from his rent a percentage of the charge, lessening with the length of his term, ranging from 88 per cent. in the case of an unexpired term of two years to 1 per cent. for 55 to 60 years, a person whose unexpired term does not exceed one year being entitled to treatment as a freeholder, and to deduct 100 per cent. The charges are to be levied as part of the corresponding Excise licence duties, and a deduction can be made in respect of them in Income Tax Returns (*Smith* v. *Lion Brewery Co.*, 1911, A. C. 150; *Usher's Brewery* v. *Bruce*, 1915, A. C. 433).

7. *New Licences.*—The powers and regulations as to the grant of new licences inaugurated by the Act of 1904 are continued in the Consolidation Act, ss. 12–15. The jurisdiction to confirm new licences is in the quarter sessions, who are constituted the confirming authority except in boroughs (see below), and the licensing justices in granting 'on-licences' are armed with most comprehensive and far-reaching powers. They may attach such conditions as to payment, tenure, and 'any other matters' as 'they think proper in the interest of the public,' it being obligatory in every case to attach such conditions as 'having regard to suitable premises and good management' they 'think best adapted for securing to the public any monopoly value which is represented' by the increased value arising in the opinion of the justices from the licence being attached. New licences may also be granted for terms not exceeding seven years, instead of for one year only, as before 1904 had been the practice for some 150 years. At the end of the seven years or other fixed period an application for re-grant is to be treated as an application for a new licence and not for a renewal, and during that time the licence is to be subject to forfeiture if any condition imposed on the grant is not complied with or if the licence holder is convicted of any offence (s. 14 (4)). The confirming authority, however, i.e., in counties quarter sessions, in boroughs not having ten justices a joint county and borough committee, and in other boroughs the whole body of justices (s. 2 (3)) —may 'with the consent of the justices authorized to grant the licences vary any conditions attached to the licence' (s. 14 (5)).

8. *Register of Licences.*—The clerk of the licensing justices keeps (s. 50) a register in which are entered the names of the owners of licensed premises and the holders of the licences. Every conviction is entered on the register as well as forfeitures, and disqualifications of premises or persons. A registration fee of 1*s.* is payable on every grant, renewal, transfer, or removal.

9. *Police Regulations.*—The holders of licences are subject to very strict police regulations. Their houses must be closed at certain hours, and may be entered by the police at any time (s. 81). They are subject

to penalties for permitting drunkenness or gaming for harbouring constables or prostitutes, for sale to children under 14 (see CHILDREN), and other offences (ss. 65–85). In some cases a conviction entails forfeiture of the licence.

10. *Procedure, and Home Office Rules.*— Quarter sessions may divide their area into districts for the purposes of the Act (s. 5), and may delegate any of their powers under it to a committee appointed in accordance with rules to be approved by the Home Office (s. 6), and except in a county borough shall so delegate their power of confirming the grant of a new licence, and of determining any question as to the refusal of a licence under the Act. The Home Office also may make general rules for carrying the Act into effect, and particularly providing for provisional renewal of licences included in reports of justices as not to be renewed without consideration, for regulating the management and application of the compensation fund, for constituting where requisite standing committees of quarter sessions, and for regulating the procedure of quarter sessions on the consideration of the reports of licensing justices, and on any hearing as to the refusal of renewals or the approval or division of the amount to be paid as compensation. See also Licensing Act, 1921, which repeals ss. 54, 56, 61, 62, and Sched. VI. of the Act of 1910, and repeals part of s. 58 (2) and alters the hours during which intoxicating liquor may be sold, making the necessary modifications to the relevant sections (see Part II. of Sched. I.). For further alterations in the law, see the Act itself and the schedules thereto. The Licensing (Permitted Hours) Act, 1934 (24 & 25 Geo. 5, c. 26), passed to remedy the decision in *R.* v. *Sussex Licensing J.J.*, (1934) 50 T. L. R. 410, gives power to the justices to increase the permitted hours only during the summer period by half an hour, but never for more than eight consecutive weeks.

Clubs must be registered, but the distribution of intoxicating liquors among the members has been described as 'a transfer of special property in the goods' (*Graff* v. *Evans*, (1882) 8 Q. B. D. 373); it is not a sale.

A *bonâ fide* but ill-conducted club may be struck off the register (s. 95); there are penalties for supplying liquor in an unregistered club (s. 93). The Intoxicating Liquor (Sale to Persons under Eighteen) Act, 1923, restricts the sale of intoxicating liquor to young persons. Children and Young Persons Act, 1933 (23 Geo. 5, c. 12), s. 6, prohibits children to be allowed in bars of licensed premises with certain obvious exceptions, namely, children of licence holder, railway refreshment rooms, etc. See CHILDREN, sub. tit. *Sale of Liquor*. See LIQUOR LICENCES.

Consult the works of *Paterson*, *Mackenzie*, *Talbot*, *Montgomery*.

Intare mariscum, to drain a marsh or low ground, and convert it into herbage pasture.

In transitu (during the passage). See STOPPAGE IN TRANSITU.

Intrinsecum servitium, common and ordinary duties with the lord's court.—*Kenn. Gloss.*

Intromission, the assuming possession and management of property belonging to another either on legal grounds or without any authority, which latter is termed *vicious intromission*.—*Scots Law.*

Intruder. See INTRUSION.

Intrusion, the entry of a stranger after a particular estate of freehold is determined before him in reversion or remainder. Where a tenant for life dies seised of certain lands or tenements, and a stranger enter thereon after such death of the tenant, and before any entry of him in remainder or reversion, such stranger is called an intruder. Intrusion was one of the five modes, the others being *disseisin*, *abatement*, *discontinuance* and *deforcement*, which constituted adverse possession, from which time was computed under the old Limitation Acts.

The writ of entry on intrusion is abolished by the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27).

Intrusion, Information of. See INFORMATION.

Inure, to take effect.—*Cowel.*

In vacuo, without object; without concomitants, or coherence.

Invadiare, to pledge or mortgage lands.

In vadio, in gage; in pledge.

Invasiones, the inquisition of serjeanties and knights' fees.—*Cowel.*

Invecta et illata. The subjects covered by the landlord's hypothec (*q.v.*) includes the ordinary equipment of the premises—furniture, stock in trade, etc. It does not include money, bonds, personal clothing, tools of trade, nor the property of the tenant's family.

Invention, Title by, the mode of acquiring an ownership in patent-rights and copyrights. See COPYRIGHT and LETTERS PATENT.

Inventiones, treasure-trove.—*Cowel.*

Inventory, a list or schedule, containing a true description of goods and chattels, or furniture, etc., made upon a sale or upon a lease of a furnished house, or (see *Woodfall, L. & T.*) on a distress for rent, or by an executor of his testator's effects, or by an administrator of those of the intestate.

In ventre sa mère (in his mother's womb). See EN VENTRE SA MÈRE.

Inveritare, to make proof of a thing.—*Jac. Law Dict.*

Invest, to give possession; to lay out money. As to investments which a trustee may make, see TRUST FUNDS.

Investitute, the open delivery of seisin or possession. The ceremonial introduction to some office or dignity.

In viridi observantia, present to the minds of men, and in full force and operation.

Invito domino [Lat.] (without the assent of the lord or owner).

Invoice [perhaps corrupted fr. *envoyez,* Fr., send], a written account of the particulars of goods sent or shipped to a purchaser, factor, etc., with the value, or prices, or charges annexed.

Iota, the minutest quantity possible. Iota is the smallest Greek letter. The word 'jot' is derived therefrom.

I. O. U., a written acknowledgment of a debt, so called because it commences with those letters, which custom has substituted for the words *I owe you,* because they have the same sound. It ordinarily runs thus:—

'To Mr. A. B., I.O.U. Twenty pounds. C. D. January 1st, 1916.'

If in the above form, it requires no stamp, being neither receipt, agreement, not promissory note. If it contains a promise to pay the money, it must be stamped as a promissory note, or as an agreement, if it contain terms of agreement the subject of which is of the value of 5*l.* It should be addressed to the creditor by name, but that is not essential to its validity. It is evidence of an account stated with the creditor, if named; if he is not named, it is *primâ facie* evidence of an account stated with the person producing it. It is not negotiable.

Ipse dixit [Lat.] (he himself said it), a bare assertion resting on the authority of an individual.

Ipso facto (by the very act itself). A censure of excommunication in the Ecclesiastical Court, immediately incurred for divers offences, after lawful trial.

Ire ad largum (to go at large; to escape; to be set at liberty).

Ireland was a distinct kingdom until 1801, when the Union with Ireland Act, 1800 (39 & 40 Geo. 3, c. 67) (see *Chitty's Statutes,* tit. '*Union Acts*'), formed the 'United Kingdom of Great Britain and Ireland.' This Act confirmed the eight Articles of Union, and provided for Irish representation in both Houses of Parliament at Westminster. Redistribution of the Irish seats in the House of Commons was carried out in 1832, 1867, and 1885. The constant demand for a separate Parliament for Ireland led to the introduction of various Bills, but it was not until 1914 that the Government of Ireland Act of that year was placed on the Statute Book. The operation of this Act was suspended for the duration of the war. The demand of the Irish Republicans of the South for a complete severance led to the Government of Ireland Act, 1920, which superseded the Act of 1914. It provided for separate Governments in Northern and Southern Ireland, each with an Executive and Legislature of two chambers, and a Council of Ireland to co-ordinate the work of the two Legislatures. Northern Ireland accepted and brought this Government into being, Sir James Craig becoming the first Prime Minister of Northern Ireland. The Republicans (Sinn Fein, 'Ourselves Alone') of Southern Ireland refused to accept the Act, and after prolonged negotiations between the Cabinet of the United Kingdom and representatives of Sinn Fein a Peace Treaty was signed on 6th Dec., 1921. This Treaty, which conferred 'Dominion status' on the Irish Free State (Saorstat Eireann), was given the force of law by the Irish Free State (Agreement) Act, 1922 (12 Geo. 5, c. 4), and carried into effect by the Irish Free State Constitution Act, 1922 (Session 2), 13 Geo. 5, c. 1. This Act has annexed to it the Constituent Act of the Dail Eireann, to which reference should be made. The Constitution of the Irish Free State came into operation on 6th Dec., 1922.

The Irish Free State (Consequential Provisions) Act, 1922 (Session 2), 13 Geo. 5, c. 2, modifies the Government of Ireland Act, 1920, as contemplated in Art. 12 of the Treaty. This modification involved the abolition of the High Court of Appeal for Ireland, and provided for appeal from decisions of Courts in Northern Ireland to the Court of Appeal in Northern Ireland, and thence to the House of Lords. For particulars of the Courts of Irish Free State, see the Courts of Justice Act, 1924 (Irish Free State Acts, 1924, No. 10).

Irish Handloom Weavers. See TRADE MARKS.

Irish and Scots Courts' Judgments. As regards Northern Ireland and Scottish judgments, a judgment of a Superior Court of Northern Ireland or Scotland is enforceable after registration of a certificate thereof by the High Court of Justice in England, under the Judgments Extension Act, 1868 (31 & 32 Vict. c. 54 (preserved by Judic. Act, 1925, s. 224); and a judgment of an inferior Court is similarly enforceable by an English county court, under the Inferior Courts Judgments Extension Act, 1882 (45 & 46 Vict. c. 31). Irish Free State judgments of the Courts may not be so enforced under the Judgments Extension Act, 1868, since references to 'Ireland' in any enactment passed before the establishment of the Irish Free State to the United Kingdom or to Ireland are in the application of that enactment in Great Britain or Northern Ireland to be construed as exclusive of the Irish Free State (see Stat. R. & O. 1923, No. 405, Art. 2). The Act of 1868 applies only to debt, damages and costs, but judgments of the Chancery Courts of Northern Ireland may be extended by the Chancery Courts here under the Crown Debts Act, 1801 (41 Geo. 3, c. 90). The facilities under the Acts of 1801 and 1868 are reciprocal in these countries. See also Part II. of the Administration of Justice Act, 1920, extended by the Foreign Judgments (Reciprocal Enforcement) Act, 1933 (23 Geo. 5, c. 13), s. 7, which made provision for the reciprocal enforcement of judgments of superior Courts between the United Kingdom and other parts of His Majesty's Dominions: its application is limited by the Act of 1933, however, to such countries as have been included within the scope of the Act of 1920 by Orders in Council under the Act of 1920, in existence at the date of an extending Order in Council under the Act of 1933. See R. S. C., Ord. XLIA.

Irregularity, disorder, departure from rule. By R. S. C. 1883, Ord. LXX., non-compliance with the rules renders proceedings liable to be set aside as irregular, but does not render them void unless the Court or a judge so direct. Order LIV., r. 24, of the County Court Rules, 1903, is to the same effect.

Irremovability, Status of, of poor persons, by one year's residence, under Poor Law Act, 1930 (20 & 21 Geo. 5, c. 17), s. 93. See STATUS OF IRREMOVABILITY.

Irrepleviable, or **Irreplevisable,** that which cannot be replevied or delivered on sureties.

Irrevocable, incapable of being revoked; powers of appointment are sometimes executed so as to be irrevocable (see POWERS OF APPOINTMENT); no will is ever irrevocable. A contract not to revoke a will is valid, for breach of which an action will lie, but the covenant is not specifically enforceable (*Robinson* v. *Ommanney*, (1882) 23 C. D. 285).

Irritancy, the becoming void; forfeiture.

Irritant Clause, a provision by which certain prohibited acts specified in a deed are declared to be null and void. A *resolutive* clause dissolves and puts an end to the right of a proprietor on his committing the acts so declared void.—*Scots Law.*

Ish, termination, as of a tenancy. See *Black* v. *Clay*, 1894, A. C. 368.—*Scots Law.*

Isle of Man. See MAN, ISLE OF.

Issint [Nor.-Fr.], thus, so.

Issuable Plea, a plea on which a plaintiff may take issue, and go to trial upon the merits. See now STATEMENT OF DEFENCE.

Issuable Terms. Hilary and Trinity were so called because in them issues were made up for the assizes. But for town causes all the four terms were issuable. The division of the legal year into terms is now abolished, so far as relates to the administration of justice (Jud. Act, 1873, s. 26). See R. S. C., Ord. LXIII.

Issue [fr. *exitus*, Lat.], used in several senses:—(1) The legitimate offspring of parents. The word 'issue' in a will was either a word of purchase or of limitation, as would best answer the intention of the testator; and for the effect of the word in the case of a deed, see *Norton on Deeds*. Now the rule in *Shelley's case* (*q.v.*), having been abolished by s. 131, in instruments made or in wills upon death after 1925, 'issue' will be construed as a word of purchase (s. 131, Law of Property Act, 1925), and s. 130, by implication abolishes the rule in *Wild's case*, (1599) 6 Co. Rep. 16 *b*, 17 *a* (*q.v.*), in such cases.—2 *Fonbl. Eq.* 69.

(2) The profits arising from lands or tenements, amerciaments, or fines.

(3) Event, consequence, evacuation, sending forth.

(4) The point in question, at the conclusion of the pleadings between contending parties in an action, when one side affirms and the other denies.

It is provided by the present rules of pleading that the plaintiff by his reply may join issue on the defence, and that if the plaintiff does not deliver a reply, or any

party does not deliver any subsequent pleading, within the proper time, the pleadings are to be deemed closed and all the material statements of fact in the pleading last delivered will be deemed to have been denied and put in issue, so that a formal joinder of issue is unnecessary. By Ord. XXXIII., r. 1, a judge may direct preparation of issues, and settle them if the parties differ. See *Williams* v. *Stanley*, 1926, 2 K. B. 37, as to the meaning of issue in regard to costs, and see PLEADING. Consult *Odgers on Pleading ; Bullen and Leake's Precedents of Pleadings.*

In Scottish practice, the question put to a jury in a civil case is termed an ' issue.'

Item [Lat. also], a word used when any article is added to the former.

Iter, a footway ; a right of passage.

Iule [fr. *jol*, Got., a sumptuous treat], Christmas.

J.

Jacens, lying in abeyance.

Jack Ketch. See KETCH, JOHN.

Jacobus, a gold coin worth 24*s.*, so called from James I., who was king when it was struck.

Jactitation [fr. *jactito*, Lat., to boast], a false pretension to marriage.—*Canon Law.*

The suit of jactitation of marriage (*jactitationis matrimonii causa*), though a rare proceeding, may still be brought in the Divorce Court by the express terms of the Matrimonial Causes Act, 1857 (20 & 21 Vict. c. 85), s. 6 (replaced by Judicature Act, 1925, s. 21), when a person falsely boasts that he or she is married to another whereby a reputation of their marriage may ensue. The party injured sues for the purpose of having perpetual silence enjoined upon the unjustifiable boaster. See *Thompson* v. *Rourke*, 1893, P. 70.

Jactivus, lost by default ; tossed away.

Jactus, or **Jactura mercium** (a throwing away of goods), jetsam, which see.

Jaghire, Jaghur, Jagir (literally, the place of taking). An assignment to an individual of the government share of the produce of a portion of the land. There were two species of *jaghires* ; one, personal, for the use of the grantee ; another, in trust for some public service, most commonly the maintenance of troops.—*Indian.*

Jail [fr. *geôle*, Fr.], a prison or gaol.

Jamaica Government Act (29 & 30 Vict. c. 12). Jamaica is administered by a governor, called captain-general, assisted by a legislative council and a privy council. And see 25 & 26 Vict. c. 55.

Jamma, Jumma, total amount, collection, assembly. The total of a territorial assessment.—*Indian.*

Jammabundy, Jummabundy, a written schedule of the whole of an assessment.—*Ibid.*

Jampnum, furze, or grass, or ground where furze grows ; as distinguished from arable, pasture, or the like.—*Co. Litt.* 5*a.*

Jaques, small money.—*Staund. P. C.*, c. xxx.

Javelin-men, yeomen retained by the sheriff to escort the judge of assize.

Jedburgh Justice, otherwise called **Jeddart Justice,** that unjust procedure whereby a person is sentenced first and tried afterwards. Jedburgh is a Scots Border town in Roxburghshire, where frequent conflicts took place between English and Scots Borderers before the Union. The turbulence of the Scots Borderers led to the establishment of a court where very summary justice was administered, but whether any actual trial took place after sentence was passed is doubtful. Compare LYNCH LAW, from which, however, it differs from the fact of the ' justice ' being done by a duly constituted authority.

Jejunium, fasting.—*Jac. Law Dict.*

Jeman, a yeoman.

Jeofails, Statutes of. So called because when a pleader in the old days of oral pleading perceived any slip in the form of his allegation, he acknowledged the error by the expression *j'ay faille* (I have made a slip), and under these statutes obtained liberty to amend.

Jerguer, or **Jerquer,** an officer of the custom-house who oversees the waiters.—*Crabb's Tech. Dict.*

Jervis's Acts, 11 & 12 Vict. cc. 42 (the Indictable Offences Act, 1848), 43 (the Summary Jurisdiction Act, 1848), and 44 (the Justices Protection Act, 1848), regulating (1) the commitment by justices of persons accused of indictable offences ; (2) the summary conviction by justices of persons charged with trivial offences ; and (3) the bringing of actions against justices—so called because they were prepared and passed through parliament by Chief Justice Jervis, then Attorney-General, in 1848. These Acts, as amended, are still in force.

Jesse. A large brass candlestick, usually hung in the middle of a church or choir.

Jesuits, members of the Society of Jesus,

a Roman Catholic religious order, founded in 1534 by Ignatius Loyola and confirmed by a Bull of Paul III. in 1540, its main object being to stem the tide of the Reformation by active propaganda. The Roman Catholic Relief Act, 1829 (10 Geo. 4, c. 7), by ss. 28–37, rendered Jesuits liable to banishment on conviction on indictment from the United Kingdom, and an attempt was made in 1902 to enforce the Act. See *Law Journal Newspaper*, 1st Feb., 1902, for judgment of Mr. Kennedy at the Marlborough Street Police Court on refusing a summons, and *R.* v. *Kennedy*, (1902) 86 L. T. 753, in which the High Court held that they had no jurisdiction to compel Mr. Kennedy to issue the summons; the sections were virtually a dead letter (*Re Smith*, 1914, 1 Ch. 937), and are now repealed as to Great Britain by the Roman Catholic Relief Act, 1926 (16 & 17 Geo. 5, c. 55). See ROMAN CATHOLICS.

Jetsam, Jettison, or **Jetson** [fr. *jeter*, Fr.], goods or other things which having been cast overboard in a storm, or after shipwreck, are thrown upon the shore, included in 'wreck' (see that title) by s. 510 of the Merchant Shipping Act, 1894. See also FLOTSAM and LIGAN.

Jeux de Bourse, speculating in the public funds or stock.—*French phrase.*

Jews. Several statutes were passed in the reign of Queen Victoria respecting the Jews. See 8 & 9 Vict. c. 52, giving them relief as to municipal offices; 10 & 11 Vict. c. 58, and 19 & 20 Vict. c. 119, ss. 21, 22, as to their marriages; 21 & 22 Vict. c. 48, s. 5, amended by 23 & 24 Vict. c. 63, as to their making declarations as a qualification for office; and the Jews Relief Act, 1858 (21 & 22 Vict. c. 49), empowering either house of Parliament by resolution to allow them to omit the words 'upon the true faith of a Christian' from the form of oath then required to be taken by members of Parliament. The Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), has since prescribed a form of oath containing no reference to the faith of a Christian, and the Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48), repeals 21 & 22 Vict. c. 48, and the Jews Relief Act, 1858, except s. 4, which provides that the official patronage of a professing Jew shall devolve on the Archbishop of Canterbury. By s. 3 of the Jews Relief Act, 1858, nothing *in that Act contained* was to extend to enable professing Jews to hold the office of Lord Chancellor.

Various Acts exempting or making special provisions for Jewish religious observances and customs have been passed. See Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), ss. 47 and 48, as to substitution of Sunday for Saturday working; Slaughter of Animals Act, 1933 (23 & 24 Geo. 5, c. 39); and Retail Meat Dealers Shops (Sunday Closing), and Shops (Sunday Trading Restriction) Acts, 1936 (26 Geo. 5, and 1 Edw. 8, cc. 30 & 53), enabling Jews to trade on Sundays under certain conditions.

The Statute de Judeismo, or Les Estatutes de Jeuerie (*Statutes of the Realm*, vol. i., p. 221), of uncertain date, but probably passed in 1375 (though Coke put the date at 1390), which prohibited usury by Jews and compelled them to wear a distinctive dress, was not expressly repealed until 1846, by 9 & 10 Vict. c. 59. For curious comment on the Statute by Lord Coke, see 2 *Inst.*, where it is observed that 15,060 Jews banished themselves in consequence of the statute, and were not banished by Parliament.

The Act of 1753 (26 Geo. 2, c. 26), to enable foreign Jews to be naturalized without taking the Sacrament, was replaced in 1754 by 27 Geo. 2, c. 1.

See, generally, *Henriques on the Return of the Jews to England*, published in 1905.

Jobber, one who buys or sells for a speedy profit by re-sale or re-purchase; on the Stock Exchange, a dealer in stocks and shares, 'dealers' constituting one of the two classes of members of whom the House consists, transacting business with dealers or brokers only; the other class being brokers who act as buying or selling agents for and deal with the public. See STOCK EXCHANGE.

Jocalia, jewels, paraphernalia.

Jocelet, a little manor or farm.

Jocus partitus, an election between two proposals.—*Bract.*, l. 4, tr. 1, c. 32.

John Doe, the name which was usually given to the fictitious lessee of the plaintiff in the mixed action of ejectment; he was sometimes called Goodtitle. See EJECTMENT. So the Romans had their fictitious personages in law proceedings, as *Titius*, *Seius*.—*Juv. Sat.* iv. 13.

Joinder of Causes of Action, coupling two or more matters in the same suit or proceeding.

Under the C. L. P. Act, 1852, s. 41, causes of action, of whatever kind, provided they were by and against the same parties and in the same rights, might be joined in the same suit; but this did not extend to replevin or ejectment; and where two or more of the causes of action so joined were local, and arose in different counties, the venue might

be laid in either of such counties, but the Court or a judge had power to prevent the trial of different causes of action together if such trial would be inexpedient, and in such case such Court or judge might order separate records to be made up, and separate trials to be had. The joinder in one bill in equity of distinct and independent matters, which was termed multifariousness, was a ground of objection to the bill. See MULTIFARIOUSNESS.

By R. S. C. 1883, Ord. XVIII., the plaintiff may in many cases unite in the same action and the same statement of claim several causes of action, subject to various powers of the Court or a judge to order separate trials. Consult *Odgers on Pleading*.

Joinder in Pleading, accepting the issue and mode of trial tendered, either by demurrer, error, or issue in fact, by the opposite party. See now ISSUE.

Joinder of Parties. See PARTIES.

Joint, combined ; shared amongst many ; in the same possession.

Joint Fiat, a fiat which was issued against two or more trading partners. Abolished. See FIAT.

Joint-heir, a co-heir. See Law of Property Act, 1932, as to equitable interests of joint heirs in tail.

Joint-stock Banks, joint-stock companies for the purpose of banking. They are regulated, according to the date of their incorporation, by charter, or by 7 Geo. 4, c. 46 ; 7 & 8 Vict. cc. 32 and 113 ; 9 & 10 Vict. c. 45 (in Scotland and Ireland) ; 20 & 21 Vict. cc. 49 and 91 ; and 27 & 28 Vict. c. 32 ; or by the Companies Act, 1929, in substitution for previous Acts, which makes registration under it compulsory in the case of a partnership consisting of more than ten persons. It is believed that the liability of the shareholders in chartered banks is in most if not in all cases limited to some amount fixed by the charter, generally twice the amount of their shares. Under the Companies Act, the liability may be either limited or unlimited, and most banks registered under the old Companies Act of 1862 were unlimited until 1880, when many took advantage of the Companies Act, 1879 (42 & 43 Vict. c. 76), to register anew as limited ; see now Companies Act, 1929, ss. 321, 322, 359 and 380. The Act of 1879, however, repealing and replacing s. 182 of the Companies Act, 1862, provided for unlimited liability in respect of bank-notes, and the same provision is repeated in the Companies Act, 1929. By s. 360 (*ibid.*), banks registered under the Act as a limited company are under an unlimited liability in respect of notes issued by them, and their members are liable for the debts of the bank to the extent of the amount paid to note-holders out of the general assets. The sale and purchase of shares in joint-stock banking companies is regulated by the Banking Companies (Shares) Act, 1867 (30 & 31 Vict. c. 29), which, in order to prevent speculative transactions, requires that the numbers of the shares shall be distinguished in the contract of sale, which is otherwise to be void ; but this enactment, which, although making it a misdemeanour to insert false numbers, imposes no penalty for not inserting the numbers at all, is not regarded (see LEEMAN'S ACT) on the Stock Exchange. Consult *Grant* or *Hart on Banking ; Smith's Mercantile Law ; Lindley on Company Law ;* and see BANK ; BANKER ; BANK-NOTES.

Joint-Tenancy. This tenancy is created where the same interest in real or personal property is, by the act of the party, passed by the same matter of conveyance or claim *in solido*, and not as merchandise, or for purposes of speculation, to two or more persons in the same right, either simply, or by construction or operation of law jointly, with a *jus accrescendi*, that is, a gradual concentration of property from more to fewer, by the accession of the part of him or them that die to the survivors or survivor, till it passes to a single hand, and the joint-tenancy ceases.

This *jus accrescendi* holds place as well in equity as at law. Equitable estates, therefore, are subject to joint-tenancy and its properties. The trust as well as the term passes to the survivor ; and if the estate of two joint tenants is assigned in trust for them, or such a trust is raised by implication, the equitable interest follows the nature of the former legal estate.

The Courts of Law and Equity disfavour this mode of holding property *beneficially*.

During the feudal rigour, however, and when assurances were simple, joint-tenancy was found to be most useful. It was adopted to prevent dower and courtesy attaching. It avoided wardship, primer seisin, and other feudal imposts of the same description, for the title by the survivorship is paramount. A conveyance was made to the father and son, or to several co-trustees, of whom the interested owner was one, and a descent was thus avoided. By the Dower Act (3 & 4 Wm. 4, c. 105) no title of dower affects a joint estate, whether legal or equitable.

Anciently, joint-tenancy was favoured because it did not induce fractions of estates, and returning to early principles the Land Legislation of 1925 has employed the tenure generally as the machinery by which *legal estate* may in such cases always be in some person, called the estate owner, who is competent to give a title to the whole estate without the concurrence of other parties. That legal estate has been vested in trustees for sale as joint-tenants in the following cases, in *joint-tenancy, estates in common* or *undivided shares*, and *coparceners;* see *infra*. For the purpose of limitations over, it was until the Land Legislation of 1925 became law much more accommodating than a tenancy in common, unless cross-remainders are expressed or implied. The law itself now adopts it in cases of trustees for sale upon the statutory trusts for sale (see L. P. Act, 1925, ss. 34 *et seq.*), assignees in bankruptcy, and others, though they differ in some respects from simple joint-tenants.

Before 1926 there might be a joint-tenancy for life, or in fee, or in remainder, but not in tail, unless the donees, being male and female, might lawfully marry; otherwise the donees possess estates for life only, with several inheritances in tail. An estate cannot be granted to two or more jointly *and* severally, for severally is repugnant and they take as joint-tenants.

This and the following paragraphs still hold good in respect of *equitable interests* in joint estates in land, the beneficial ownership of a legal estate in land of joint-tenants having been abolished by the Law of Property Act, 1925, and the beneficial ownership converted into an equitable interest (s. 1 (3), *ibid.*). And the paragraphs may be read where the context so admits as referring to the incidents, both at law and in equity, in regard to all titles existing before 1926, and to equitable interests only after 1st January, 1926.

When an estate is granted to two or more persons without any modifying and disjunctive words, they take, according to the common law rule, as joint-tenants. For example, if an estate be granted to A. and B. for their lives, they become joint-tenants of the freehold; if to A. and B. and their heirs, they are then joint-tenants of the fee. While equity recognizes this rule, yet it has laid down many exceptions to it, amongst the most important of which are the following:

(1) If two join in lending money on mortgage, though they take a joint security, yet equity holds that it could never have been intended that their interests should survive, the fair presumption being that each means to lend his own money, and to be repaid his own again. The consequence is, that on the death of one the survivor who holds the entire legal estate by survivorship is deemed by equity a trustee for the personal representatives of the deceased co-mortgagee until the money be repaid. Equity then treats the two mortgagees as tenants in common. Where a mortgage is made to trustees who did not appear in that character on the face of the deed (lest the title be incumbered with notice of their trust), it was usual to insert a clause, called a joint account clause, providing against the application of this rule of equity; see now L. P. Act, 1925, s. 111, reproducing Conveyancing Act, 1881, s. 61.

(2) When two persons purchase an estate, and advance the purchase-money between them in *unequal* portions, equity treats them as tenants in common, notwithstanding the transfer be made to them generally, but the inequality must appear on the face of the conveyance. If, however, the consideration-money be paid by them in *equal* portions, and the transfer is general, then equity has not any ground to infer that this was not a joint purchase of the chance of survivorship, and they must be deemed, even in equity, as joint-tenants. Should one expend money in the repair and improvement of the estate, he will have a claim or lien on the estate for the amount of such money.

(3) When partners in trade purchase property for the partnership concern, equity treats them as tenants in common, holding the survivor to be trustee of the legal estate for the personal representatives of the deceased partner as to his share. Wares, merchandise, and stock in trade belonging to partners, survive to the representatives of the deceased partner. The *lex mercatoria* excludes the *jus accrescendi* for the benefit of commerce, which is *pro bono publico*, the maxim being *jus accrescendi inter mercatores locum non habet.*

A joint-tenancy, if created by the convention of parties, must arise out of the *same* deed, will, or claim, for there must exist a unity of *title* between them which must be by purchase, and not by mere operation of law, and the estate must vest in them at one and the same *time;* for a joint-tenancy must subsist *ab initio;* an estate cannot become a joint-tenancy by the happening of any circumstances *ex post facto*. Upon the vesting of land in new trustees the estate vests anew in the new and continuing

trustees. There is no accession to an old title. The same *interest* must be given to the parties, for one joint-tenant cannot have one estate in the property as for life, and the other as for years; and they must hold it by the same undivided *possession*, for each has an undivided moiety of the whole, and not the whole of an undivided moiety, though since the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27), s. 12, the possession of one joint-tenant is no longer to be deemed the possession of the other or others.

Joint-tenants being seised *per my et per tout*, or, as Coke says, *totum conjunctim et nihil per se separatim*, enjoy a survivorship (*jus accrescendi*) which is held to be as good as a right by descent, the title of the survivor being paramount. It is a continuation of the estate by the survivorship of the tenants, the estate passing among the joint-owners without any perceptible degree of transition but the diminution of the number of persons to enjoy it. The last survivor now takes the whole (*equitable interest*) as if the estate had originally been given to him only (see Law of Property (Amendment) Act, 1926, Sched., amending s. 36 of the L. P. Act, 1925, and see Administration of Estates Act, 1925, s. 159, sub-s. (4)), unless, before 1926, any of his companions have conveyed away his own share in his lifetime, which, of course, each can do; so a partial alienation is a severance *pro tanto*, for *alienatio rei præfertur juri accrescendi*.

The right of survivorship is necessarily reciprocal; for otherwise there would be different degrees of interest in the same estate, which is inconsistent with the nature of joint-tenancy. A body corporate, therefore, whose existence has no natural termination, cannot at Common Law be joint-tenant with a natural person; and as survivorship is necessarily included in joint-tenancy, two corporations cannot be joint-tenants together; for both being considered by the law of perpetual duration, it is impossible for one to survive the other. With regard to stock transferable at the Bank of England or Ireland, this law is altered by s. 6 of the National Debt (Stockholders Relief) Act, 1892 (55 & 56 Vict. c. 39), passed in consequence of *Law Guarantee and Trust Society* v. *Bank of England*, (1890) 24 Q. B. D. 406, which provides that such stock 'may be transferred to and held in the names of an individual and a body corporate, or of two or more bodies corporate, and any such holding shall in its relation to the bank be deemed a joint-tenancy'; and, finally, the Bodies Corporate (Joint Tenancy) Act, 1899 (62 & 63 Vict. c. 20), has abrogated the common law rule entirely by the provision that 'a body corporate shall be capable of acquiring and holding any real or personal property in the same manner as if it were an individual.'

The freehold in joint-tenants was so entire that they could not grant, nor bargain and sell, nor surrender or devise to each other, much less exchange with or enfeoff one another; the proper mode of assurance from one joint-tenant to another was, and as to equitable interests still is, a deed of release, and the fee passed in such a case without the word 'heirs.' No right of dower or courtesy attaches to this estate, for the *jus accrescendi* is preferred to all charges and incumbrances which do not amount to at least a partial alienation of the share by a lease for life; and a devise by a joint-tenant, during the existence of the joint-tenancy, is void. The maxim is, *jus accrescendi præfertur ultimæ voluntati necnon oneribus*. By the Wills Act, 1837, a general devise passes after-acquired property; lands, acquired *jure accrescendi*, will consequently pass.

A curious question sometimes arose as to what is the law in case it cannot be proved which of two or more joint-tenants is the survivor (*Wing* v. *Angrave*, (1860) 8 H. L. C. 183); see now L. P. Act, 1925, s. 184, and COMMORIENTES.

By s. 36 (1) of the L. P. Act, 1925, where a legal estate (not being settled land) is beneficially limited or held in trust for any persons as joint-tenants, the same shall be held on trust for sale in like manner as if the persons beneficially entitled were tenants in common but not so as to sever the joint-tenancy in equity. By sub-sec. 2, severance of a joint-tenancy of a legal estate so as to create a tenancy in common in land shall not be permissible, whether by operation of law or otherwise, but the right of a joint-tenant to release his interest to the other joint-tenants is not affected, nor is the right to sever a joint-tenancy in an equitable interest. See Law of Property (Entailed Interests) Act, 1932 (22 & 23 Geo. 5, c. 27), and UNDIVIDED SHARES; INFANT; ENTIRETIES.

The severance and destruction of this estate may be effected in several ways, as—

(1) By a voluntary deed of partition among the tenants agreeing to hold the property in severalty, for this is a disunion of

their possession, and they have then but a separate interest in the several parts of the land, and the *jus accrescendi* is gone.

(2) By alienation without partition, as by one joint-tenant either releasing his share to the other, or conveying it away to a third person, for this is a destruction of the unity of title. A covenant to sell by a joint-tenant severs the estate in equity, provided it can be specifically performed, but not at law.

(3) By accession of interest, either by one joint-tenant purchasing the interest of the others, or by his acquiring the whole estate by survivorship, whereby the unity of interest is dissolved.

(4) By notice under L. P. Act, 1936, s. 36, sub-s. (2), or by conveyance, s. 72 (*ibid.*).

(5) After 1925, by a partition under s. 29 (3), of the L. P. Act, 1925. Before 1925, by a partition of sale under the Partition Acts, now repealed. See PARTITION.

(6) Limitation of action under 3 & 4 Wm. 4, c. 27, s. 12, a joint-tenant in possession to the exclusion of the other or others may obtain a title under the Statute against the other or others. The entry of the one joint-tenant apparently does not vest the possession of another joint-tenant; see *Carson's Real Property Statutes* (notes to s. 12, *supra*).

Jointress, or **Jointuress,** she who has an estate settled upon her by her husband, to hold during her life, at least provided she survive him.

Jointure, strictly, a joint estate limited to husband and wife, but in common acceptation extended also to a sole estate limited to the wife only. To a legal jointure these four things were requisite :—

The old rules were : (1) The jointure must take effect immediately on the death of the husband. (2) It must be for her own life at least, and not *pur autre vie*, or for any term of years, or for any smaller estate. (3) It must be made to herself, and no other in trust for her. (4) It must be made, and so in the deed particularly expressed to be, in satisfaction of the whole, and not of part of her dower. It may be made either before or after marriage; if made after marriage she may waive it, and claim her dower. 2 *Bl. Com.* 137.

The Statute of Jointures, 11 Hen. 7, c. 20, was repealed by 3 & 4 Wm. 4, c. 74, s. 17, except as to lands comprised in settlements made before the passing of this Act. See DOWER; and 20 Hen. 8, c. 10.

Since estates for life are not legal estates now (L. P. Act, s. 1), jointure lands which are settled and not consisting of the fee simple or a lease for years vested absolutely in the jointress may be over-reached upon conveyance to a purchaser of the land charged under the provisions of s. 2 of that Act. Although the existence of a jointure charged upon the estate of an absolute owner in fee simple converts that land into settled land (Settled Land Act, 1925, s. 1 (v.)), the absolute owner may convey the land, not as settled land, but subject to the charge (L. P. (Amend.) Act, 1926).

Jokelet [fr. *yokelet*], a little farm such as requires a small yoke of oxen to till it.

Joncaria, or **Juncaria** [fr. *jonc*, Fr., a rush], land where rushes grow.—*Co. Litt.* 5 *a.*

Journal, a day-book or diary of transactions used by merchants, mariners, tradesmen, etc., in their business.

Journals of Parliament, minutes of proceedings in Parliament. If purporting to be printed by the printers to the Crown or to either House of Parliament, copies of these are admitted in evidence, by virtue of s. 3 of the Evidence Act, 1845 (8 & 9 Vict. c. 113), without proof that they were so printed.

Journey-choppers, Journ-choppers, Gern-choppers, regrators of yarn.—8 Hen. 6, c. 5. See REGRATING.

Journeyman [fr. *journée*, Fr., a day's work], a workman hired by the day, or other given time.

Journey's Accounts, the shortest possible time between an abatement of one writ and the issuing of another. Obsolete.—6 *Rep.* 10.

Judaismus, or **Judaism,** the religion of the Jews; also usury; also the dwelling-places of the Jews.—*Jac. Law Dict.*

Judex ad quem, a judge to whom an appeal is made.

Judex a quo, a judge from whom is an appeal.

Judge [fr. *juge*, Fr.; *judex*, Lat.], one invested with authority to determine any cause or question in a court of judicature.

To secure the dignity and political independence of the judges of the Supreme Court, it is enacted by s. 5 of the Jud. Act, 1875 (replaced by Jud. Act, 1925, s. 12), repeating in effect a provision of the Act of Settlement (12 & 13 Wm. 3, c. 2), that the judges of the Supreme Court (with the exception of the Lord Chancellor, who goes out with the Ministry) shall hold their office during good behaviour, subject to a power of removal by the Crown on an address by both Houses of

Parliament; prior to the Act of Settlement, they held office during the pleasure of the Crown. They may not sit in the House of Commons.

The qualification is, by Jud. Act, 1925, s. 9, replacing s. 8 of the Judicature Act, 1873, ten years' standing at the Bar for a judge of the High Court of Justice, and fifteen years' standing at the Bar or one year's service as a judge of the High Court for a judge of the Court of Appeal. Prior to the Judicature Acts, judges of the superior courts of Common Law (superseded by the High Court of Justice) had to be serjeants-at-law (see that title), and any serjeant-at-law might be appointed judge. The appointment is by the sovereign by letters-patent. Fifteen years' service as a judge, or disability by permanent infirmity, entitles to a pension by Jud. Act, 1925, s. 14, replacing s. 14 of the Act of 1873.

By Jud. Act, 1925, s. 4, in the Chancery Division of the High Court there are, in addition to the Lord Chancellor, six judges, and in the King's Bench Division, in addition to the Lord Chief Justice, there are nineteen judges, two having been added by the Supreme Court of Judicature (Amendment) Act, 1935 (25 Geo. 5, c. 2), s. 1. In the Probate, Divorce and Admiralty Division there is the President and two judges. In the Court of Appeal, in addition to the Master of the Rolls, there are five Lords Justices. The Lord Chancellor, the Lord Chief Justice, and the President of the Probate, Divorce, and Admiralty Division are *ex officio* judges of the Court of Appeal.

The county court judges are appointed, under County Courts Act, 1934, s. 4, replacing s. 8 of the County Courts Act, 1888, by the Lord Chancellor, their number being limited to sixty, the qualification being at least seven years' standing at the Bar. For 'inability or misbehaviour' they are removable by the Lord Chancellor. See COUNTY COURTS.

No action lies against a judge for anything said or done in his judicial capacity; but if a judge act without jurisdiction he may be made to answer for the consequences of his acts (*Anderson* v. *Gorrie*, 1895, 1 Q. B. p. 671; *Scott* v. *Stansfield*, (1868) L. R. 3 Ex. 220). In the latter case the defendant had said to the plaintiff (an accountant and scrivener), while trying a case in which he was defendant, 'You are a harpy, preying on the vitals of the poor,' and it was held that no action lay. If a judge has a personal interest in the action, he is incapacitated from officiating, on the principle that *Nemo debet esse judex in propriâ suâ causâ*, unless the parties agree that he should decide the cause. See *Dimes* v. *Grand Junction Canal Co.*, (1852) 3 H. L. C. 759; but this incapacity, where it arises from an interest as one of several ratepayers only, is abolished by the Jurisdiction in Rating Act, 1877 (40 & 41 Vict. c. 11), and also by s. 304 of the Public Health Act, 1936. See INTEREST.

The following are the chief maxims relating to judges:—

Judex damnatur cum nocens absolvitur. (The judge is condemned when a guilty person escapes punishment.) This is taken from Publius Syrus, a Roman poet of the first century, and is the motto of the *Edinburgh Review*.

Judicis est jus dicere non dare.—Lofft, 42. (It is the duty of a judge to declare, not to make law.)

Nemo debet esse judex in propriâ causâ.—(No man ought to be judge in his own cause.) *Earl of Derby's case*, 12 Rep. 114.

De fide et officio judicis non recipitur quæstio, sed de scientia sive sit error juris sive facti.—Bac. Max. 17. (The good faith and honesty of purpose (so Bouvier, *Law Dict.*, but Broom has it 'the honesty and integrity') of a judge cannot be questioned, but his knowledge, whether of law or fact, can.) Bacon's own paraphrase is: 'The law doth so much respect the certaintie of judgement, and the credit and authoritie of judges as it will not permit any error to be assigned that impeacheth them in their trust and office, and in wilful abuse of the same, but onely in ignorance, and mistaking either of the law or of the case in matter of fact.'

Judge Advocate, Judge Advocate-General. The Judge Advocate-General is an officer appointed by letters-patent under the Great Seal. He is under the orders of the Secretary of State for War to whom he acts as legal adviser. One of his functions is to review court-martial proceedings. All general military courts-martial are attended by a judge advocate acting by deputation, either special or general, under the hand and seal of the judge advocate-general; or by a person appointed by general officers commanding the forces abroad, to execute the office of judge advocate. The duties of an officiating judge advocate at a court-martial are to superintend the proceedings, to make a minute of the proceedings, and to advise the Court on points of law, of custom, and of form, and so far to assist the prisoner as to elicit a full statement of the facts material

to the defence. The proceedings of general courts-martial held at home are transmitted by the officiating judge advocate to the judge advocate-general, to be laid before the Crown, with a statement, by the officiating judge advocate, of any circumstances which in his opinion may affect the legality of the decision. The proceedings of courts-martial held abroad are also transmitted as directed by the order convening the Court or to the judge advocate-general, and preserved in his office. See *Clode on Military Law.*

The Judge Advocate of the Fleet and deputy judge advocates occupy similar functions in the Navy. When a court-martial has been ordered, the person nominated president appoints an officiating judge advocate, in the absence of a judge advocate or his deputy. His duties are nearly the same as those of the officiating judge advocate on military courts-martial. See *Thring's Criminal Law of the Navy; and Naval Regulations and Instructions*, chap. xi.; and see the Naval Discipline Acts, 1866 and 1884.

Judge's Notes. See NOTES.

Judge Ordinary, the judge of the Court for Divorce.

Judger, a Cheshire juryman.—*Jac. Law Dict.*

Judges' Chambers. See CHAMBERS.

Judgment [fr. *jugement*, Fr.], judicial determination; decision of a Court.

Under the former practice of the superior Courts, this term was usually applied only to the Common Law Courts, the term 'decree' being in general use in the Court of Chancery. The expression 'Judgment,' however, is now used generally, except in matrimonial causes, the term 'judgment' including 'decree' (Jud. Act, 1925, s. 225, replacing Jud. Act, 1873, s. 100).

The several species of judgments are either:—

(α) *Interlocutory*, given in the course of a cause, upon some plea, proceeding, or default, which is only intermediate, and does not finally determine or complete the action. See INQUIRY; SUMMONSES; and ORDERS; and the various titles of the subjects of such judgments as MANDAMUS; INJUNCTION, etc.

(β) *Final*, putting an end to the action by an award of redress to one party, or discharge of the other, as the case may be.

By the C. L. P. Act, 1852, s. 120, a plaintiff or defendant having obtained a verdict in a cause tried out of term, was entitled to issue execution in fourteen days, unless the judge who tried the cause, or some other judge, or the Court, ordered execution to issue earlier or later, with or without terms; but by the present Rules of the Supreme Court execution may issue forthwith on judgment, unless stayed. See EXECUTION; and as to registration of Judgments, *Chit. Stat.*, tit. '*Judgment and Execution*' and '*Land Charges*'; and see ESTOPPEL; CONTRACTS OF RECORD; ELECTION; FOREIGN JUDGMENT.

The word 'judgment' is also used to denote the reasons given by the Court for its decision.

Judgment-debtor. One against whom a judgment ordering him to pay a sum of money stands unsatisfied. He may, by order of the Court or judge, be orally examined by the judgment creditor as to debts owing to him by third parties, and be compelled to produce books and documents, with a view to attaching any debts due to him (R. S. C. 1883, Ord. XLV., r. 1). See ATTACHMENT OF DEBTS.

Judgment-debtor Summons. The Bankruptcy Act, 1861, ss. 76–85, provided for the issue of this kind of summons by a judgment creditor in default of payment of whose debt the debtor might be adjudicated bankrupt. It was replaced in 1869 by the 'Debtor's Summons' under s. 7 of the Bankruptcy Act of 1869, which was itself replaced by the 'Bankruptcy Notice' under the Acts of 1883 and 1914.

Judgment Summonses. As to commitment upon the same in the county court, see COMMITMENT.

Judgments Extension Act, 1868. By this Act (31 & 32 Vict. c. 54) (preserved by the Judicature Act, 1925, s. 224) the judgments of the superior Courts of either England, Scotland, or Northern Ireland may be enforced as judgments in either of the other two countries upon registration (in a prescribed manner) of certificates thereof in the country in which such judgments are sought to be enforced. By the Inferior Courts Judgment Extension Act, 1882 (45 & 46 Vict. c. 31), the principle of this Act was, with the limitation of personal service, extended to inferior Courts. See INFERIOR COURTS; IRISH JUDGMENTS.

Part II. of the Administration of Justice Act, 1920, makes provision for the reciprocal enforcement of judgments of superior Courts between the United Kingdom and other parts of the Empire. The Act is limited to such parts of His Majesty's Dominions as have been included within its scope by Orders in Council; and by the Foreign

Judgments (Reciprocal Enforcement) Act, 1933 (23 Geo. 5, c. 13), s. 7, Part II. of the Act of 1920 ceases to have effect except in relation to any Dominion to which the Act of 1920 was extended at the date of an Order under the Act of 1933. See R. S. C., Ord. XLIA., and *Annual Practice*.

Judicatores terrarum, persons in the county Palatine of Chester who, on a writ of error, were to consider of the judgment given there, and reform it, otherwise they forfeited 100*l.* to the Crown by custom.—*Jenk. Cent.* 71.

Judicature Acts, 1873, 1875 and 1925 (36 & 37 Vict. c. 66, 38 & 39 Vict. c. 77, and 15 & 16 Geo. 5, c. 49); the 1875 Act came into operation on the 1st of November, 1875, and consolidated the pre-existing superior Courts into one Supreme Court, consisting of the High Court and the Court of Appeal. The 1925 Act consolidates the Judicature Acts, 1873–1910, and other enactments relating to the Supreme Court of Judicature in England and the administration of justice therein; this 1925 Act has been amended in some minor particulars by the Administration of Justice Act, 1928 (18 & 19 Geo. 5, c. 26), and subsequent Acts. See SUPREME COURT OF JUDICATURE; *Chitty's Statutes*, tit. '*Judicature*.'

Judices pedanei, judges chosen by the litigants.—*Civ. Law.*

Judicial acts. Numerous statutes give summary power to justices of the peace, and declare that certain acts shall only be valid if done by two magistrates. If it be only a *ministerial* act, it is not requisite that the two magistrates should be together at the time of doing the act; if it be *judicial*, they must. All persons concerned in the exercise of judicial functions are protected from the consequences of acts for which they would be liable if they arose out of proceedings which were simply administrative or ministerial. See *Halsbury's Laws of England*, '*Public Authorities*.'

Judicial Committee of the Privy Council, a tribunal of Privy Councillors, established by 2 & 3 Wm. 4, c. 92, for the disposal of appeals to the Sovereign in Council. It consists of the Lord Chancellor, the Lord President and ex-Lords President, the six Lords of Appeal in Ordinary, and such other members of the Privy Council as shall from time to time hold or have held 'High Judicial Office,' i.e., judges of the Supreme Courts of England or Ireland, Court of Session in Scotland, and not more than seven judges of the superior Courts of the self-governing Colonies (or other possession fixed by Order in Council), and not more than two judges of any High Court in India as shall be nominated by the King.

The Committee sits in Downing Street, Whitehall. Appeals are conducted before it as before a Court, although in form it reports to the King advising that an appeal should be allowed or disallowed: consequently dissenting opinions are not disclosed. The principal matters which come before the Judicial Committee are:—(1) Appeals from the Courts in the Dominions, Colonies and other Dependencies, e.g., Canada, Ceylon, India, Irish Free State, Australia, Channel Islands, etc. (2) Ecclesiastical appeals. (3) All appeals in prize cases from all Admiralty Courts. (4) Appeals under s. 4 of the Copyright Act, 1911. (5) Appeals in respect of schemes for endowed schools; see *Education*. Consult *Wheeler's Privy Council Law*; *Halsbury's Laws of England*, tit. '*Courts*'; and see *Chitty's Statutes*, tit. '*Privy Council*.'

Judicial Discretion. Such matters in the course of a trial as are to be decided summarily by the judge, and cannot be questioned afterwards, are said to be within his discretion. Various matters incidental to the conduct of a cause before trial are also by statute left in the discretion of the Court, or a judge at chambers. Discretion is thus defined by Coke, in *Rooke's case*, 40 Eliz.: 'Discretion is a science of understanding, to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections; for, as one said, *talis discretio discretionem confundit*.'

Judicial Documents, proceedings relating to ligitation. They are divided into: (1) judgments, decrees, and verdicts; (2) depositions, examinations, and inquisitions taken in the course of a legal process; (3) writs, warrants, pleadings, etc., which are incident to any judicial proceedings.—See 1 *Stark. Evid.* 252.

Judicial Notice. Of many things, such as the course of nature, the common law of England, public statutes, the existence of a war in which this country is engaged, standard almanacs, the rule of the road (to keep on the left side), and the constitution of the government, a Court does not require any proof. See *Best on Evidence*, s. 253; *Taylor on Evidence*, part i., ch. 2; *Powell on Evidence*, 9th ed., pp. 145 *et seq.*

Judicial Oath, the oath to be taken 'as

soon as may be after acceptance of office' by the judges of the Supreme Court, and by justices of the peace for counties and boroughs. An affirmation may be substituted by every person for the time being by law permitted to make affirmation instead of oath. See Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), ss. 4, 10, 11, by which the form is :—

I do swear that I will well and truly serve our Sovereign in the office of , and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill-will. So help me God.

Judicial Separation, granted either to husband or wife on the ground of adultery, cruelty, rape, sodomy, bestiality, non-compliance with a decree for restitution of conjugal rights, or desertion without cause for two years and upwards (Judicature Act, 1925, s. 185); also by justices, under the Married Women (Maintenance) Acts, 1895 to 1925, to the wife, on the conviction of the husband of aggravated assault, or on the ground of persistent cruelty, forcing her to live apart from him, or on the ground of his being an habitual drunkard (Licensing Act, 1902, s. 5); and relief can also be obtained by a husband where the wife is an habitual drunkard (*ibid.*). Under Maintenance Acts the husband can be ordered to make weekly payments to his wife, which can be enforced by imprisonment (*R.* v. *Richardson*, 1909, 2 K. B. 851), but her judgment creditor cannot obtain equitable execution by the appointment of a receiver of such payments (*Paquine* v. *Snary*, 1909, 1 K. B. 688). See also Summary Jurisdiction (Separation and Maintenance) Act, 1925 (15 & 16 Geo. 5, c. 51). See also DIVORCE.

Judicial Trustee, a trustee appointed by, and to act under the control of, the Court, under the Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35). Such a trustee may be appointed either jointly with any other person or as sole trustee, and if sufficient cause is shown in place of all or any existing trustees (s. 1); and the administration of the estate of a deceased person is a 'trust' within the meaning of the Act (*ibid.*). A judicial trustee is an officer of the Court, and he may be remunerated out of the trust property and his accounts must be audited once a year and a report thereon made to the Court (*ibid.*). See also Judicial Trustee Rules, 1897, and *Lewin on Trusts*.

Judicial Writs, writs issuing from the Court in which proceedings are commenced under its seal, and tested in the name of its chief judge, as distinguished from original writs, which issued out of the Court of Chancery.

Judicis est jus dicere, non dare. *Loosely*, a judge should administer the law as he finds it, not make it.

Judicium Dei (judgment of God), a term applied by our ancestors to the now prohibited trials of undiscovered perpetrators of crimes; as those by arms and single combat; or by ordeals, as by fire or red-hot ploughshares (see ORDEAL), which were founded on the belief that God would work a miracle rather than suffer innocence to perish.

Judicium redditur in invitum. *Co. Litt.* 248 *b.*—(Judgment is given against one, whether he will or not.)

Judicium semper pro veritate accipitur. 2 *Inst.* 380.—(Judgment is always taken for truth.) See RES JUDICATA.

Jugulator, a cut-throat or murderer.

Jugum terræ, a yoke or land, containing half a plough-land.—*Co. Litt.* 5 *a.*

Juncare, to strew rushes.—*Pat.* 14 *Edw.* 1.

Juncaria. See JONCARIA.

Junta, or **Junto** [Lat.], a select council for taking cognizance of affairs of great consequence requiring secrecy; a cabal or faction.

Jura personarum (the rights of persons).

Jura regalia, royal rights; royal prerogatives. See *Bac. Abr. Prerogative.*

Jura rerum (the rights which a person may acquire in things).

Jura summa imperii (the supreme rights of dominion).

Jurat, the statement at the foot of an affidavit of the names of the parties swearing it, and of the officer before whom it is sworn, of the date, and of any other necessary particulars, as that the affidavit of a blind person was read in the presence of the officer to such person. See R. S. C. 1883, Ord. XXXVIII., rr. 9, 13, 14; and for the form in lieu of jurat where affirmation is made, see Oaths Act, 1888, s. 4.

Also an officer in the nature of an alderman, sworn for the government of many corporations. The twelve assistants of the bailiff in Jersey are called jurats.

Jurata, the jury-clause in a *nisi prius* record. The entry *jurata ponitur in respectu* is abolished.—C. L. P. Act, 1852, s. 104.

Juration, the act of swearing; the administration of an oath.

Jurator, a juror.

Juratores sunt judices facti. *Jenk. Cent.* 61.—(Juries are the judges of fact.)

Jure divino (by divine right).

Jure emphyteutico (by the law of rents and services).

Jure naturæ æquum est neminem cum alterius detrimento et injuria fieri locupletiorem. *D.* 50, 17, 206.—(By the law of nature it is just that no one should be enriched by the detriment or injury of another.)

Juridical, acting in the distribution of justice.

Juridical Days, days in court on which the laws are administered.

Jurisconsulti, or **Jurisprudentes,** men who studied the forms and, in time, the principles of Civil Law, and expounded them for the benefit of their friends and dependents. See *Smith's Dict. of Antiq.*

Jurisdiction, legal authority; extent of power; declaration of the law. Jurisdiction may be limited either locally, as that of a county court, or personally, as where a court has a quorum, or as to amount, or as to the character of the questions to be determined.

Juris et de jure (of law and from law). A conclusive presumption, which cannot be rebutted, is called a presumption *juris et de jure.*

Jurisinceptor, a student of the Civil Law.

Jurisprudence, the science of law, especially of Roman Law.

Jurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia. *Just. Inst.*, 1, 1.—(Jurisprudence is the knowledge of things divine and human, the science of the right and the wrong.)—*Sand. Just.*

Jurist, a civil lawyer, a civilian.

Juris Utrum, an abolished writ which lay for the parson of a church whose predecessor had alienated the lands and tenements thereof.—*Fitz. N. B.* 48.

Jurnedum, a day's travelling.

Juror, one who serves on a jury.

Jurors' Book, a list of persons qualified to serve on juries.

Jury [fr. *jurata,* Lat.; *jure,* Fr.], a number of persons sworn to deliver a verdict upon evidence delivered to them touching the issue.

Trial by jury may be traced to the earliest Anglo-Saxon times. One of the judicial customs of the Saxons was that a man might be cleared of an accusation of certain crimes, if an appointed number of persons (*juratores,* or more properly *compurgatores*) came forward and swore to a *veredictum,* that they believed him innocent. It is remarkable that for accusations of any consequence among the Saxons on the Continent, twelve *juratores* was the number required for an acquittal. Similar customs may be observed in the laws of Athens and Rome, where δικασται and *judices* answer to jurors, and of the continental Angli and Frisiones, though the number of jurors varied.

See, as to the introduction and growth of trial by jury in England, *Forsyth's History of Trial by Jury;* and for comments on and proposed amendments of the law, see *Erle's Jury Laws and their Amendment,* published by Stevens & Sons in 1882.

The procedure relating to trials by jury was amended by Administration of Justice (Miscellaneous Provisions) Act, 1933. In *Hope* v. *Great Western Railway Co.,* 1937, 2 K. B. 130, the Court of Appeal held that trial by jury upon application of a party under s. 6 of the Act was a matter in the discretion of a Court or judge.

Qualification.—The property qualification of jurors is fixed by the County Juries Act, 1825 (6 Geo. 4, c. 50), s. 1, for common jurors, at 10*l.* a year freehold, or 20*l.* a year leasehold, or assessment to the poor-rate or house-duty for a house of 30*l.* a year in Middlesex and 20*l.* a year in other counties (except the county of London, the qualification for which is the same as for Middlesex); the qualification for a special jury, by s. 31 of the same Act, and the Jurors Act, 1870 (33 & 34 Vict. c. 77), s. 6, is having those property qualifications and being also legally entitled to be called an esquire, or being a person of higher degree, or being a banker or merchant, or occupying a house of a certain rateable value. Until the Sex Disqualification (Removal) Act, 1919, women were disqualified at common law from acting as jurors except in the case of a Jury of Matrons (*q.v.*). Now the qualifications are the same for each sex.

Certain persons, as aliens, felons, lunatics, blind and deaf persons, are disqualified. Exemption from service may be claimed by peers, M.P.'s, clergymen, ministers and priests, judges, magistrates, barristers and solicitors in actual practice, notaries public, officers of both Houses of Parliament, of the Supreme Court, and of metropolitan magistrates, clerks of the peace, coroners and deputies, sheriffs' officers and servants, solicitors' managing clerks, police, J.P.'s within their own jurisdiction, members of

corporations, etc., governors of prisons, superintendents of asylums, registered medical practitioners, chemists, dentists, officers and members of H.M. forces, servants of Post Office, Customs, and Inland Revenue, H.M. Household, Masters of Trinity House and members of the Mersey Docks and Harbour Board and the Port of London Authority, and pilots. Application should be made for exemption to the registration officer under the Juries Act, 1922.

Special jurors are summoned to try the more important or difficult jury cases in the King's Bench Division.

Grand jury, abolished (except in a few cases) by the Administration of Justice (Miscellaneous Provisions) Act, 1933 (23 & 24 Geo. 5, c. 36), is summoned by the sheriff of every county for every commission of oyer and terminer and general gaol delivery. The grand jury is instructed in the articles of their inquiry by the presiding judge. They sit in private, and receive indictments inquiring, upon their oaths, whether there be sufficient cause shown by the evidence of the prosecution to call upon the accused persons to answer before a petty jury. See GRAND JURY.

A coroner's jury may consist of any number, not less than seven or more than eleven. Juries in all criminal trials and civil trials in the superior courts, and in writs of inquiry, consist of twelve men, neither more nor less. Juries in county courts consist of eight (County Courts Act, 1934, s. 93).

Before the Act of 1870 there was an old rule in criminal cases against allowing jurors food, drink, or fire after the summing up, but now they are allowed reasonable refreshment at their own expense. Except on a trial of murder, treason or treason-felony, juries may separate in the same way as on a trial for misdemeanour, i.e., to their own homes, being charged not to converse with any person on the subject of the trial.

Remuneration.—There is no statutory remuneration for common jurors in the High Court; s. 22 of the Act of 1870, which fixed a remuneration of ten shillings a day for common jurors, and a guinea a day for special jurors, was repealed by 34 Vict. c. 2. Special jurors get a guinea a cause by s. 34 of the County Juries Act, 1825. In the county courts jurors get a shilling apiece. In some cases a juror gets a customary allowance for trying causes, but in no case for trying prisoners.

An alien is no longer entitled to be tried by a jury *de medietate linguæ;* see British Nationality and Status of Aliens Act, 1914, s. 18. See GRAND JURY; SPECIAL JURY; TRIAL; INQUIRY, WRIT OF; *Chitty's Statutes*, tit. '*Juries*'; as to effect of wrong service of a juror, see IDEM SONANS.

In Scotland, the jury in a civil case numbers twelve. Actions properly for damages, declarators of rights of way, and reductions of wills on the ground of facility or essential error, are the more important types of cases tried by jury. The jury in criminal cases numbers fifteen.

Jury Process, the writ for the summoning of a jury. They were the *distringas juratores*, or *habeas corpora juratorum*, and the *venire juratores facias*, now abolished. A jury is summoned by precept. See 23 & 24 Vict. c. 77.

Jury of Matrons is a jury composed entirely of matrons, which is impanelled in two cases only: (1) upon a writ *de ventre inspiciendo*, which see; (2) where a female prisoner is condemned to be executed, and pleads pregnancy as a ground to postpone the completion of the sentence until after her confinement. Upon this a jury of matrons, or discreet women, inquire into the plea; should they bring in their verdict that the prisoner is *enceinte*, the execution is stayed until the birth of the child, after which, as a rule, the Crown commutes the punishment.

Jus, law, right, equity, authority, and rule.

A Roman 'magistratus' generally did not investigate the facts in dispute in such matters as were brought before him; he appointed a judex for that purpose, and gave him instructions. Accordingly, the whole procedure was expressed by the two phrases *Jus* and *Judicium;* of which the former comprehended all that took place before the magistratus (*in jure*), and the latter all that took place before the judex (*in judicio*). Originally, even the magistratus was called judex, as, for instance, the consul and prætor (*Liv.* iii. 55); and under the empire the term 'judex' often designated the præses.—*Smith's Dict. of Antiq.*

All law (*jus*) is distributed into two parts—*Jus Gentium* and *Jus Civile*—and the whole body of law peculiar to any state is its *Jus Civile* (*Cic. de Orat.* i. 44). The Roman Law, therefore, which is peculiar to the Roman state, is its Jus Civile, sometimes called Jus Civile Romanorum, but more frequently designated by the term Jus Civile only, by which is meant the Jus Civile of the Romans.

The Jus Gentium is viewed by Gaius as springing out of the *Naturalis Ratio*, common to all mankind, which is still more clearly expressed in another passage (i. 89), where he uses the expression '*omnium civitatum jus*' as equivalent to the Jus Gentium, and as founded on the Naturalis Ratio.

The Naturale Jus and the Jus Gentium are therefore identical. Cicero (*Off.* iii. 5) opposes Natura to Leges, where he explains Natura by the term Jus Gentium, and makes Leges equivalent to Jus Civile.

In the partitiones (c. 37) he also divides Jus into Natura and Lex.

There is a threefold division of Jus made by Ulpian and others, which is as follows :— Jus Civile ; Jus Gentium, or that which is common to all mankind ; and Jus Naturale, which is common to man and beasts. The foundation of this division seems to have been a theory of the progress of mankind from what is commonly termed a state of nature ; first, to a state of society, and then to a condition of independent states. This division had, however, no practical application, and must be viewed merely as a curious theory, except so far as positive law, which may be said to be the expression of specialized requirements traceable to natural instincts, is a development of Ulpian's Jus Naturale.

Another division is referred to and sometimes expressed by the words *Jus* and *Fas* (*fas et jura sinunt.—Virg. Georg.* i. 269), the law of things not pertaining to religion, and of things pertaining to it ; also respectively opposed to one another by the terms *Res Juris Humani et Divini* (*Instit.* ii. tit. 1). As the components of a single generalization, 'jurisprudentia.'

The terms *Jus Scriptum* and *Non Scriptum*, as explained in the Institutes (i. tit. 2), comprehended the whole of the Jus Civile ; for it was all either Scriptum or Non Scriptum, whatever other divisions there might be (*Ulp. Dig.* 1, tit. 1, s. 6). *Jus Scriptum* comprehended everything, except that '*quod usus approbavit.*' This division of Jus Scriptum and Non Scriptum does not appear in Gaius. It was borrowed from the Greek writers, and seems to have little or no practical application among the Romans.

There is another division of the matter of law which appears among the Roman jurists, viz., the Law of Persons, which is expressed by the phrase (1) '*jus quod ad personas pertinet,*' (2) '*vel ad res*' (the Law of Things), and (3) '*vel ad actiones*' (the Law of Procedure) (*Gaius*, i. 8).—*Cf. Smith's Dict. of Antiq.*

Jus constitui oportet in his quæ ut plurinum accidunt non quæ ex inopinato. D. 1, 3, 3.—(Law ought to be made with a view to those cases which happen most frequently, and not to those which are of rare or accidental occurrence.)

Jus accrescendi (the right of survivorship). See JOINT-TENANCY.

Jus accrescendi præfertur ultimæ voluntati. *Co. Litt.* 185 *b.*—(The right of survivorship is preferred to the last will.)

Jus ad rem, an inchoate and imperfect right ; such as a parson promoted to a living acquires by nomination and institution.

Jus æsneciæ, the right of primogeniture.

Jus albinatus, the *droit d'aubaine*, which see.

Jus Anglorum, the laws and customs of the West Saxons, in the time of the Heptarchy, by which the people were for a long time governed, and which were preferred to all others.—*Jac. Law Dict.*

Jus Civile, the interpretation of the laws of the Twelve Tables, and now of the whole system of the Roman Laws.

Jus Civitatis, Roman citizenship, including (1) public rights ; *suffragium et honores* and *jus provocationis*, the right of appeal in capital cases from the tribunal to the assemblies of the public ; and (2) private rights ; *connubium et commercium*. Originally, the full enjoyment was restricted to the patricians. In the course of centuries of development plebeians obtained all these rights and they were conferred by law on aliens, not by right of naturalisation but either as individuals or as members of the same community. *Cf. Fustel de Coulanges*, '*Le Cité Antique*,' *Hunter's Rom. Law.*

Jus Commune, the Common Law.

Jus Coronæ, the right of the Crown.

Jus curialitatis Angliæ, the courtesy of England, which see.

Jus deliberandi, the right which an heir has in Scots Law of deliberating for a certain time whether he will represent his predecessor. See ANNUS DELIBERANDI.

Jus devolutum, the right of the Church of presenting a minister to a vacant parish, in case the patron shall neglect to exercise his right within the time limited by law.

Jus disponendi, the right of disposition ; the right of disposition by will ; the right to call upon a trustee to execute conveyances of the legal estate, as the *cestui que trust* directs.

Jus dividendi [Med. Lat.], the right of disposing of realty by will.—*Du Cange.*

Jus duplicatum, the right of possession of as well as the right of property in a thing.

Jus ex injuriâ non oritur.—A right cannot arise to any one out of his own wrong.)

Jus feciale, the law of nations.—*Roman Law.*

Jus fiduciarium, a trust.

Jus fodiendi, a right of digging.

Jus gentium, the law of nations.—*Roman Law.* See *Maine's Ancient Law,* ch. iii., and *International Law.*

Jus habendi, the right to be put in actual possession of property.

Jus habendi et retinendi, a right to have and to retain the profits, tithes, and offerings, etc., of a rectory or parsonage.

Jus hæreditatis, the right of inheritance. See DESCENT.

Jus honorarium, the body of Roman Law, which was made up of edicts of the supreme magistrate, particularly the prætors.

Jus imaginis, the right of using pictures and statues of ancestors among the Romans. It had some semblance to the right of bearing a coat of arms amongst us.

Jus in personam, a right which gives its possessor a power to oblige another person to give or procure, to do or not to do, something.

Jus in re, a complete and full right; a real right, or a right to have a thing, to the exclusion of all other men.

Jus jurandi forma verbis differt, re convenit; hunc enim sensum habere debet, ut Deus invocetur. *Grotius,* l. 2, c. xiii. s. 10.—(The form of taking an oath differs in language, agrees in meaning; for it ought to have this sense, that the Deity is invoked.) See OATH.

Jus liberorum, a privilege granted to such persons in ancient Rome as had three children, by which they were exempted from all troublesome offices.

Jus mariti, the right, if any, to his wife's property and succession which a husband possesses by right of marriage. See HUSBAND AND WIFE; MARRIED WOMAN; WIDOW.

Jus merum, pure or mere right.

Jus naturale est quod apud omnes homines eandem habet potentiam. 7 *Co.* 12.—(Natural right is that which has the same force among all men.)

Jus non patitur ut idem bis solvatur. (Law does not suffer that the same thing be twice paid.)

Jus Papirianum, the laws of Romulus, Numa, and other kings of Rome, collected by Sextus Papirius, who lived in the time of Tarquin the Proud.

Jus pascendi, the right of grazing.

Jus patronatus, a commission granted by a bishop to some persons, usually his chancellor and others, of competent learning, to inquire who is the rightful patron of a church.

Jus possessionis, a right of possession.

Jus postliminii. See POSTLIMINIUM.

Jus prætorium, the discretion of the prætor in Roman Law, as distinguished from the *leges,* or standing law. See CIVIL LAW.

Jus precarium, a right by courtesy or sufferance for which the remedy was only by entreaty or request.

Jus presentationis, a right of presenting.

Jus privatum, the civil or municipal law of Rome.

Jus quæsitum, a select or special law.

Jus recuperandi, intrandi, etc., a right of recovering and entering land, etc.

Jus relictæ, the right of a widow in her deceased husband's personalty; if there be children, she is entitled to a third of it; if there be none, to a half. But see now the Intestate Husband's Estate (Scotland) Act, 1911 (1 & 2 Geo. 5, c. 10). See REASONABLE PARTS.

Jus relicti. This right was introduced by the Married Women's Property (Scotland) Act, 1881 (44 & 45 Vict. c. 21), s. 6, of which enacts that the husband shall take the same share and interest in his wife's movable estate which is taken by a widow in her deceased husband's movable estate.

Jus respicit æquitatem. *Co. Litt.* 24.—(Law has regard to equity.)

Jus spatiandi, a right to walk about at pleasure over the land of another person; no such right is known to English law, see *International Tea Stores Co.* v. *Hobbs,* 1903, 2 Ch. p. 172; *A.-G.* v. *Antrobus,* 1905, 2 Ch. p. 198.

Jus superveniens auctori accrescit successori.—(A right growing to a possessor accrues to the successor.)

Jus tertii, the right or title of a third person. In Scots Law normally, a *tertius* has no title to enforce a contract even though he may have an interest that it is carried out. But when a contract shows that the object of the parties to it was to advance the interests of a *tertius,* and the *tertius* is named, then a *jus quæsitum tertio* is created which gives the *tertius* a title to sue.

Jus venandi et piscandi, the right of hunting and fishing.

Justa, a certain measure of liquor, being as much as was sufficient to drink at once.—*Dugd. Mon.* t. 1, 149.

Justice [fr. *justitia,* Lat.], the virtue by which we give to every man what is his due, opposed to injury or wrong. It is either *distributive,* belonging to magistrates, or *commutative,* respecting common transactions among men. See JUSTITIA.

Justice, High Court of. See HIGH COURT OF JUSTICE.

Justicements, all things appertaining to justice.

Justicer, administrator of justice.

Justices, officers deputed by the Crown to administer justice and do right by way of judgment. The judges of the Supreme Court are called justices, but the word is usually applied to petty magistrates who sit to administer summary justice in minor matters, and who are commonly called *justices of the peace.* They were first appointed in 1327 by 1 Edw. 3, st. 2, c. 16, and are now appointed by the king's special commission under the Great Seal, the form of which was settled by all the judges in 1590, and continues, with little alteration, to this day. Consult *Putnam's Early Treatises on the Practice of the Justices of the Peace in the Fifteenth and Sixteenth Centuries.* This appoints them all, jointly and severally, to keep the peace in the county named; and any two or more of them to inquire of and determine felonies and other misdemeanours in such county committed, in which number some particular justices, or one of them, are directed to be always included, and no business done without their presence, the words of the commission running thus:—*Quorum aliquem vestrum,* A., B., C., D., etc., *unum esse volumus,* whence the justices so named were usually called justices of the *quorum;* but the modern practice is to include all the justices in the quorum clause. A justice named in the commission is not at liberty to act until he has taken the oath of allegiance and judicial oath in the form respectively prescribed by the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 82), and the Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48), s. 2. These justices ('stipendiary magistrates' excepted: see MAGISTRATE) act gratuitously, receiving no salary or fees.

By the Justices Qualification Act, 1744 (18 Geo. 2, c. 20), every justice *for a county* had to have an estate of freehold, copyhold, or customary tenure, in fee, for life, or a given term, of the yearly value of 100*l.*, or a reversion or remainder expectant upon such lease as in the Act mentioned, with reserved rents of the clear yearly value of 300*l.* per annum; but two years' occupation of a dwelling-house of not less than 100*l.* annual value would of itself give a qualification by the Justices Qualification Act, 1875 (38 & 39 Vict. c. 54); but both these Acts are repealed by the Justices of the Peace Act, 1906 (6 Edw. 7, c. 16), by which 'the qualification by estate required in the case of a justice of the peace for any county' is abolished, as also is the residential qualification required by 2 Hen. 5, st. 2, c. 1, in the case of justices residing within seven miles of the county. The Act of 1906 also allows a solicitor, if otherwise qualified, to be appointed a county justice (reproduced by Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37), s. 54), but prohibits any solicitor being a justice, or any partner of his, from practising directly or indirectly before the justices for that county or any borough within the county. A clergyman is not, as a rule, appointed if a layman is available (see 19 *Sol. Journ.* 896).

Borough Justices (in addition to the mayor and ex-mayor, who are justices *ex officio* in every borough) are appointed by the Crown in boroughs having a separate commission of the peace. They must reside, while acting, in or within seven miles of the borough, or occupy property therein, but they need not be burgesses or have such qualification by estate as was required for a justice of the county.—Mun. Corp. Act, 1882, ss. 155–157. See also Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 18.

By s. 304 of the Public Health Act, 1936, a justice of the peace is not to be disqualified from acting in cases arising under that Act by reason only of his being liable in common with others to contribute to or be benefited by any council rate or fund for payment of expenses.

Women may be appointed justices of the peace (Sex Disqualification (Removal) Act, 1919, s. 1).

The office of Justice of the Peace subsists during the pleasure of the Crown, and is determinable (1) by express writ under the Great Seal; (2) by writ of *supersedeas;* (3) by a new commission; (4) by accession to the office of sheriff during the year of the shrievalty.

The duties of a justice of the peace are of a varied character. They are of four principal kinds: (1) To commit offenders to trial before a judge and jury, upon being satisfied that there is a *primâ facie* case

against them. This power is chiefly regulated by 'Jervis's Act' (No. 1), 11 & 12 Vict. c. 42: see, especially, ss. 9, 25. (2) To convict and punish summarily. The procedure in these matters is chiefly regulated by 'Jervis's Act' (No. 2) (11 & 12 Vict. c. 43), the Summary Jurisdiction Act, 1879, and the Criminal Justice Administration Act, 1914, while the power itself is given by the particular statute dealing with the subject-matter of the offence. (3) To act, if county justices, as judges at Quarter Sessions, where their chairman presides and tries indictments with a jury, and such justices as attend the Quarter Sessions sit as a Court of Appeal from the decisions of justices in petty sessions. (4) The licensing of places for the sale of intoxicating liquor, and of persons to deal in game.

As to procedure against juvenile offenders, see Children and Young Persons Act, 1933 (23 Geo. 5, c. 12), and JUVENILE COURTS, JUVENILE OFFENDERS.

The management of such administrative business as the licensing of theatres, the levying of county rates, the establishment and maintenance of reformatory and industrial schools, etc., is transferred from the justices to county councils (see that title) by s. 3 of the Local Government Act, 1888 (51 & 52 Vict. c. 41), as amended by Local Government Act, 1933 (23 & 24 Geo. 5, c. 51).

▶ Consult *Burn's Justice; Stone's Justices' Manual; Leeming and Cross's Quarter Sessions Practice*, and *Pritchard's Quarter Sessions*. See *Chit. Stat.*, tit. '*Justices*,' and SESSIONS OF THE PEACE; QUARTER SESSIONS; PETTY SESSIONS; METROPOLITAN POLICE; SUMMARY JURISDICTION, COURT OF.

Justices of Appeal, the title borne by the ordinary judges of the Court of Appeal, under Jud. Act, 1875, s. 4, until the Jud. Act, 1877 (40 & 41 Vict. c. 9), by s. 4 (replaced by Jud. Act, 1925, s. 6 (3)), gave them the style of 'Lords Justice of Appeal' (see that title).

Justice-seat, the principal Court of the Forest.

Justiceship, rank of office of a justice.

Justiciable, proper to be examined in courts of justice.

Justiciar or **Justiciary, Chief,** an officer instituted by William the Conqueror, of high importance in our early history, a lord chief justice. He presided in the King's Court and in the Exchequer, and his authority extended over all other courts. He was *ex-officio* regent of the kingdom in the king's absence. Writs ran in his name and were tested by him. The last who filled the office and bore the title of *Capitalis Justitiarius Anglicæ* was Philip Basset, *temp.* Henry III. See *Jac. Law Dict.*

Justiciary, High Court of, the supreme Criminal Court of Scotland, consists of the Lord Justice General, the Lord Justice Clerk, and the other Judges of the Court of Session who are *ex-officio* Lords Commissioners of Justiciary. It has jurisdiction in all cases of crime committed in Scotland or in a British ship at sea. It sits in Edinburgh, and, on circuit, at various other places. It has certain appellate jurisdiction, the principal of which is that provided for by the Criminal Appeal (Scotland) Act, 1926 (16 & 17 Geo. 5, c. 15) (see CRIMINAL APPEAL). When exercising this jurisdiction, three Lords Commissioners are a quorum.

Justiciatus, judicature; prerogative.

Justicies, a writ directed to the sheriff in some special cases, by virtue of which he might hold plea of debt in his county court for a large sum; whereas by his ordinary power he was limited to sums under 40*s.*—*Fitz. N. B.* 117; 3 *Bl. Com.* 36.

As the sheriff could not, by this process, or the judgment to be obtained thereupon, arrest the defendant's body, but only take his goods, and as the cause might be removed at the defendant's pleasure into the superior courts, this process fell into desuetude.

Justifiable Homicide, the killing of a human creature without incurring any legal guilt. It is of various kinds:—

(1) The due execution of public justice, in putting a malefactor to death who has forfeited his life by the laws of his country.

(2) It may be committed for the advancement of public justice, as in the following instances: (α) Where an officer or his assistant, in the due execution of his office, either in a criminal or civil case, arrests, or attempts to arrest, a person who resists and who is killed in the struggle. (β) In case of a riot or rebellious assembly, officers endeavouring to disperse the mob are justified in killing them, both at Common Law and by the Riot Act (1 Geo. 1, c. 5). (γ) Where the prisoners in a gaol assault the gaoler or officer, and he in his defence kills any of them; it is justifiable for the sake of preventing an escape. (δ) Where an officer or his assistant, in the due execution of his office, arrests, or attempts to arrest, a person for felony or a dangerous wound given, and he having notice thereof flies and is killed by

such officer or assistant in pursuit. (c) Where, upon such offence as last described, a private person, in whose sight it has been committed, arrests or endeavours to arrest the offender, and kills him in resistance, or flight, under similar circumstances.

(3) Where committed for the prevention of any forcible or atrocious crime, but not if the crime is unaccompanied by force.

If two shipwrecked persons get on the same plank, but finding it not able to save them both, one of them thrusts the other from it, whereby he is drowned, this is said by Lord Bacon and others to be justifiable, but such is not the law of England. See *Reg.* v. *Dudley*, (1884) 14 Q. B. D. 273, in which, where a shipwrecked crew were dying of famine, it was held, upon a special verdict, not to be justifiable homicide but wilful murder for two of them to kill a boy to feed upon his body. The prisoners in this case were sentenced to death, but the sentence was commuted to six months' imprisonment.

Justification, a maintaining or showing a sufficient reason in court why the defendant did what he is called upon to answer, particularly in an action of libel; a defence of justification is a defence showing the libel to be true, or in an action of assault showing the violence to have been necessary.

If in a libel action a defendant pleads justification he must give particulars of the matters upon which he intends to rely in support of his plea (see R. S. C., Order XXXVI., r. 37); but it is otherwise if the plea is only one of fair comment (*Digby* v. *Financial News, Ltd.*, 1907, 1 K. B. 502). Consult *Odgers on Libel.*

Justificators, a kind of compurgators, or those who by oath justified the innocence or oaths of others, as in the case of WAGER OF LAW, *q.v.*

Justified. Hanged. *Scots term.*

Justifying Bail, proving the sufficiency of bail or sureties in point of property, etc. See BAIL.

Justifying Security. Administrators in certain cases are required by the Court of Probate to give justifying security—i.e., the sureties to the administration bond must, in an affidavit, swear that they are, after the payment of their debts, worth a sum specified. Justifying security is required by the Court according to the circumstances of each case, subject to the rule that whenever administration is granted in default of the appearance of persons cited, but not personally served with the citation, or for the use and benefit of a person of unsound mind, unless it is granted to a committee appointed by the Court of Chancery, justifying security must be given.—1 *Williams on Executors.*

Justinianist, a civilian; one who studies the civil law.

Justitia, a statute, law, or ordinance. Also a jurisdiction, or the office of a judge.—*Jac. Law Dict.*

Justitia debet esse LIBERA, **quia nihil iniquius venali justitiâ**; PLENA, **quia justitia non debet claudicare**; **et** CELER, **quia dilatio quædam negatio.** 2 *Inst.* 56.—(Justice ought to be unbought, because nothing is more hateful than venal justice; full, for justice ought not to halt; and quick, for delay is a kind of denial.) Compare the 29th chapter of Magna Charta, *post*, MAGNA CHARTA.

Justitia piepoudrous, speedy justice.—*Bract.*, 334.

Justitium, a ceasing from the prosecution of law, and exercising justice in places judicial. The Vacation.—*Cowel's Law Dict.*

Justs, or **Jousts,** exercises between martial men and persons of honour, with spears, on horseback; different from *tournaments*, which were military exercises between many men in troops.

Juvenile Courts. These courts first received statutory recognition by the Children Act, 1908 (8 Edw. 7, c. 67).

These are now governed by ss. 45 to 49 of the Children and Young Persons Act, 1933 (23 Geo. 5, c. 12). The Court must 'sit either in a different building or room from that in which sittings of Courts other than juvenile Courts are held' (s. 47 (2)).

The general public also are not admitted to these courts, but *bonâ fide* representatives of the Press cannot be excluded (s. 47 (2)). The Second Schedule of the Act governs the constitution of these courts and in the Metropolitan Police Court District, and they are now held in buildings other than police courts, and consist of a police magistrate and two J.P.'s, one of whom must be a woman. See also Juvenile Courts (Constitution) Rules, 1933 (S. R. & O., 1933, No. 647/L. 20), and CHILDREN.

Juvenile Offenders. The various methods of dealing with juvenile offenders are governed by ss. 50 to 60 of the Children and Young Persons Act, 1933 (23 Geo. 5, c. 12). See s. 54 with regard to committal in custody in a remand home, and s. 57 with regard to sending to approved schools. With regard to the summary trial of children and young persons for certain indictable offences, see

the Third Schedule of the Act and s. 11 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). See also CHILDREN ; INDUSTRIAL SCHOOLS ; REFORMATORY SCHOOLS.

Juverna, an ancient name of Ireland.

Juxta formam statuti (according to the form of the statute).

K.

Kabani, a person who, in Oriental states, supplies the place of our notary public. All obligations, to be valid, are drawn by him ; and he is also the public weigh-master ; and everything of consequence ought to be weighed before him.

Kabooleat, properly *Kabuliyat*, a ' written agreement, especially one signifying assent, as the counterpart of a revenue lease, or the document in which a payer of revenue, whether to the government, the zemindar, or the farmer, expresses his consent to pay the amount assessed upon his land.' (*Wilson's Indian Glossary.*)

Kaia, a key, quay, or wharf.—*Old Records.*

Kaiage, or **Kaiagium,** a wharfage-due.

Kain, poultry, etc., renderable by a vassal to his superior.—*Bell's Scotch Law Dict.*

Kalalconna, a duty paid by shopkeepers in Hindustan who retail spirituous liquors ; also the place where spirituous liquors are sold.—*Indian.*

Kalendæ, rural chapters, or conventions of the rural dean and parochial clergy, which were formerly held on the calends of every month ; hence the name.—*Paroch. Antiq.* 604.

Kalendar, now spelled calendar, *q.v.*

Kalends. See CALENDS.

Kantref [Brit.], the division of a county ; a hundred in Wales. See CANTRED.

Karitè, the best beer in a religious house. See CARITAS.

Karle, a churl.—*Domesday.*

Karrata fœni, a cart-load of hay.

Kay, a quay, or key.

Kazy, a Mohammedan judge or magistrate in the East Indies, appointed originally by the Court of Delhi to administer justice according to their written law ; under the British authorities his judicial functions ceased, and his duties were confined to the preparation and attestation of deeds, and the superintendence and legalization of marriage and other ceremonies among the Mohammedans.—*Indian.*

Keating's (Sir H. S.) Act, for summary procedure on bills of exchange (18 & 19 Vict. c. 67). Superseded by R. S. C., Ord. III., r. 6, and repealed (with savings for inferior courts by s. 7) by the Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49), writs under it having been done away with by R. S. C., Ord. II., r. 6. It has been repealed as regards the county court by the County Courts Act, 1919.

Kebbar, or **Culler,** the refuse-sheep drawn out of a flock.—*Cooper's Thesaur.*

Keelage, a privilege to demand money for the bottom of ships resting in a port or harbour.—*Termes de la Ley.*

Keelhale, Keelhaul, or **Keelrake,** to drag a person under the keel of a ship by means of ropes from the yardarms—a punishment formerly practised in the Navy.

Keels, vessels for the carriage of coals.

Keeper of the Great Seal, Lord, a judicial officer who used to be appointed in lieu of the Lord Chancellor.—5 Eliz. c. 18.

Keeper of the Privy Seal, now called the Lord Privy Seal, through whose hands all charters, etc., pass before they come to the Great Seal. The office of Lord Privy Seal is always held by a Cabinet Minister.

Keeper of the Queen's Prison. This officer was appointed by the Secretary of State for the Home Department during pleasure.—Abolished 25 & 26 Vict. c. 104.

Keepers of the Liberty of England. See CUSTODES LIBERTATIS, etc.

Keeping House, confining oneself within the privacy of home to defeat creditors ; an act of bankruptcy. See BANKRUPTCY.

Keeping the Peace. See PEACE.

Kennelworth Edict (*dictum sive edictum de Kennelworth*). An edict or award between Henry III. and those who had been in arms against him ; so called because made at Kenilworth Castle in Warwickshire, *anno* 51 Hen. 3, A.D. 1266. It contained a composition of those who had forfeited their estates in that rebellion, which composition was five years' rent of the estates forfeited.—*Hale's Hist.*, p. 10, n. (*d*).

Kentlage, a permanent ballast, consisting usually of pig-iron, cast in a particular form, or other weighty material, which, on account of its superior cleanliness, and the small space occupied by it, is frequently preferred to ordinary ballast.—*Abbott on Shipping*, 5.

Kenyon-Slaney Clause, s. 7 (6) of the Education Act, 1902 (2 Ed. 7, c. 42), and is as follows :—

(6) Religious instruction given in a public elementary school not provided by the local education authority shall, as regards its character, be in accordance with the provisions (if any) of the trust deed

relating thereto, and shall be under the control of the managers: Provided that nothing in this subsection shall affect any provision in a trust deed for reference to the Bishop or superior ecclesiastical or other denominational authority so far as such provision gives to the Bishop or authority the power of deciding whether the character of the religious instruction is or is not in accordance with the provisions of the trust deed.

The clause was inserted on a motion of Colonel Kenyon-Slaney, M.P. for the Newport division of Shropshire, but the proviso was added by the House of Lords. This clause was repealed and re-enacted by the Education Act, 1921 (11 & 12 Geo. 5, c. 51) s. 29 (5) (*c*).

Keps, contrivances for supporting, when at rest, the cage in which miners travel up and down the shaft of a mine; see the Coal Mines Act, 1911, s. 40 (4); also a local name for bee-hives.

Kerhere, a customary cart-way; also a commutation for a customary carriage duty.

Kernellatus, fortified or embattled.—*Co. Litt.* 5 *a.*

Kernes, idlers, vagabonds.

Ketch, John, the public executioner in the reigns of Charles II. and James II. Formerly a popular name for those who succeeded him in his office.

Keyus, a guardian, warden, or keeper.—*Dugd. Mon.*, tom. 2, p. 71.

Khalsa, pure, unmixed. An office of government in which the business of the revenue department was transacted under the Mohammedan Government, and during the early periods of British rule. Khalsa lands are lands the revenue of which is paid into the Exchequer.—*Indian.*

Khiraj, tax, tribute, land-tax.—*Ibid.*

Kidder, an engrosser of corn to enhance its price.—*Ainsworth.*

Kiddle, Kidel, or **Kedel** [fr. *kidellus*, Lat.], a dam or open wear in a river, with a loop or narrow cut in it, accommodated for the laying of wheels or other engines to catch fish.—2 *Inst.* 38; and see, per Lord Selborne, C., *Neill* v. *Duke of Devonshire*, (1882) 8 App. Cas. at p. 144.

Kidnapping [fr. *kind*, Dut., a child, and *nap*, to steal], the forcible abduction or stealing away of a man, woman, or child from their own country, and sending them into another. It is an offence punishable at Common Law by fine and imprisonment; and the kidnapping a child under fourteen is made felony by the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 56.

See also Pacific Islanders Protection Act, 1872 (35 & 36 Vict. c. 19) (amended by 38 & 39 Vict. c. 51), for the prevention and punishment of criminal outrages upon natives of the islands in the Pacific Ocean.

Kilderkin, a measure of 18 gallons.

Kilketh, an ancient servile payment made by tenants in husbandry.

Kill, Irish for a church or cemetery; used as a prefix to the names of many places in Ireland.

Killagium, keelage (which see).

Killyth-stallion, a custom by which lords of manors were bound to provide a stallion for the use of their tenants' mares.

Kin or **Kindred** [fr. *cynren*, Sax.], relation by blood.

There are two degrees of kindred: the one in the lineal or direct line ascending or descending, and the other in the collateral or indirect line.

The right of representation of kindred for the purposes of distribution of personalty, in the descending line, reaches beyond the great-grandchildren of the same parents; but in the collateral line it was not allowed to reach beyond brothers' and sisters' children under the Statutes of Distribution, but now the right is conferred on the issue of any person entitled to succession upon intestacy of person dying after 1925 (except parents or grand-parents) under the Statutory Trusts, s. 47, Administration of Estates Act, 1925.

Kin-bote, compensation for the murder of a kinsman.—*Old Saxon Law.*

King, the head and governor of a country. The King, under his present style or title, George VI., by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, derives his title from the Act of Settlement of 1700 (12 & 13 Wm. 3, c. 2), by which the Crown 'of England, France and Ireland' was settled, after the death of William III. and Princess Anne without issue, on the Electress Sophia of Hanover 'and the heirs of her body being Protestants'; the Union with Scotland Act, 1706 (6 Anne, c. 11), which constituted one kingdom of Great Britain; and the Union with Ireland Act, 1800 (39 & 40 Geo. 3, c. 67), as varied by the Government of Ireland Act, 1920 (10 & 11 Geo. 5, c. 67), and the Royal and Parliamentary Titles Act, 1927 (17 Geo. 5, c. 4), whereby 'United Kingdom' shall, on and after the 12th April, 1927, mean Great Britain and Northern Ireland, Southern Ireland having ceased to

be an integral part of the United Kingdom, and under the Irish Free State Agreement Act, 12 Geo. 5, c. 4, Sched., acquiring the status of a dominion, and see also the Statute of Westminster, 1931 (22 Geo. 5, c. 4), s. 4, enacting, subject to the provisions of the Act, that no Act of Parliament of the United Kingdom passed after the 11th December, 1931, shall extend to a dominion as part of the law of that dominion unless it is expressly declared in that Act that the dominion has requested, and consented to, the enactment thereof.

The King has all spiritual and ecclesiastical jurisdiction by virtue of s. 8 of the Elizabethan Act of Supremacy, 1 Eliz. c. 1 (though Henry VIII.'s Act of Supremacy, 26 Hen. 8, c. 1, declaring Henry to be supreme head on earth of the Church of England, repealed by 1 & 2 P. & M. c. 8, continued repealed by the Elizabethan Act), and his supremacy over the Church of England is also declared by the First of the Canons of 1603.

The King is also head of the Army (subject to the illegality of a standing Army, to keep up which an Annual Act of Parliament [see ARMY] is necessary), of the Navy, and by ss. 3, 4 of the Militia Act, 1882 (45 & 46 Vict. c. 49), of the Militia. He appoints archbishops and bishops by virtue of 25 Hen. 8, c. 20, and judges of the Supreme Court under s. 5, Judicature Act, 1873.

There is no legislative power in either or both Houses of Parliament without the King.—13 Car. 2, st. 1, c. 1, s. 3.

For rights of the people as against the King, see BILL OF RIGHTS; and see, further, CIVIL LIST; CROWN; SIGN MANUAL; NULLUM TEMPUS. Consult *Jac. Law Dict.*, tit. '*King*.'

King-geld, a royal aid; an escuage.

Kings-at-Arms. The principal herald of England was of old designated king of the heralds, a title which seems to have been exchanged for king-at-arms about the reign of Henry IV. The kings-at-arms at present existing in England are three: Garter, Clarencieux, and Norroy, besides Bath, who is not a member of the college. Scotland is placed under an officer called Lyon King-at Arms, and Ireland is the province of one named Ulster. See HERALD.

King's Bench. The Court of King's or Queen's Bench (so called because the King used formerly to sit there in person (though the judges determined the causes), the style of the Court still being *coram ipso rege*, or *coram ipsâ reginâ*) was a Court of record, and the Supreme Court of Common Law in the kingdom, consisting of a chief justice and four *puisne* justices, who were by their office the sovereign conservators of the peace and supreme coroners of the land.

This Court, which was the remnant of the *aula regia*, was not, nor could be, from the very nature and constitution of it, fixed to any certain place, but might follow the King's person wherever he went, for which reason all process issuing out of this Court in the King's name was returnable '*ubicunque fuerimus in Anglia*.' For some centuries, and until the opening of the Royal Courts, the Court usually sat at Westminster, being an ancient palace of the Crown, but might remove with the King as he thought proper to command.

The jurisdiction of the Court was very high. It kept all inferior jurisdictions within the bounds of their authority, and might either, by writ of *certiorari*, remove their proceedings to be determined here, or, by writ of *prohibition*, prohibit their progress below. It superintended all civil operations in the kingdom. (See QUO WARRANTO.) By writ of *mandamus* it commanded magistrates to do what their duty required in every case where there was no other specific remedy. By writ of *habeas corpus* it protected the liberty of the subject by speedy and summary interposition. It took cognizance both of criminal and civil causes: the former in what is called the Crown side or Crown office, the latter in the plea side of the Court. On the Crown side it took cognizance of all criminal causes, from high treason down to the most trivial misdemeanour or breach of the peace, and into it also indictments from all inferior Courts might be removed by writ of *certiorari*. See CERTIORARI; HABEAS CORPUS; MANDAMUS; QUO WARRANTO.

On the plea side it exercised a general jurisdiction over all actions between subject and subject, with the exception of real actions and suits concerning the revenue. Its jurisdiction in civil action was formerly limited to trespass or injuries said to have been committed *vi et armis*, but by means of fictitious proceedings called *Bill of Middlesex* and *Latitat* (which see) it usurped jurisdiction over all personal actions; direct jurisdiction in all such actions being given by 2 Wm. 4, c. 39, which abolished these fictitious proceedings. Error lay from this Court to the Exchequer Chamber.

The jurisdiction of this Court, under the name of the Queen's Bench, was assigned, by s. 34 of the Jud. Act, 1873, to the Queen's

Bench Division of the High Court of Justice, and by Order in Council under s. 32 of the same Act the Common Pleas and Exchequer Divisions were in February, 1881, merged in the same Queen's Bench Division—since the death of Queen Victoria styled the King's Bench Division. The Lord Chief Justice of England, besides being an *ex-officio* judge of the Court of Appeal (Jud. Act, 1875, s. 4), is President of the Division (Jud. Act, 1873, s. 31). See now Judicature Act, 1925, ss. 2-5, 9-17, 18, 19; by the Judicature Act, 1935, the number of judges in the K. B. D. has been increased to nineteen.

King's Books. They contain the *Valor Beneficiorum*—i.e., value of every ecclesiastical benefice and preferment, according to which valuation the first-fruits and tenths were collected and paid, and the clergy rated. This value was certified by certain commissioners, pursuant to 26 Hen. 8, c. 3, confirmed by 1 Eliz. c. 4.

King's Counsel, barristers appointed counsel to the Crown, and called within the Bar. They answer in some measure to the advocates of the revenue, *advocati fisci*, among the Romans. They must not be employed against the Crown without special licence, which is not refused unless the Crown desires to be represented by the individual in the case. Each King's Counsel had a small salary, but it is not so now. Under 13 & 14 Vict. c. 25 (repealed by Stat. Law Rev. Act, 1875), they might act as judges of assize when named in the commission, and may, and often do, act as such judges, as being 'persons usually named in the commission' under s. 29 of the Jud. Act, 1873, and being expressly authorized so to be named by s. 37 of that Act. See now Judicature Act, 1925, s. 70; see ADVOCATES, FACULTY OF.

King's Evidence. See APPROVER.

King's Evil, scrofula, formerly supposed to be cured by the King touching the sufferer and hanging round his neck a white ribbon to which was fastened a gold coin; for an account of the ceremony of 'touching,' see *Macaulay's Hist. of England*, ch. xiv.

King's Keys. The King's Keys are, in law phrase, the crow-bars and hammers used to force doors and locks in execution of the King's warrant.—*Scott's Antiquary.*

King's Printer has the liberty of printing the Bible, Prayer Book, Statutes, and Acts of State, to the exclusion of all other presses, except those of the two universities, and by 56 & 57 Vict. c. 66, all Statutory Rules. By the Evidence Act, 1845 (8 & 9 Vict. c. 113), s. 3, all copies of private, local, and personal Acts of Parliament, not public Acts, if purported to be printed by the Queen's printers, and all copies of the journals of either House of Parliament, and of royal proclamations purporting to be printed by the printers to the Crown, or by the printers to either House of Parliament, or by any or either of them, shall be admitted as evidence thereof by all Courts, etc., without any proof being given that such copies were so printed, and see 45 & 46 Vict. c. 9, and 7 Edw. 7, c. 16, as to colonial and dominion Acts and Orders.

King's Proctor, the proctor or solicitor representing the Crown in the Probate and Divorce Court. In proper cases it is his duty to intervene in petitions for dissolution or for declaration of nullity of marriage to defeat collusion or the suppression of material facts. In his official capacity he cannot intervene to show cause against a decree *nisi* for dissolution of marriage being made absolute without the leave of the Court (*Gray* v. *Gray*, (1861) 30 L. J. P. & M. 96). In the case of an unsuccessful intervention the King's Proctor may be condemned in costs (*Carter* v. *Carter*, 1910, P. 151). See Judicature Act, 1925, s. 181.

King's Silver, the money which was paid to the King, in the Court of Common Pleas for a licence granted to a man to levy a fine of lands, tenements, or hereditaments to another person; and this must have been compounded, according to the value of the land, in the alienation office, before the fine would have passed.—2 *Inst.* 511. See FINE.

King's Widow, a widow of the King's tenant-in-chief, who was obliged to take oath in Chancery that she would not marry without the King's leave.

Kinsfolk, relations; those who are of the same family.

Kinsman, a man of the same race or family.

Kinswoman, a female relation.

Kintal, or **Kintle** [fr. *centum*, Lat.], a hundred pounds in weight. See QUINTAL.

Kintledge, a ship's ballast. See KENTLAGE.

Kipper-time, the space of time between the 3rd of May and the Epiphany, in which fishing for salmon in the Thames, between Gravesend and Henley-on-Thames, was forbidden.—*Rot. Parl.* 50 Edw. 3.

Kirby's Quest, an ancient record remaining with the remembrancer of the Exchequer, so called from its being the inquest of John de Kirby, treasurer to King Edward I.—*Jac. Law Dict.*

Kirk [fr. *cyrce*, Sax.; *κυριακή*, Gk.], a church.

Kirk-note or **Kirk-mote,** a meeting of parishioners on Church affairs.

Kirk-officer, the beadle of a church in Scotland.

Kirk-session, a parochial Church Court in Scotland, consisti g of the ministers and elders of each parish.

Kissing the Book, kissing the New Testament on taking an oath (see that title). This practice, which has of late years been much objected to on sanitary grounds, is peculiar to English Courts, and even in them has not been in use for much more than 150 years; the original practice having been for the witness only to place his hand on the New Testament in order to take the 'corporal oath' (see that title, and see *Best on Evidence*, 9th ed., at p. 147).

The practice of kissing the thumb, or some part of the Book instead of the Book itself, was emphatically condemned by the late Mr. Justice Byrne at the close of the Michaelmas sittings in 1901 (see *Times* for Dec. 23), who observed that there was no excuse whatever for a witness refraining from kissing the Book, when by taking advantage of the Oaths Act to swear by uplifted hand he could get rid of the obligation to swear in the ordinary form. The practice of kissing the thumb only, though followed by many to escape infection, is perhaps followed by more from a notion that the moral obligation to keep the oath taken is extinguished, and that the offence of perjury is not committed. The whole practice of taking an oath has now been altered by the Oaths Act, 1909. See OATH.

Kist, stated payment, instalment of rent.—*Indian.*

Kleptomania [fr. *κλέπτω*, Gk., to steal; and *μανία*, frenzy], insanity in the form of an irresistible propensity to steal. Consult *Taylor's Med. Jur.*

Knacker is defined by the Protection of Animals Act, 1911 (1 & 2 Geo. 5, c. 27), s. 15 (*e*), as meaning 'a person whose trade or business it is to kill any cattle not killed for the purpose of the flesh being used as butcher's meat.' As to the regulations under which such business may be carried on, see ss. 5 and 6 of the Act and the First Schedule thereto. See also Slaughter of Animals Act, 1933 (23 & 24 Geo. 5, c. 39), s. 4, Sched. II.

Knaveship, a portion of grain given to a mill-servant from tenants who were bound to grind their grain at such mill. See THIRLAGE.

Knight, a title of honour; when used simply, denoting a knight bachelor, who does not belong to any Order of Knighthood. It entitles the person on whom it is conferred to be styled 'Sir,' and his wife 'Dame.' The recognised courtesy title of Lady —— is, however, almost universally adopted for the wife of a knight bachelor. A knight is now made by the sovereign touching him with a sword as he kneels, and saying, 'Rise, Sir——,' or by Letters Patent. See *Halsbury's 'Laws of England.'*

Knightencourt, a court which used to be held twice a year by the Bishop of Hereford.

Knightenguild, an ancient guild or society formed by King Edgar.

Knighthood, the character or dignity of a knight. The union of chivalry with the feudal system, and the decay of both, gave rise to knight-service and the compulsion of landowners to become knights or pay a fine, but by 16 Car. 1, c. 20, no man can be compelled to take the Order of Knighthood. See *Sir N. H. Nicholas's History of the Orders of Knighthood of the British Empire.*

Knight-marshal, an officer in the royal household who has jurisdiction and cognizance of offences committed within the household and verge, and of all contracts made therein—a member of the household being one of the parties.

Knight-service, formerly the most universal and most honourable species of tenure, being entirely military; a feudal tenure. Abolished by 12 Car. 2, c. 24. See TENURE.

Knights Bachelors [fr. *bas chevalier*, Fr.], the most ancient though lowest order of knighthood, formerly entitled to a pennon in battle. See BAS-CHEVALIERS; KNIGHT.

Knights of the Bath [*milites balnei*, Lat.], an order instituted by Henry IV. and revived by George I. They are so called from the ceremony formerly observed of bathing the night before their creation.—*Dugd. Antiq. of Warw.* 531.

Knights of the Order of the British Empire, founded 1917.

Knights of the Garter [*equites garterii, vel periscelidis*, Lat.], otherwise called *Knights of the Order of St. George.* This order was founded by Richard I., and improved by Edward III., A.D. 1344. They form the highest order of knights. See GARTER.

Knights of the Order of the Indian Empire, founded 1878.

Knights of the Royal Victorian Order, founded in 1896.

Knights of St. Michael and St. George, an order instituted in 1818, with precedence

after equal classes of the Order of the Star of India.

Knights of St. Patrick, instituted in Ireland by George III. in 1783, revised in 1905. They have no rank in England.

Knights of the Order of the Star of India, founded in 1861.

Knights of the Thistle. This order is said to have been instituted by Achaius, King of Scotland, A.D. 819. The better opinion, however, is that it was instituted by James V. in 1534, was revived by James VII.(James II. of England) in 1687, and re-established by Queen Anne in 1703. See *Nicholas's History of the Orders of Knighthood of the British Empire.* They have no rank in England.

Knights Bannerets [*milites vexillarii*, Lat.], those created by the sovereign in person on the field of battle, formerly entitled to a banner in battle. They have been said to rank, generally, after Knights of the Garter. 1 *Bl. Com.* 403.

Knights of the Chamber [*milites cameræ*, Lat.], those created in the sovereign's chamber in time of peace, not in the field.—2 *Inst.* 666.

Knight's Fee [*feodum militare*, Lat.], twelve plough-lands, the value of which was 20*l. per annum* (2 *Inst.* 596). By the grant of a knight's fee, land, meadow, and pasture may pass as parcel of it, and even a manor if it is usually called so. Consult *Shep. Touch.* 92, 93. Selden contends that it was as much as the king was pleased to grant upon condition of having the service of a knight.—*Tit. of Hon.*, p. ii., c. v., ss. 17, 26. See TENURE.

Knights of the Shire, the old title of members of Parliament representing counties or shires, in contradistinction to burgesses, who represent boroughs, so called because it was necessary that they should be knights.

Knights of the Post, hireling witnesses.

Knock-out. The arrangement made between persons attending an auction to refrain from bidding in competition one with the other on the sale of certain articles and for the subsequent private sale among themselves of the articles thus bought at a low price.

At Common Law such an agreement is not illegal (*Rawlins* v. *General Trading Co.*, 1921, 1 K. B. 635), and to an action by the purchaser of goods sold by auction for the delivery up of the goods, the fact that the sale was a 'knock-out' does not of itself afford a defence (*Cohen* v. *Roche*, 1927, 1 K. B. 169), but now the Auctions (Bidding Agreements) Act, 1927 (17 & 18 Geo. 5, c. 12), prohibits a dealer from giving any consideration or reward to anyone for abstaining or having abstained from bidding, under penalty on summary conviction to a fine not exceeding 100*l.* or imprisonment for not more than three months. A *bonâ fide* joint account, a copy of such agreement has been deposited before purchase with the auctioneer, is not an offence.

Knopa, a knob, nob, bosse, knot.

Knot (nautical mile), a division of the log-line. So a ship going eight nautical miles in the hour is said to go eight knots. The nautical mile has been fixed by the British Admiralty at 6,080 feet. The land mile is 5,280 feet.

Know-men, or *just-fast men*, the Lollards in England.

Koran, or **Alcoran,** the Mohammedan book of faith. It contains both ecclesiastical and secular laws. Consult *Gibbon's Dec. and Fall*, ch. 1.

Kut-Kubala, a mortgage-deed or deed of conditional sale, being one of the customary deeds or instruments of security in India as declared by regulation of 1806, which regulates the legal proceedings to be taken to enforce such a security. It is also called *Byebil-wuffa.* See a form in 8 *W. Rep.* p. 29.

Kymortha [Welsh], rhymer, minstrel, or other vagabond who makes assemblies and collections.—*Barr. on Stat.* 360.

Kyth [fr. *cognatus*, Lat.], kin or kindred.

L.

Label [fr. *labellum*, Lat.], a narrow slip of paper or parchment affixed to a deed, writing, or writ, hanging at or out of the same; and an appending seal is called a label (*Jac. Law Dict.*). As to the seller of a mixed article protecting himself from the penalties of the Sale of Food and Drugs Act, 1875, by means of a label, see s. 8 of the Act, and the Food and Drugs (Adulteration) Act, 1928 (18 & 19 Geo. 5, c. 31), s. 4, and see ADULTERATION.

Labina, watery land.—*Old Records.*

Laborarlis, an ancient writ against persons who refused to serve and do labour, and who had no means of living; or against such as, having served in the winter, refused to serve in the summer.—*Reg. Brev.* 189.

Labour Bureau, defined in the Labour Bureau (London) Act, 1902 (2 Edw. 7, c. 13), as 'an office or place used for the purpose of supplying information, either by the keeping

of registers or otherwise, respecting employers who desire to engage workpeople and workmen who seek engagement or employment.' The Act empowers the council of any metropolitan borough to establish and maintain such a bureau out of the general rate.

Labour Exchange, referred to by the Unemployment Insurance Act, 1935 (25 Geo. 5, c. 8), s. 113, 1 (K), as 'EMPLOYMENT EXCHANGE.' The Labour Exchanges Act, 1909 (9 Edw. 7, c. 7), gives the Board of Trade (now Minister of Labour) power to establish and maintain labour exchanges, and section 5 defines 'labour exchange' as meaning 'any office or place used for the purpose of collecting and furnishing information, either by the keeping of registers or otherwise, respecting employers who desire to engage workpeople and workpeople who seek engagement or employment.'

Labour, Hard. See HARD LABOUR.

Labourers, servants in husbandry or manufactures, not living *intra mœnia*. Various repealed Acts of Parliament (see, e.g., 5 Eliz. c. 4) have vested in the justices of the peace the power of compelling persons not having any visible livelihood to go out to service in husbandry, or in certain specific trades, for the promotion of honest industry. A 'labourer' is a man who digs and does other work of that kind with his hands (per Brett, M.R., *Morgan* v. *London General Omnibus Co.*, (1884) 53 L. J. Q. B. 352); but a farmer is not a labourer within the Sunday Observance Act, 1677 (29 Car. 2, c. 7) (*R.* v. *Silvester*, (1864) 33 L. J. M. C. 79; but compare *R.* v. *Wortley*, (1851) 21 L. J. M. C. 44). Nevertheless, a driver of a motor omnibus is 'engaged in manual labour' (*Smith* v. *Associated Omnibus Co.*, 1907, 1 K. B. 916).

Professional footballers are not employed 'by way of manual labour' (*In re National Health Insce. Act*, 1924; *In re Professional Players of Association Football*, 1928, W. N. 96). See, further, MASTER AND SERVANT.

Labourers' Dwellings. Prior to 1890 the following five sets of enactments provided for the erection and maintenance of healthy 'labourers' dwellings,' the first three of the five being materially amended by the Housing of the Working Classes Act, 1885 (48 & 49 Vict. c. 72):—

(1) The Labouring Classes Lodging Houses and Dwelling Houses Acts, 1851, 1866, and 1867. These Acts might be 'adopted' by the town council of a borough and other local authorities. Upon the adoption of the Acts, corporate land might be appropriated and lodging-houses erected thereon, or money might be borrowed by the local authorities for erecting such houses on other land.

The Act of 1885 amended the procedure for adopting these Acts, allowed land to be bought for the purpose of the Acts, and allowed separate houses to be erected under the process of the Acts.

(2) The Artisans' and Labourers' Dwellings Act, 1868, amended by 42 & 43 Vict. c. 64, and 45 & 46 Vict. c. 54. Under this Act town councils and other urban sanitary authorities had power to direct the demolition or improvement of separate dwellings unfit for human habitation and the building and maintaining of better dwellings in lieu thereof.

The Act of 1885 took away from an owner, required to demolish such dwellings, the power which he had under these Acts of requiring the local authority to purchase the dwellings of him.

(3) The Artisans' and Labourers' Dwellings Improvement Act, 1875, amended by 42 & 43 Vict. c. 63, and 45 & 46 Vict. c. 54. Under this Act a town council or other urban sanitary authority might frame schemes for the improvement of a body of houses, courts, or alleys, within particular areas. The schemes required the confirmation of the Local Government Board, the Metropolitan Board of Works, or a Secretary of State, according as the improvements were to be effected in the country or in London.

The Act of 1885 extended these Acts to all urban sanitary districts.

(4) The Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 111. By this enactment, which reproduced the repealed Working Men's Dwellings Act, 1874, a municipal corporation might, with the approval of the Treasury, convert corporate land into sites for working men's dwellings—i.e., 'buildings suitable for the habitation of persons employed in manual labour and their families'—and grant leases for that purpose for 999 years, or any shorter term, of any parts of the corporate land.

This enactment was untouched by the Act of 1885, and also by the consolidating Act of 1890 presently referred to.

(5) The Housing of the Working Classes Act, 1885 (48 & 49 Vict. c. 72), which amended the above enactments, as above mentioned, also enacted that settled land might be sold, let, or exchanged, for the erection thereupon of dwellings for the working classes at less than the market value.

All these Acts are consolidated, with amendments of no very great importance

by the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), amended by the Housing of the Working Classes Acts, 1900 and 1903, the Housing, Town Planning, etc. Acts, 1909 and 1919, the Housing (Additional Powers) Act, 1919. See also Public Works Loans Acts, 1920 (s. 5) and 1922 (s. 4), and Housing Acts, 1921, 1923, 1924, 1930 and 1936; and see HOUSING OF WORKING CLASSES; WORKMEN.

Labourers, Statute of, 31 Edw. 3, c. 7 (repealed as long obsolete by Statute Law Revision Act, 1863), whereby justices of the peace had power to regulate the rate of wages, which had risen to an abnormal height owing to the scarcity of labour arising out of the 'Black Death.'

Labouring Classes. See WORKMEN.

Lac, Lak, Lakh, or **Lauk,** in Indian computation 100,000, e.g., a lac of rupees.

Lace, a measure of land equal to one pole. This term is widely used in Cornwall.

Lacerta, a fathom.—*Old Records.*

La Chambre des Estelles, the Star Chamber.—*Law French.*

Laches [fr. *lâcher*, Fr., to loosen], slackness, negligence in pursuing a legal remedy whereby the party forfeits the benefit upon the principle *Vigilantibus non dormientibus jura subveniunt.* See that maxim; also *Nullum tempus occurrit regi;* and LIMITATION OF ACTIONS.

Lacta, a defect in the weight of money.

Lacuna, a ditch or dyke; a furrow for a drain; a blank in writing.—*Old Records.*

Lada, purgation, exculpation. There were three kinds: (1) That wherein the accused cleared himself by his own oath, supported by the oaths of his consacramentals (compurgators), according to the number of which the *lada* was said to be either simple or three-fold; (2) Ordeal; (3) Corsned. See CORSNED BREAD.

Also, a service which consisted in supplying the lord with beasts of burden; or, as defined by Roquefort: *Service qu'un vassal devoit à son seigneur, et qui consistoit à faire quelques voyages par ses bêtes de somme.*—*Anc. Inst. Eng.*

Lada [fr. *lathian*, Sax.], a lath, or inferior court of justice; also a course of water, or a broadway.

Lade, or **Lode,** the mouth of a river.

Laden in Bulk, freighted with a cargo which is neither in casks, boxes, bales, nor cases, but lies loose in the hold, being defended from wet or moisture by a number of mats and a quantity of dunnage. Cargoes of corn, salt, etc., are usually so shipped. See now the Merchant Shipping Acts, 1894 and 1906, s. 452 and s. 11. See also Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 & 23 Geo. 5, c. 9).

Lading. See BILL OF LADING.

Lady [fr. *hæf dig*, Sax., loaf-day, which words have in time been contracted into the present appellation]. It was the fashion for the lady of the manor, once a week or oftener, to distribute to her poor neighbours, with her own hands, a certain quantity of bread. The title is borne by the wives of knights, and of all barons and knightly degrees above them, either in their own right, or by courtesy, except the wives of bishops; but see DAME.

Lady-court, the court of a lady of the manor.

Lady-day, the 25th of March in every year, being the Annunciation of the Blessed Virgin, and one of the usual quarterly days for the payment of rent, etc. Lady-day, under the old style, was April 6th.

Lædorium, reproach.—*Girald. Camb.* c. 14.

Læsæ majestatis, crimen, the crime of treason.—*Glanville,* l. 1, c. 11.

Læsio ultra dimidium vel enormis, the injury sustained by one of the parties to an onerous contract when he had been overreached by the other to the extent of more than one-half of the value of the subject-matter—e.g., when a vendor had not received half the value of property sold, or the purchaser had paid more than double value.—*Colq. Rom. Civ. Law,* s. 2094. See *Moyle's 'Contract of Sale in Civil Law.'*

Læsione fidei, Suits pro, proceedings in the Ecclesiastical Courts for spiritual offences against conscience, for non-payment of debts, or breaches of civil contracts. By entertaining them the clergy attempted to turn the Spiritual Courts into tribunals for the administration of equity; but these suits were prohibited by the Constitutions of Clarendon.—10 Hen. 2, c. 15.

Læt [fr. *litus, lidas, letus*], one of a class between servile and free.—*Palgrave,* i. 354.

Lætare Jerusalem, Lent or Easter offerings, so called from these words in the hymn of the day. They are also denominated *quadragesimalia.*—*Cowel's Law Dict.*

Læthe, or **Lathe,** a division or district peculiar to the county of Kent.—*Spelm.*

Lafordswic [fr. *hlaford*, Sax., lord, and *swic*, betrayal], a betraying of one's lord or master.

Laga, law.—*Old term.*

Lagan or **ligan** [fr. *liggan*, Sax.], goods tied to a buoy and sunk in the sea; also a right

which the chief lord of the fee had to take goods cast on shore by the violence of the sea.—*Bract.* l. 3, c. ii.; 5 *Rep.* 106 *b*; also the goods themselves; included in 'wreck' (see that title) by s. 510 of the Merchant Shipping Act, 1894. See DROITS OF ADMIRALTY; FLOTSAM AND JETSAM.

Lage-day, a day of open court; the day of the county court.

Lage-man, a juror.—*Cowel.*

Lagen, a measure of six sextarii.—*Fleta,* l. 2, c. viii.

Lagh [fr. *laga,* Sax.], law. Obsolete.

Laghslite, a breach of law; a punishment for breaking the law.

Lagon. See LAGAN.

Lagos. A West African settlement of the Crown (see 34 & 35 Vict. c. 8), now part of the Colony of Nigeria (Letters Patent, 29th November, 1913), S. R. & O. 1913, p. 2388.

Lagotrophy [fr. λαγώς, Gk., a hare; and τρεφω, to nourish], a warren of hares.

Lagu, law; also used to express the territory or district in which a particular law was in force, as *Denalagu, Mercna lagu,* etc.—See *Præfatio ad Wilk. L. Anglo-Sax.* 16.

Lahman, or **Lagemannus,** an old word for a lawyer.—*Domesday,* I. 189.

Lah-slit, a mulct for offences committed by the Danes.—*Anc. Inst. Eng.*

Laia, a roadway in a wood.—*Dugd. Mon.* t. 1, p. 483.

Laic [fr. λαός, Gk., people], one who is not in holy orders, or not engaged in the ministry of religion.

Lairwite, or **Lecherwite,** a fine for adultery or fornication, anciently paid to the lords of some manors.—4 *Inst.* 206.

Laity [fr. λαός, Gk., people], the people, as distinguished from the clergy. See LAYMAN.

Lambard's Archaionomia, a work printed in 1568, containing the Anglo-Saxon laws, and those of William the Conqueror and of Henry I.

Lambard's Eirenarcha, a work upon the office of a justice of the peace, which having gone through two editions, one in 1572, the other in 1581, was reprinted in English in 1599.

Lambeth Degrees. Degrees conferred by the Archbishop of Canterbury. These degrees are conferred without examination, but are now usually confined to degrees in divinity. A Lambeth medical degree does not entitle the holder to be registered as a medical practitioner.

Lame Duck, a cant term on the Stock Exchange meaning that a broker or jobber cannot fulfil his contracts; it is libellous (*Morris* v. *Langdale,* (1800) 2 Bos. & Pul. 284).

Lammas [said to be derived from a custom by which the tenants of the Archbishop of York were obliged, at the time of Mass, on the 1st of August, to bring a live lamb to the altar. In Scotland they are said to wean lambs on this day. It may be corrupted from *latter-math.* Others derive it from a Saxon word, signifying *loaf-mass,* because on that day our forefathers made an offering of bread composed of new wheat], the gule or 1st of August, and the second of the four cross quarter-days of the year.—*Encyc. Londin.; Wheat. Com. Pr.*

Lammas Lands. Lands over which there is a several right of either arable or meadow crop but as soon as the crop has been taken a commonable right of pasturage arises generally from about Lammas (1st August) (reaping time), until 25th March (sowing time), in which the holders who had the several rights are included. No right by grant exists except in a corporation or other trustees for the benefit of the inhabitants, the latter being an indefinite body unascertainable at the time of grant. See the repealed Tithe Act, 1839 (2 & 3 Vict. c. 62), s. 13; *Chitty's Statutes,* tit. '*Tithe,*' as to commutation of tithe thereon, and see *Baylis* v. *Tyssen-Amherst,* (1877) 6 Ch. D. 500.

Lancaster, a county of England erected into a palatine in the reign of Edward III., and granted by him to his son John for life, that he should have *jura regalia* and a king-like power to pardon treasons, outlawries, etc., and make justices of the peace and justices of assize within the county, and all processes and indictments to be in his name. It is now vested in the Crown. It has a separate Chancery Court, the procedure of which is regulated by Acts of 1850, 1854, and 1890 (13 & 14 Vict. c. 43, 17 & 18 Vict. c. 82, and 53 & 54 Vict. c. 23), the last of these Acts conferring on the Court exactly the same jurisdiction as that of the Chancery Division of the High Court of Justice (see Judicature Act, 1925, s. 18 (2)); the Common Pleas became vested in the High Court, but the Chancery at Lancaster was not so vested. See also Chancery of Lancaster Rules, 1930, and Chancery of Lancaster (Companies) Rules, 1930, printed in 1930, W. N. Part II., pp. 63, 68. See COUNTY PALATINE and DUCHY COURT OF LANCASTER.

Lancetl, vassals who were obliged to work

for their lord one day in the week, from Michaelmas to autumn, either with fork, spade, or flail, at the lord's option.—*Spelm.*

Land, in its restrained sense, means soil, but in its legal acceptation it is a generic term, comprehending every species of ground, soil or earth, whatsoever, as meadows, pastures, woods, moors, *waters*, marshes, furze, and heath; it includes also houses, mills, castles, and other buildings; for with the conveyance of the land, the structures upon it pass also. And besides an indefinite extent upwards, it extends downwards to the globe's centre, hence the maxim, *Cujus est solum ejus est usque ad cœlum et ad inferos;* or, more curtly expressed, *Cujus est solum ejus est altum.* See *Co. Litt.* 4 *a.*

In an Act of Parliament passed after 1850 'land' includes messuages, tenements and hereditaments, houses, and buildings of any tenure.—Interpretation Act, 1889, s. 3. By the Law of Property Act, 1925, s. 205 (1) (ix.), 'land' for the purposes of the Act includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way), and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land. A conveyance of land does not pass tithe rent-charge by implication (*Public Trustee* v. *Duke of Lancaster*, 1927, 1 K. B. 516).

Water, by a solecism, is held to be a species of land; e.g., in order to recover possession of a pool or rivulet of water, the action must be brought for the land—e.g., ten acres of 'land covered with water'—and not for the water only; see *Hampton Urban Council* v. *Southwark Water Company*, 1900, A. C. 3.

Land Charge, a rent or annuity or principal moneys charged otherwise than by deed upon land under Act of Parliament for securing to any person the money spent by him, or under that Act, as a charge under the Land Drainage Act, 1861 (see DRAINAGE), or s. 20 of the Agricultural Holdings Act, 1923, for repayment of compensation of tenant's improvements. See s. 4 of the Land Charges Registration and Searches Act, 1888 (51 & 52 Vict. c. 51), by s. 12 of which a 'land charge,' created after the commencement of that Act—i.e., after 1st January, 1889—is void against a purchaser for value of the land charged therewith, unless it has been registered in the 'Register of Charges,' in the manner mentioned in that Act, since transferred to the Land Registry by virtue of the Land Charges Act, 1900 (63 & 64 Vict. c. 26), now repealed by the Land Charges Act, 1925. By this Act the system of compulsory registration of charges over land has been greatly extended and no purchaser of land would be well advised to forego a preliminary search for such charges, both in the Land Registry and the local registries. The search is essential for the ascertainment of title.

Five registers are kept at the Land Registry at Red Lion Square, in addition to those kept under former statutes: (1) Lis Pendens (see that title); (2) annuities existing before the 1st January, 1926 (now closed, see Class *E*, *infra*); (3) writs and orders affecting land, and (4) DEEDS OF ARRANGEMENT (see that title), as defined by the Deeds of Arrangement Act, 1914 (4 & 5 Geo. 5, c. 47); the 5th, Land Charges, has been subjected to great changes. This register is made up (see s. 10 of the Act) of Class *A*, Statutory Land Charges, Class *B*, similar charges not made on the application of any person, if created or conveyed after 1925, and not being local land charges. Class *C* (i.) every first and subsequent mortgage if created after 1925 or if created before 1926, acquired under a conveyance made after 1925, of a legal estate except mortgages protected by a deposit of deeds, or within the jurisdiction of a district registry, such as Yorkshire, and registered there, and mortgages and charges registered under the Companies Act, 1929. (ii.) Limited or statutory owner's charges. (iii.) Every *equitable charge* which is not (*a*) protected by a deposit of deeds, or (*b*) arising from or affecting an interest under a *trust for sale* or *settlement*, or (*c*) included in another class of land charge; (iv.) *estate contracts* (*q.v.*). The fourth, Class *D*, in this register affects (i.) Inland Revenue charges for *death duties*, (ii.) *restrictive covenants* created after 1925 except covenants in leases, and (iii.) easements, rights and privileges created after 1925; Class *E*, annuities created before 1926 and registered after 1925. Pending actions, writs and orders affecting land and deeds of arrangement must be registered anew every five years. Failure to register charges created after 1888 under Class *A* avoids the charge against any purchaser of land if not registered before completion of purchase; under Class *B*, or Class *C*, mortgages,

limited or statutory owner's charges and equitable charges, failure to register avoids the same charge against any purchaser of the land charged or any interest therein; and failure to register estate contracts or charges in Class *D* will avoid the charge only against the purchaser of a legal estate for money or money's worth. It should be remembered that purchaser under the Land Charges Act, 1925, means any purchaser for valuable consideration unless he is referred to otherwise, e.g., as a purchaser for money's worth (ss. 13 and 20, *ibid.*, see PURCHASER). The Registration of Land Charges under the Land Charges Act must not be confused with registration of charges on registered land or notice of incumbrances or equitable interests on or in registered land which can be registered or noted under the Land Registration Act, 1925. Registration under the Land Charges Act, 1925, or under the Companies Act, 1929, s. 79, does not, as against registered purchasers or incumbrancers, protect charges which should be registered or noted under the Land Registration Act, 1925. See s. 23, L. C. Act, 1925, and see Land Charges Act, 1925; also LOCAL LAND CHARGES and NOTICE.

Land Commissioners, the title by the Settled Land Act, 1882, s. 48, of the commissioners formerly called 'The Copyhold Inclosure and Tithe Commissioners.' By s. 26 of that Act, a certificate of these commissioners that an 'improvement' within that Act has been effected is, in the absence of an Order of the Court, an authority to trustees to pay for the improvement out of 'capital money,' and by s. 28 a tenant for life must maintain and repair an 'improvement' at his own expense during such period, if any, as the commissioners by certificate in any case prescribe.

All powers and duties of the Land Commissioners were transferred to the Board of Agriculture by the Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30).

Land Drainage Act, 1930 (20 & 21 Geo. 5, c. 44) repeals all prior Land Drainage Acts, as well as many other Acts relating to drainage, and consolidates the existing law with amendments. Commissioners of Sewers are abolished. A system is set up to provide for the care of all watercourses whereby land is drained.

There are two kinds of drainage districts, catchment areas and other drainage districts, either within, and subsidiary to, a catchment area, or outside it; each drainage district is governed by a drainage board, or a Catchment Board in the case of a catchment area.

Catchment areas, the drainage of which is directed to a main river, are set out in Part I., Schedule I., but they may be increased; each catchment area is governed by a Catchment Board constituted by the Minister of Agriculture and Fisheries, which has exclusive jurisdiction over the main river and general supervision over the drainage of the area and Drainage Boards (with representation of County Councils and County Borough Councils) in that area. In each catchment area the internal Drainage Boards are constituted on an elective basis, under the supervision of the Catchment Board.

The Minister of Agriculture and Fisheries may constitute separate drainage areas outside catchment areas, and Drainage Boards to govern them. The Commissioners of Sewers are abolished and previously existing drainage is reformed with a view to make the whole administration of the county uniform. See also Land Drainage (Compulsory Purchase of Land) Regulations, 1931, S. R. & O., 1931, No. 3; Land Drainage (Form of Rate Book) Regulations, 1931, S. R. & O., 1931, No. 112; Land Drainage (Grants to Catchment Boards) Regulations, 1931, S. R. & O., 1931, No. 296.

Land Registry Act. See REGISTRATION OF LAND.

Land Revenues of the Crown. See CIVIL LIST AND CROWN LANDS.

Land Transfer Acts. See REGISTRATION OF TITLE.

Land Values. See VALUE.

Landa, an open field; a field cleared from wood.—*Old Records.*

Land-agende, Land-hlaford, or **Land-rica,** a proprietor of land; lord of the soil.—*Anc. Inst. Eng.*

Land-boc [*Sax.*] (*libellus de terra,* Lat.), the deed or charter by which lands were held.—*Spelm.*

Land-cheap, a fine paid in some places on the alienation of lands.

Landea, a ditch, in marshy lands, to carry water into the sea.—*Du Cange.*

Landefricus, a landlord; a lord of the soil.

Landegandman, an inferior tenant of a manor.—*Spelm.*

Land-gabel, a tax or rent issuing out of land. Spelman says it was originally a penny for every house. This *land-gabel,* or *land-gavel,* in the register of Domesday, was a quit-rent for the site of a house, or the land

whereon it stood; the same as what we now call ground-rent.

Landimers [*agrimensores*, Lat.], measures of land.—*Tomlins' Law Dict.*

Landirecta, rights which charged the land whoever possessed it. See TRINODA NECESSITAS.—*Cowel's Law Dict.*

Landlord, he of whom land or tenements are holden; who has a right to distrain for rent in arrear, etc.—*Co. Litt.* 57. See *Foa* or *Woodfall on Landlord and Tenant*, and also the Rent and Mortgage Interest Restrictions Act, 1920 (10 & 11 Geo. 5, c. 17), s. 70.

Landlord and Tenant. A tenancy arises when the owner of an estate in land, called the lessor or landlord, agrees expressly or by implication to allow another person, called the lessee or tenant, to enjoy the exclusive possession and use of the land for a period less than the landlord's estate in it, generally upon payment of rent. The landlord's estate is called the reversion, and at common law a power of distress for rent is incident to the reversion.

Leases or tenancies may be (1) for any agreed period such as for years or less, e.g., for a year, half-year, quarter or week; (2) from year to year; (3) at will; (4) on sufferance; or (5) they may arise upon estoppel; or (6) exist by force of a statute (see LEASE; INCREASE OF RENT). In a narrower sense the words 'tenancy' and 'landlord and tenant' are generally restricted to lease of a house or land for occupational purposes. If nothing appears to the contrary, either expressly or by implication, in the lease or agreement, the landlord is not liable for any repairs and the tenant is liable to use the premises in a tenant-like manner and to restore the premises to the landlord at the end of the term in the state in which they were when he entered upon them subject to the deterioration which would ensue naturally during the term, having regard to the purpose for which they were let, and the tenant's implied agreement for tenant-like user of the premises. Beyond these obligations a tenant is not under any implied obligation to repair or reinstate the premises if destroyed or damaged by the act of God, natural decay, or by tempest or fire (see *Yellowly* v. *Gower*, (1855) 11 Exch. 174; *Standen* v. *Christmas*, 10 Q. B. 135). The landlord is not under any implied obligation to repair or under any warranty that the premises are fit for the purposes for which they are taken except as to fitness upon letting furnished premises (see *Collins* v. *Hopkins*, 1923, 2 K. B.), or as to fitness and repair in the case of small houses under the Housing Acts (see that title), and *Jones* v. *Phillips and Green*, 1925, 1 K. B. 659, as to the difference between the landlord's liability to repair under the Housing Act of 1925, and a tenant's undertaking to keep and leave in good tenantable repair (fair wear and tear excepted). His only obligation in law is an implied agreement or covenant that the tenant shall quietly enjoy and possess the premises during the term free from disturbance by the landlord or by persons claiming against him or by paramount title, though it is said that in any letting short of a demise by deed the implied warranty does not extend to disturbance by title paramount (see *Markham* v. *Paget*, 1908, 1 Ch. 697; and *Jones* v. *Lavington*, 1903, 1 K. B. 253). Another implied obligation on the tenant's part is that he is liable to an action of debt for the rent. All these implied warranties and obligations arise out of privity of estate so that if the reversion on the one hand or the lease on the other is assigned, the original lessor or lessee is no longer bound by these obligations, which devolve with the reversion and the land upon the respective assignees, but if the obligation in any form is expressed by way or covenant or agreement, the implied covenant is excluded as a rule and the obligation becomes binding by privity of contract, so that the original contractors are bound during the whole term to each other by contract and to the assignees by privity of estate only; thus a lessee is liable for the rent and covenants notwithstanding assignment, while assignees being only bound by privity of estate, their obligations cease upon assignment over. Further, assignees are only bound by covenants running with the land (see that title), such as to pay rent, repair, not to assign or otherwise touching and concerning the thing demised; they are not bound by privity of estate by their predecessor's personal undertakings which do not affect the premises comprised in the lease, although, of course, if the assignee has covenanted with his assignor to the like effect, he becomes bound by his personal contract with the latter.

Formerly, covenants in respect of things having reference to the subject-matter of the lease not in existence at the date of covenant would not bind assigns unless they were named, but the word 'assigns' in such covenants is not now necessary

under the Law of Property Act, 1925, s. 79, in leases made after the 31st December, 1925; on the other hand, the benefit of such covenants ran with the assigns without being named by s. 58 of the Conveyancing Act, 1881, repealed and reproduced as amended by the Law of Property Act, 1925, s. 78, in leases made after the commencement respectively of the Acts of 1882 and 1925, according to their respective provisions.

Houses are usually let at an 'inclusive' or 'exclusive' rent. 'Inclusive' means that the landlord undertakes to pay the rates and do the repairs or part of them. 'Exclusive,' that the burden of these as well as the payment of rent falls upon the tenant. As a rule, the usual and proper covenants and agreements by the tenant in an exclusive lease are to pay the rent, rates and outgoings except landlord's taxes, to keep and deliver up the premises in repair or good tenantable repair. An unqualified covenant to keep in repair means to reinstate and keep the premises in the state when the covenant begins to operate (*Walker* v. *Hatton*, 10 M. & W. 249), even though destroyed by fire, etc. 'Good tenantable repair' was explained in *Proudfoot* v. *Hart*, 25 Q. B. D. 42, as such repair as having regard to the age, character and locality of the house would make it reasonably fit for the occupation of a reasonably-minded tenant of the class who would be likely to take it. For the effect of the exception for 'reasonable wear and tear' in covenants to repair, see *Taylor* v. *Webb*, *supra*, and *Times Newspaper*, 6th February, 1937; (C. A.) disapproving *dicta* in *Haskell* v. *Marlow*, 1928, 2 K. B. 45. These covenants are frequently supplemented by undertakings to paint at agreed periods, to insure, not to assign or underlet without the landlord's permission, as modified by the Landlord and Tenant Act, 1927, s. 19 (1) (*a*), and otherwise.

In all leases and tenancy agreements the landlord, as a rule, qualifies his implied covenant for quiet possession so as to exclude his liability for acts of persons under a paramount title.

Apart from agreement or condition terminating the lease or proviso for re-entry, a lessee or tenant has an exclusive right to possession of the premises for the whole term, even against the lessor, and when the latter is under any obligation in regard to the premises, the tenant generally agrees expressly to give the requisite notice and allow the landlord at all reasonable times to inspect and enter for the agreed purposes. Further, even if the tenant fails to pay the rent or commits breaches of covenant, the landlord cannot enter unless the lease or agreement contains a proviso for re-entry in those events (see that title, and the Common Law Procedure Act, 1852, s. 210, as affected by the Judic. Act, 1925, s. 99, 1 (*f*), (*g*), and Sched. I.). As to relief against forfeiture for non-payment of rent, see Judic. Act, 1925, s. 46; for breach of covenants, Law of Property Act, 1925, s. 146, as amended by the Landlord and Tenant Act, 1927, s. 18 As to agricultural tenancies, see AGRICULTURAL HOLDINGS; DISTRESS. See also FIXTURES; LEASES; and other titles relating to the subjects above referred to.

Landlord and Tenant Act, 1927 (17 & 18 Geo. 5, c. 36), provides 'for the payment of compensation for improvements and goodwill to tenants of premises used for business purposes or the grant of a new lease in lieu thereof,' and in other respects amends the law of landlord and tenant. Sects. 1 to 3 deal with the conditions under which a tenant may claim compensation for improvements. Sect. 4, with conditions under which a tenant on leaving may claim compensation for goodwill attached to the premises by reason whereof they could be let at a higher rent. Sect. 5 provides for the granting of a new lease when the sum which could be awarded under s. 4 would not compensate the tenant for his loss of goodwill. Other provisions of the Act ameliorate the position of the tenant with regard to breaches of repairing covenants and also with regard to covenants against assignment, covenants against improvements without consent and covenants against alteration of user without consent. See also LANDLORD AND TENANT.

Land-man [fr. *terricola*, Lat.], a terre-tenant.

Landmark, an object fixing the boundary of an estate or property.

Land-reeve, a person whose business it is to overlook certain parts of a farm or estate; to attend not only to the woods and hedge-timber, but also to the state of the fences, gates, buildings, private roads, drift-ways, and water-courses; and likewise to the stocking of commons, and encroachment of every kind, as well as to prevent or detect waste, and spoil in general, whether by the tenants or others; and to report the same to the manager or land-steward.

Lands Clauses Consolidation Act, 1845, (8 & 9 Vict. c. 18), amended by 23 & 24 Vict.

c. 106, and 32 & 33 Vict. c. 18, applicable to England and Ireland, the Public Act of Parliament whereby railway companies and other public bodies, authorized by special Act of Parliament to take the land of individuals for the purpose of such special Act, enter upon and make compensation for the land. Sects. 3 and 5 apply this *general* Act to every undertaking established by any *special* Act passed after its date by which the purchase or taking of lands for such undertaking is authorized and incorporate the general Act with such special Act except when or in so far as it is expressly excluded.

The Acquisition of Land (Assessment of Compensation) Act, 1919 (15 & 16 Geo. 5, c. 59), varied the principles of compensation provided by the Lands Clauses Acts upon compulsory purchase by a Government Department or a local or public authority, *inter alia*, compensation under the Act of 1919, is to be based on the value of the land which a willing seller might expect to obtain, and not, as under the Lands Clauses Acts, the value to the owner whatever the market value, if any, might be. Nor is the potential value of the land to be taken into account under the Act of 1919. 'Public authority,' for the purposes of the Act of 1919 (see s. 12), means any body of persons not trading for profit authorized by or under any Act to carry on a railway, dock, water or other public undertaking, and see the Electricity (Supply) Act, 1926 (16 & 17 Geo. 5, c. 51), and the Land Drainage Act, 1930 (20 & 21 Geo. 5, c. 44). Again, under the Land Clauses Acts, the value can be decided by a sheriff's jury or by arbitration, or if the claim does not exceed 50*l.*, by two justices of the peace. Under the Act of 1919 the assessment must be referred to an official arbitrator or to an agreed arbitrator or to an assessment by the Commissioners for Inland Revenue (s. 8 of 1919). Subject to the requirements of any particular statute, the Land Clauses Acts, however, apply to the acquisition of land by public authorities in so far as the Acquisition of Land Act, 1919, is not inconsistent with the provisions of those Acts.

Among the Acts embodying the Lands Clauses Acts, 1845, and the Acquisition of Land (Assessment of Compensation) Act, 1919, with modifications, are the Town and Country Planning Act, 1932, the Restriction of Ribbon Development Act, 1935, the Housing Act, 1936, and the Public Health Act, 1936. Very drastic reductions of compensation are provided for in these Acts where the property is in a bad state or situated in a clearance, improvement or redevelopment area, and otherwise.—*Jepson's Lands Clauses Acts; Cripps* or *Gordon on Compensation.*

Lands Clauses Consolidation Act (Scotland) (8 & 9 Vict. c. 19, amended by 23 & 24 Vict. c. 106), differs in form only from the above, most of the sections being word for word the same. A separate Act was necessitated by reason of the difference in the Scots law and procedure.

Land-steward, a person who overlooks or has the management of a farm or estate.

Land-tax, a tax laid upon land and houses, which in 1689 (1 Will. & Mary, c. 3) superseded all the former methods of taxing either property or persons in respect of their property, whether by tenth or fifteenths, subsidies on land, hydages, scutages, or talliages. Although generally a charge upon a landlord, yet it is a tax neither on landlord nor tenant, but on the beneficial proprietor, as distinguished from the mere tenant at rack-rent; and if a tenant have to any extent a beneficial interest, he becomes liable to the tax *pro tanto*, and can only charge the residue on his landlord. Houses and buildings appropriated to public purposes are not liable to land-tax. As to its origin and inequality, see 3 *Hall. Cons. Hist.* 135; *Miller on the Land-tax; Bourdin on Land-tax.*

The more agricultural counties, upon which the burden of the tax has fallen most heavily by reason of the depreciation in value of agricultural land, were greatly relieved by s. 31 of the Finance Act, 1896, which fixes the maximum at one shilling in the £ in any parish, instead of at four shillings, which former maximum it had reached or approached in more than one agricultural county, such as Norfolk, Essex, Lincolnshire, and Suffolk.

The sum fixed by the Land Tax Act, 1797 (38 Geo. 3, c. 5), to be paid for the land-tax in Great Britain was 2,037,627*l.* 9*s.* 0½*d.*, made up by contributions of fixed amount from the counties and boroughs as named by that Act. The tax was annual until 1798, when by an Act of that year, the Land Tax Perpetuation Act, 1798, it was made perpetual upon the basis of the valuation of 1689. The same Act provided for the redemption of the tax, but the redemption clauses were shortly afterwards superseded by the Land Tax Redemption Act, 1802 (42 Geo. 3, c. 116), under which, together with the Land Tax Redemption

Act, 1813 (53 Geo. 3, c. 123), and other enactments, the most important being s. 32 of the Finance Act, 1896 (59 & 60 Vict. c. 28), as amended by the Finance Act, 1921 (11 & 12 Geo. 5, c. 32), s. 64, it may be redeemed by a capital payment of twenty-five times its amount. Up to 1876 about 800,000*l.* of the original 2,000,000*l.* had been redeemed.

The chief exemptions from the tax are colleges and hospitals.

For the various statutes for the better regulation of land-tax and its redemption, see *Chitty's Statutes*, tit. '*Land Tax*,' and ss. 31–36 of the Finance Act, 1896. See also Finance Acts, 1898 (s. 12), 1918 (s. 21), 1920 (s. 63), 1921 (s. 64), 1927 (17 & 18 Geo. 5, c. 10), s. 54.

Names of Commissioners.—Curious 'Land Tax Commissioners' Names Acts' are passed from time to time (see, e.g., the Land Tax Commissioners' Names Act, 1899 (62 & 63 Vict. c. 25), to constitute the persons therein named Land Tax Commissioners, at first expressly by 7 & 8 Geo. 4, c. 75, an Act which contained 300 pages, and afterwards by reference to a schedule signed by and deposited with the Clerk of the House of Commons.

Land-waiter, an officer of the custom-house, whose duty is, upon landing any merchandise, to examine, taste, weigh, or measure it, and to take an account thereof. In some ports they also execute the office of a coast-waiter. They are likewise occasionally styled *searchers*, and are to attend and join with the patent-searcher in the execution of all dockets for the shipping of goods to be exported to foreign parts; and in cases where drawbacks on bounties are to be paid to the merchant on the exportation of any goods, they, as well as the patent-searchers, are to certify the shipping thereof on the debentures.—*Encyc. Londin.*

Langeman, a lord of a manor.—1 *Inst.* 5.

Langeolum [fr. *lana*, Lat.], an under-garment made of wool, formerly worn by the monks, which reached to their knees.—*Dugd. Mon.* t. 1, 419.

Languidus, in ill-health; a return made by a sheriff to a writ, when the removal of a person in his custody would endanger his life. See DUCES TECUM LICET LANGUIDUS.

Lanis decre scentiâ Walliæ traducendis absque custumâ, etc., an ancient writ that lay to the customer of a port to permit one to pass wool without paying custom, he having paid it before in Wales.—*Reg. Brev.* 279.

Lano niger, a sort of base coin, formerly current in this kingdom.—*Mem. in Scac.*

Lapidation, the act of stoning a person to death.

Lapis marmoreus, a marble stone about twelve feet long and three feet broad, placed at the upper end of Westminster Hall, where was likewise a marble chair erected on the middle thereof, in which our sovereigns anciently sat at their coronation dinner, and at other times the Lord Chancellor.—*Orig. Jurid.*

Lapse [fr. *lapsus*, Lat.], error; failing in duty.

(1) A benefice is said to lapse when the patron does not exercise the right of presentation within six calendar months (182 days) after the avoidance of the benefice, exclusive of the day of the avoidance. In such case there is a devolution of the rights of patronage from a neglectful patron to the bishop as ordinary, to the metropolitan as superior, and to the sovereign as patron paramount of all the benefices in the realm.

(2) A device or legacy is said to lapse when the devisee or legatee dies before the testator. In such case the devise or legacy falls into the residuary real or personal estate, as the case may be. If a residuary devise or bequest lapses, the property falls into the intestate estate of the testator (see *Easum* v. *Appleford*, (1840) 5 My. & Cr. 56; *Re Whitrod*, 1926, 1 Ch. 118). If, however, the devisee or legatee should be a child or other issue of the testator, and should die leaving issue surviving at the testator's death, then, by s. 33 of the Wills Act, 1837 (7 Wm. 4 & 1 Vict. c. 26), the devise or bequest does not lapse, but takes effect as if the devisee or legatee had died immediately after the testator; and see s. 32 of the same Act as to a devise for an estate-tail. Extended to personalty settled in tail under s. 130 of the Law of Property Act, 1925. For the case of a devise of freehold land to an infant dying after 1925, unmarried, after the testator's death, see Administration of Estates Act, 1925, s. 51 (3). It is also a general rule that a trust legacy does not lapse by the death of the trustee in the testator's lifetime the legacy survives for the benefit of the beneficiary. Consult *Jarman* or *Theobald on Wills*; *Roper on Legacies*.

Larceny [fr. *larcin*, Fr.; *latrocinium*, Lat.], contracted from latrociny, the unlawful taking and carrying away of things personal, with intent to deprive the rightful owner of the same. Larceny is a felony, and is either simple or accompanied with circumstances of aggravation.

(1) Simple larceny at Common Law, or plain theft. To constitute the offence there must be an unlawful taking, which implies that the goods must pass from the possession of a true owner (including one who has a qualified property only in the goods, as a bailee), and without his consent; where there is, then, no change of possession, or a change of it by consent, or a change from the possession of a person without title to that of the true owner, there cannot be a larceny. As to the difference between property parted with by the owner of his own free will, however fraudulently influenced, in other words, between property 'entrusted' and 'possession by a trick,' see *Oppenheimer* v. *Frazer*, 1907, 2 K. B. 50, and *Lake* v. *Simmons*, 1926, 2 K. B. 51, and see FALSE PRETENCES. If a delivery be obtained from the owner by a person having *animus furandi* at the time, and he afterwards unlawfully appropriates the goods in pursuance of that intent, it is larceny. There must not be only a taking, but a carrying away (*cepit et asportavit*). A bare removal from the place in which he found the goods, though the thief does not quite make off with them, is a sufficient asportation or carrying away. It must be of personal goods, and not of the realty or things adhering thereto, or savouring thereof. The taking and carrying away must be with intent to deprive the owner of the thing taken or, as it is expressed, *animo furandi*. Larceny may be committed of a thing the owner of which is unknown, provided it appear that there is some person other than the taker in whom the ownership resides. Larceny was formerly divided into *petit*, where the value of the property was not more than twelve pence, and *grand*, where it exceeded that amount; but this distinction was abolished by s. 2 of the Larceny Act, 1861. The punishment for simple larceny is in ordinary cases penal servitude for the term of three years, or imprisonment for any term not exceeding two years, with or without hard labour, and if the offender be a male under the age of 16 years, with or without whipping.

(2) Larceny in a dwelling-house. Whosoever shall steal in any dwelling-house any chattel, money, or valuable security to the value of 5*l*. or more shall be liable to be kept in penal servitude for any term not exceeding fourteen years; and whosoever shall steal any chattel, money, or valuable security in a dwelling-house, and shall, by any menace or threat, put any one being therein in bodily fear, shall be liable to the same punishment.

(3) Larceny from the person. It is either,

(*α*) Privately stealing, as picking a person's pocket;

(*β*) Open and violent larceny from the person, or robbery, called by the civilians rapine; as to which, see ROBBERY.

Embezzlement is distinguished from the offence of larceny as being committed in respect of property which is not, at the time, in the actual or legal possession of the owner. See EMBEZZLEMENT; and Larceny Act, 1916, ss. 17–19.

The Larceny Act, 1916 (6 & 7 Geo. 5, c. 50), together with those sections of the Larceny Act, 1861 (24 & 25 Vict. c. 96), which this Act left unrepealed, constitute with subsequent amendments a complete code of the subject. See as to larceny generally, *Archbold's* or *Roscoe's Crim. Evid.* and *Russell on Crimes*.

Larceny (Advertisement) Act, 1870 (33 & 34 Vict. c. 65). By the Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 102, a penalty of 50*l*. is imposed on any person publishing an advertisement for the return of stolen goods 'without questions being asked,' recoverable by any one suing for it. This leading to vexatious actions by common informers against the publishers of newspapers, the Act of 1870 enacts that no such action be brought against printers or publishers of newspapers without the consent of the Attorney-General, etc.

Lardarius regis, the king's larderer, or clerk of the kitchen.

Larding Money [fr. *lardarum*, Lat.]. In the manor of Bradford, in Wilts, the tenants pay to their lord a small yearly rent by this name, which is said to be for liberty to feed their hogs with the masts of the lord's wood, the fat of a hog being called lard; or it may be a commutation for some customary service of carrying salt or meat to the lord's larder.—*Dugd. Mon.*, t. 1, p. 321.

Larrons [fr. *latro*, Lat.], thieves.

Lascar, a native Indian sailor; 'the term is also applied to tent-pitchers, inferior artillery-men, and others.'—*Wilson's Indian Glossary.*

Agreements by masters or owners of ships with lascars are regulated by s. 125 of the Merchant Shipping Act, 1894, reproducing s. 544 of the Merchant Shipping Act, 1854, and saving nine unrepealed sections (ss. 25–34) of 4 Geo. 4, c. 80.

Lashite or **Lashlite,** a kind of forfeiture

during the government of the Danes in England.

Last [fr. *hlæstan*, Sax.; *lest*, Fr.], a burden; a weight or measure of fish, corn, wool, leather, pitch, etc.

Lastage or **Lestage** [fr. *lastagium*, Lat.], a custom exacted in some fairs and markets to carry things bought whither one will. But it is more accurately taken for the ballast or lading of a ship. Also, custom paid for wares sold by the last, as herrings, pitch, etc. —*Jac. Law Dict.*

Lastatinus, an assassin or murderer.—*Wals.*

Last Court, a court held by the twenty-four jurats in the marshes of Kent, and summoned by the bailiffs, whereby orders are made to lay and levy taxes, impose penalties, etc., for the preservation of the said marshes.

Last Day of Term. On the last day of each of the four terms the junior barrister present in every court of law was entitled to make his motion the first, and so on, in order of juniority, to the senior outer-barrister; afterwards, among the Queen's Counsel and serjeants, the senior began. For the purposes of the administration of justice the division of the legal year into terms has been abolished (Jud. Act, 1873, s. 26). See SITTINGS.

Last Heir, he to whom lands came by escheat for want of lawful heirs—that is, in some cases the lord of whom the lands were held, but in others the sovereign.—*Bract.* l. 7, c. xvii. See ESCHEAT.

Last Resort. A court from which there is no appeal is called the court of last resort.

Lata culpa dolo æquiparatur (gross negligence is tantamount to fraud). It has been said that this maxim does not hold in English law; negligence, however great, does not of itself constitute fraud (*Le Lievre* v. *Gould*, 1893, 1 Q. B. p. 498, per Lord Esher, M.R.), but a statement made with a reckless disregard of its truth or untruth has the same effect as a statement which is wilfully untrue.

Latching, an underground survey.

Latent [fr. *latens*, Lat.], hidden, concealed; secret. See AMBIGUITY.

Latent Defect. A defect which could not previously to an accident have been avoided by care or discovered by reasonable examination. A carrier of passengers is not liable for injury to them arising from a latent defect in his coach (*Redhead* v. *Midland Ry. Co.*, (1869) L. R. 4 Q. B. 379). Upon sale of goods, the seller will be answerable for a latent defect if the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment (Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 14. See *Frost* v. *Aylesbury Dairy Co.*, 1905, 1 K. B. 608.

Latera, sidesmen, companions, assistants.

Laterare, to lie sideways, in opposition to lying endways, used in descriptions of lands.

Lath, or **Lathe,** a part of a county. In some counties there is an intermediate division between the shire and the hundred—as lathes in Kent, and rapes in Sussex—each of them containing three or four hundreds or wapentakes.

Lathreeve, Ledgreeve, or **Trithin-greve,** an officer under the Saxon government who had authority over a lathe.

Latimer [fr. *latinier*, Fr., form of *latiner*], an interpreter, according to Coke (2 *Inst.* 515). It is suggested that it should be *latiner*, because he who understood Latin might be a good interpreter. Camden makes it signify a Frenchman or interpreter (*Britan.*, f. 598).

Latin, the language of the ancient Romans. There are three sorts of law Latin: (1) Good Latin, allowed by the grammarians and lawyers. (2) False or incongruous Latin, which in times past would abate original writs; though it would not make void any judicial writ, declaration, or plea, etc. (3) Words of art, known only to the sages of the law, and not to grammarians; called lawyers' Latin.

English superseded Latin as the courts' language by virtue of 4 Geo. 2, c. 26.

Latin Information. The name of an information and action by the Crown, the Duchy of Lancaster or the Duke of Cornwall in the nature of civil proceedings to recover debt or damages for a tort or otherwise, see *A.-G.* v. *Valle-Jones*, 1935, 2 K. B. 209 (damage by loss of services); an English information is an information in equity on the revenue side of the King's Bench Division (see *Halsb. L. of E.*, title '*Crown Practice.*'

Latinarius, an interpreter of Latin.

Latitat (he lies hid), a writ whereby all persons were originally summoned to answer in personal actions in the King's Bench; so called because it is supposed by the writ that the defendant lurks and lies hid, and cannot be found in the County of Middlesex (in which the Court is holden) to be taken

by bill, but has gone into some other county, to the sheriff of which this writ was directed to apprehend him there.—*Fitz. N. B.* 78; *Termes de la Ley.* Abolished by the (repealed) Uniformity of Process Act, 1832 (2 Wm. 4, c. 39). See BILL OF MIDDLESEX.

Lator [fr. *latus*, Lat.], a bearer, a messenger.

Latro, he who had the sole jurisdiction *de latrone* in a particular place (mentioned in *Leg. W. I.*). See INFANGENTHEF.

Latrocination [fr. *latro*, Lat., a robber], the act of robbing; a depredation.

Latrocinium, the prerogative of adjudging and executing thieves; also larceny, theft.—*Old Charter.*

Latrociny, larceny.

Latter-math, a second mowing; the aftermath.

Laudare, to advise or persuade; to arbitrate.

Laudatio, testimony delivered in court concerning an accused person's good behaviour and integrity of life. It resembled the practice which prevails in our trials of calling persons to speak to a prisoner's character. The least number of the *laudatores* among the Romans was ten.

Laudator, an arbitrator.

Laudibus (de) Legum Angliæ. Sir John Fortescue, who had been some time chief justice of the King's Bench in the reign of Henry VI., is said to have written this work, while in exile with the Prince of Wales, and others of the Lancastrian party, in France. Sir John was then made chancellor; and in that character he supposes himself holding a conversation with the young prince on the nature and excellence of the laws of England compared with the civil law and the laws of other countries. He considers at length the mode of trying matters of fact by jury, and shows how it excels that by witnesses. He informs us that some of our princes wished to introduce the civil law merely for the sake of governing in the arbitrary way allowed by that law, which declares, *quod principi placuit legis habet vigorem.* He then proceeds to examine some other points of difference between the Civil and Common Law, always deciding in favour of our own. He concludes his book with a short account of the societies where the law of England was studied, the degrees and ranks in the profession, with the manner in which they were conferred; to these are subjoined some short remarks on the conduct and delay of suits.—4 *Reeves*, 113.

Laudimium, the fiftieth part of the value of an estate paid by a new proprietor to the tenant for investiture or leave of possession.—*Civil Law.*

Laudum, an arbitrament or award.—*Wals.*

Laughe, frank-pledge.—2 *Reeves*, 17.

Launcegay, a kind of ancient weapon, prohibited by 7 Rich. 2, c. 13.

Laund or **Lawnd,** an open field without wood.—*Blount.*

Laundry. By s. 1 of the Factory and Workshop Act, 1907 (7 Edw. 7, c. 39), there are included in the list of non-textile factories and workshops within the meaning of the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22):—

(29) Laundries carried on by way of trade or for the purpose of gain, or carried on as ancillary to another business or incidentally to the purposes of any public institution.

The Act further controls the period of employment of women in laundries (s. 2) and also contains other regulations (ss. 3 and 4) for their proper management.

Sending infected articles which have not been properly disinfected or without proper notice to laundries, private or public, is prohibited by Public Health Act, 1936, s. 152.

Laureate or **Laureat** [fr. *laurea*, Lat.] an officer of the household of the sovereign, whose business formerly consisted only in composing an ode annually, on the sovereign's birthday, and on the new year; sometimes also, though rarely, on occasion of any remarkable victory.—*Warton's Hist. of English Poetry.* The annual birthday ode has been discontinued for many years. The title is derived from the circumstance that in classical times and in the Middle Ages the most distinguished poets were solemnly crowned with laurel. From this the practice found its way into our universities; and it is for that reason that Selden, in his *Titles of Honour*, speaks of the laurel crown as an ensign of the degree of mastership in poetry. A relic of the old university practice of crowning distinguished students of poetry exists in the term 'Laureation,' which is still used at one of the Scotch Universities (St. Andrews), to signify the taking of the degree of Master of Arts.

Laurels, pieces of gold, coined in 1619, with the king's head laureated; hence the name.

Lavatorium, a laundry or place to wash in; a place in the porch or entrance of cathedral churches, where the priest and other officiating ministers were obliged to wash their hands before they proceeded to Divine service.

Lavatories. In factories and workshops, see Public Health Act, 1936, s. 46; Shops, Shops Act, 1934; Public, ss. 87 to 89, P. H. Act, 1936.

Lavina. See LABINA.

Law [fr. *lage, lagea,* or *lah,* Sax.; *loi,* Fr.; *legge,* Ital.; *lex,* fr. *ligo,* Lat., to bind], a rule of action to which men are obliged to make their conduct conformable. A command, enforced by some sanction, to acts or forbearances of a class: see *Austin's Jurisprudence;* 1 *Bl. Com.* 38. A principle of conduct may be observed habitually by an individual or a class. When sufficiently formulated or defined to be observed uniformly by the whole of a class it may become a custom; or it may be imposed on all individuals who consent or are unable to resist its application and the sanction or penalty which is imposed for non-compliance, and in that case it becomes a law. If, in addition, the law and its sanction are imposed by, or by authority of a sovereign, the law becomes 'positive' (see *Austin's Jurisprudence*). Short of positive law the principle may be called a moral or social law. Generally speaking, jurisprudence is concerned only with positive law, and law in its ordinary legal sense means positive law. See LEX.

The law of foreign countries is a question of fact in English Courts. See FOREIGN LAW.

Law is also sometimes used as opposed to Equity, meaning the principles followed in Common Law Courts in contradistinction to those which were administered only in courts of equity: now, however, in all branches of the Supreme Court and in inferior courts (Jud. Act, 1873, ss. 24, 89, 91) (now Judicature Act, 1925, ss. 36-43, 44, 202), full effect is to be given to all equitable rights. See, further, s. 25 (now Jud. Act, 1925, ss. 44, 45), by which the law on several points has now been altered.

Law Agents (Scotland). Solicitors in Scotland; generally members of a Society. See SOLICITORS.

Law Courts, the name popularly given to the Royal Courts of Justice. See that title.

Lawday, a court-leet, or view of frankpledge.

Lawful. The natural meaning in a statute of the words 'it shall be lawful' is permissive only, but if the words are used to effectuate a legal right, they are compulsory (*Julius* v. *Bishop of Oxford,* (1880) 5 App. Cas. 182): see *Craies,* or *Maxwell* or *Hardcastle on Statute Law.*

Lawful Day, a day on which a court may sit.

Lawing of Dogs, the cutting several claws of the forefeet of dogs in the forest, to prevent their running at deer.

Lawless Court [*quia dicta sine lege,* Lat.], 'a tribunal held on King's Hill, at Rochford, in Essex, on Wednesday morning next after Michaelmas Day, yearly, at cock-crowing, at which court they whisper, and have no candle, nor any pen nor ink, but a coal; and he that owes suit or service there, and appears not, forfeits double his rent.'—*Cam. Brit.* Obsolete.

Lawless Man [*ex lex,* Lat.], an outlaw.

Law List, a list of barristers, solicitors, and other legal practitioners, giving their addresses, and the dates of their entering the profession. The present 'Law List,' which has been published annually since 1801, is *primâ facie* evidence that the persons therein named as solicitors or certificated conveyancers, are such.—Solicitors Act, 1850 (23 & 24 Vict. c. 127), s. 22.

Law of Marque. See LETTERS OF MARQUE.

Law, Martial. See MARTIAL LAW.

Law Merchant [*lex mercatoria,* Lat.], that part of the law of England which governs mercantile transactions. It is founded upon the general custom of merchants of all nations, which, though different from the general rules of the Common Law, has been gradually engrafted into it and made to form part of it. See *Introduction to Smith's Merc. Law.*

Law Officers of the Crown, shortly termed 'Law Officers,' the Attorney-General and the Solicitor-General, this definition was contained in s. 93 of the Patents and Designs Act, 1907, but deleted by the Patents and Designs Act, 1932 (22 & 23 Geo. 5, c. 32), s. 13 and Sched. Consult *Norton-Kyshe's Attorney-General and Solicitor-General of England.*

The Scottish Law Officers are the Lord Advocate and the Solicitor-General (*q.v.*).

Law of Property Act, 1922 (12 & 13 Geo. 5, c. 16). This statute came into operation on 1st January, 1926. With the Amending Acts of 1924 and 1926 (15 Geo. 5, c. 5), it provides for the abolition of copyhold and customary tenure; the extinguishment of manorial incidents (but not, apart from the lord's consent of his rights to mines, minerals, franchises, fairs and sporting rights), and the conversion of perpetually renewable leaseholds into long terms. The other provisions of this Act, sometimes called Lord Birkenhead's Act of 1922, have been

repealed or consolidated and amended by the Law of Property Acts, 1925 to 1932.

Law of Property Act, 1925 (15 Geo. 5, c. 20), with amending Acts, 1926, 1929 and 1932 (cited together as the Law of Property Acts, 1925 to 1932), has consolidated and effected changes in the land laws with the object of simplifying the transfer and conveyance of land. An important change was the abolition of all legal estates or tenures in land, except an estate in fee simple in possession, and a term of years absolute in or in certain incorporeal hereditaments arising out of annexed to or charged upon the legal estate in land. Any number of these legal estates can exist in respect of the same piece of land or incorporeal hereditament; for instance, land may be held in fee simple, leased and mortgaged at the same time. All other estates and interests in land are reduced to equitable interests. All mortgages of the same legal estate under the statutory conditions are legal estates. None being for the whole fee simple or the term, but each for a term taken out of the fee or original term which remains in the mortgagor and so that each subsequent mortgage overlaps the previous one and takes up some of the residue of the legal estate still remaining in the mortgagor (see MORTGAGES).

The chief legal estates which have been converted into equitable interests from the 1st January, 1926, are: (1) *Tenancies in common* or in undivided shares in land (see UNDIVIDED SHARES). (2) *Limited estates*, less than the fee or entire term, e.g., entailed estates, estates for life, in remainder whether vested or contingent, and married women's estates subject to a restraint upon anticipation (see SETTLED LAND). (3) *Legal estates of infants in fee simple*, legal estate not being capable of being held by an infant (see INFANTS). The object of these changes being that the entirety of the legal estate should be in the hands of an owner or joint owners of full age who can deal with the whole estate without the concurrence of holders of equitable interests in favour of a purchaser for value by means of an expedient which is generally termed 'the CURTAIN,' that is to say, in outline: (*a*) trustees for sale as to undivided shares; (*b*) the tenant for life or other statutory owner of the fee in trust for limited or settled estates and infants' estates; (*c*) personal representatives as to the estate of the deceased, whether testate or intestate; (*d*) mortgagees; (*e*) an order of Court as provided, may, with certain exceptions set out in sub-s. (3) of s. 2, L. P. Act, 1925, convey the whole of the legal estate in the fee simple or term free from, i.e., over-reaching, any of the equitable interests covered or curtained by the powers exercisable by the respective donees under (*a*), (*b*), (*c*), (*d*), or (*e*), to a purchaser for value without disclosing, or putting him upon inquiry concerning the equitable interests or title to the same so withheld from his notice (see, generally, Law of Property Act, 1925, ss. 1 and 2). A person not included in the classes referred to, e.g., a sole beneficial owner in possession of his property, selling it in exercise of his powers as such owner, cannot take advantage of the curtain except in so far as it may have been properly used in connection with any link in his own title; see further, LAND CHARGES; MORTGAGE; REGISTRATION OF TITLE.

The registration of equitable interests and some legal charges under the Land Charges Act, 1925, has to some extent preserved the legal rights against the land of the owners of these equities (see LAND CHARGES). Subject to the Acts all equitable interests which are enforceable in a Court of Equity are preserved (see s. 3 of the L. P. Act, 1925). A substantial part of the Law of Property Acts consists of the modifications necessary or to give effect to the changes in the law and to simplify the investigation of title. See also ABSTRACT CONDITIONS OF SALE; COMMONS; LEASES; LEGAL ESTATE; MORTGAGE; NOTICE; PERPETUITIES; and *Wolst. and Ch. Conv. Statutes.*

Notwithstanding these changes, the old law of real property as it existed on the 31st December, 1925, is still in force subject to express statutory modification in regard to the equitable interests to which the old legal estates in land have been reduced, and the old law is applicable for the purpose of ascertaining the title of the persons claiming land or any interest therein up to the 1st January, 1926.

Law Reform. By the Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), all causes of action shall with certain exceptions survive on the death (after the 24th July, 1934) of any person against or for the benefit of his estate. See *actio personalis*, and by s. 1 (2) it is enacted:

> Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person the damages recoverable for the benefit of the estate of that person:—
> (*a*) shall not include any exemplary damages;
> (*b*) in the case of a breach of promise to marry shall be limited to such damage, if any, to

the estate of that person as flows from the breach of promise to marry;

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

See *Rose* v. *Ford*, (1937) 53 T. L. R. 873.

The rights conferred by the Act are in addition to the rights conferred on the dependants of deceased persons by the Fatal Accidents Acts, 1846 to 1908, or by the Carriage by Air Act, 1932 (22 & 23 Geo. 5, c. 36), and the liabilities are provable in the administration of an insolvent estate, notwithstanding that they are in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust. See further, ADOPTION; LEGITIMATION; BASTARDY; FUNERAL EXPENSES; also INTEREST and LIMITATIONS.

The Law Reform (Married Women and Tortfeasors) Act, 1935 (25 & 26 Geo. 5, c. 30), confers rights to property belonging to a married woman and qualifies that property as if she were a *feme sole* (see MARRIED WOMEN'S PROPERTY). The Act also modifies the law relating to restraint upon anticipation (see that title), abolishes a husband's liability for his wife's torts and ante-nuptial obligations (see HUSBAND AND WIFE); amends the law relating to joint tortfeasors or damages recoverable in more than one action against joint or several tortfeasors in respect of damages which are the result of a tort and provides for contribution between the tortfeasors. By s. 6 of the L. R. Act, 1935:—

(1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—

(a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;

(b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child, of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;

(c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) For the purposes of this section—

(a) the expression 'parent' and 'child' have the same meanings as they have for the purposes of the Fatal Accidents Acts, 1846 to 1908; and

(b) the reference in this section to 'the judgment first given' shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

(4) Nothing in this section shall—

(a) apply with respect to any tort committed before the commencement of this Part of this Act; or

(b) affect any criminal proceedings against any person in respect of any wrongful act; or

(c) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

See CONTRIBUTION.

Law Reports. Reports of judgments of courts on points of law, published for the purpose of being used as precedents (see (REPORTS). Prior to 1865, these reports were all executed and published as mere private speculations, one reporter or pair of reporters being usually, though not always, accredited by the chief judge of each court. For an account of these reporters and their works, see *Handbook of English Law Reports*, by Master Fox. In 1865 'The Incorporated Council of Law Reporting for England and Wales' began to publish monthly the reports called *The Law Reports*. These, though perhaps the best known, have no monopoly—for contemporaneous monthly reports are published under the name of *The Law Journal*, and contemporaneous weekly reports under the names of *The Law Times Reports*, *The Solicitors' Journal and Weekly Reporter* and *All England Reports*, and *The Times Law Reports*. All reports made by members of the Bar and published on their

responsibility may be cited in argument. For abbreviations, see tables in, e.g., *Mews's Digest*.

The Scottish reports (civil cases) from 1907 onwards are known as 'Session Cases' and are published annually. They are cited thus, e.g.: '1934 S. L. 121.' House of Lords cases thus: 1934, S. C. (H. L.) 33.' The reports prior to 1907 are in five series, referred to by the names of the editors—Shaw, Dunlop, Macpherson, Rettie, and Fraser. They are cited by the number of the volume in the series, and the initial of the editor, thus: '12 R. 121.'

Cases are also reported in *The Scots Law Times* (S. L. T.).

Law Society. See INCORPORATED LAW SOCIETY.

Law Spiritual [*lex spiritualis*, Lat.], the ecclesiastical law.—*Co. Litt.* 344.

Law Suit, an action or litigation.

Law Terms.—See TERMS.

Lawyer, a person learned in the law, as a counsel, or solicitor.

Lay [fr. λαός, Gk.], not clerical or not professional; regarding or belonging to the people, as distinct from the clergy or a particular profession.

Lay Corporations, bodies politic; they are either: (1) Civil, created for temporal purposes; or (2) Eleemosynary, for charitable purposes.

Lay Days, running or consecutive days; a term used as to the time of loading and unloading ships, etc. See DEMURRAGE.

Laye [fr. *ley*, Old Fr.], law.

Lay Fee, lands held in fee of a lay lord, as distinguished from those lands which belong to the Church.

Lay Impropriators, lay persons to whose use ecclesiastical benefices have been annexed. At the dissolution of the monasteries by stat. 27 Hen. 8, c. 28, and 31 Hen. 8, c. 13, the appropriations of the several parsonages which belonged to them were given to the king. The same had been done in former reigns when the alien priories were dissolved and given to the Crown. From these two roots have sprung all the lay impropriations or secular parsonages, they having been afterwards granted out from time to time by the Crown to laymen. See APPROPRIATION and LAY RECTOR.

Lay Investitute of Bishops, putting a bishop into possession of the temporalities belonging to his bishopric.

Lay People, jurymen. Obsolete.

Lay Rector. A person holding by title under lay impropriation (see that title). As to the lay rector's liability to repair, see *Morley* v. *Leacroft*, 1896, P. 92, and *Stuart* v. *Haughley Parish Church Council*, 104, L. J. Ch. 314, with the right to contribution from other lay impropriators. As to any right to occupy a seat in the chancel of a church, see *Stileman-Gibbard* v. *Wilkinson*, 1897, 1 Q. B. 749.

Laystall [Sax.], a place for dung or soil.

Lazar [old Fr. *lazare*, from *Lazarus* of the New Testament (Luke xvi. 20)]. A leper, any person infected with a nauseous and pestilential disease.

Lazaret, or Lazaretto, places where quarantine is to be performed by persons coming from infected countries; to escape from them was punishable by a fine of 200*l.*, and for a quarantine officer to permit any person to leave them without a Privy Council Order was felony under the Quarantine Act, 1825 (6 Geo. 4, c. 78), repealed by the Public Health Act, 1896, itself repealed and replaced as from 1st October, 1937, by the Public Health Act, 1936.

Lea or **Ley,** a pasture.—*Co. Litt.* 4 *b*.

Leading Cases. A case so frequently followed as to become invested with peculiar authority is termed a 'leading case.' The leading cases on important points of law were collected and published by Mr. John William Smith with copious notes in 1837, and a similar collection on points of equity, by Messrs. White and Tudor, in 1849. See also RULING CASES.

Leading Question, a question which suggests to a witness the answer which the party examining desires. See *Best on Evidence*; *Powell on Evidence*. Such questions are not allowed to be put except in cross-examination, except as to matter not in dispute, and preliminary inquiries, name and address, etc., of witnesses.

It is not easy to lay down any precise general rule as to what are leading questions; on the one hand, it is clear that the mind of the witness must be brought into contact with the subject of inquiry; on the other, that he ought not to be prompted to give a particular answer, or to be asked any question to which *yes* or *no* would be conclusive. But how far it may be necessary to particularize, in framing the question, must depend upon the circumstances of each particular case.

If a witness by his conduct show himself decidedly adverse to the party calling him it is in the discretion of the Court to allow him to be examined as if on cross-examination.—*Tayl. on Evid.*

League [fr. *ligue*, Fr.; *ligo*, Lat.], a treaty of alliance between different states or parties. It may be offensive, or defensive, or both. It is *offensive* when the contracting parties agree to unite in attacking a common enemy; *defensive* when the parties agree to act in concert in defending each other against an enemy.

Also a measure equal to three English miles, or 3,000 geometrical paces.

League of Nations (Société des Nations) is a conventional assembly which was set up early in 1920 at the conclusion of the War of 1914–1919, with a membership of 58 States. The Covenant, consisting of 26 Articles at the beginning of each of the Peace Treaties, is its charter, pledging these States to promote international co-operation, and achieve peace and security by accepting obligations not to go to war, and to respect treaties. Among the important principles which underlie the League are the 'collective system,' e.g., collective action to prevent aggression, as well as to assist members to carry on their common interests more effectively; the duty of reduction of armaments; equality for States, e.g., recognition of greater responsibility of large Powers, with legal equality for all, large or small; undertaking to use peaceful settlement for disputes, with recognition that any war is the responsibility of all peoples; provision of means for adapting existing rights, when necessary, to justice. The League's machinery, the only existing one on adequately large scale, includes a Council; a larger Assembly; a Secretariat which constitutes the first International Civil Service; the Hague Court of Justice, the first World Court of Law; the International Labour Organization, providing first machinery for securing standards of labour conditions which can guard against abuse and economic competition; regular, efficient technique for carrying on, by conference and personal contact, the technical business of government where, more and more, the interdependence of countries makes common action imperative; discussion in public. More than 400 treaties have been concluded, varying from security pacts like Locarno, to the General Act, providing means for peaceful settlement of any dispute, which are linked up with the League's machinery and the Hague Court; the latter, at the same time, is building up a cumulative body of international case law, while the new practice of giving 'advisory opinions' has been of marked help to the Foreign Offices in handling many problems. The first Secretary-General of the League was Sir Eric Drummond; in 1933 he was succeeded by M. Avenol.

League of Nations Union (at 15 Grosvenor Crescent, London, S.W.1) is a British voluntary organization, under a Royal Charter, of which the object is to educate and make effective public opinion concerning the League.

Leakage, an allowance made to merchants for the leaking of casks or the waste of liquors.

Leal, loyal, belonging to law.

Leap-year, otherwise called bissextile [fr. *bis* and *sextilis* (dies)] from its introduction to make up the loss of the six hours by which the course of the sun annually exceeds the 365 days allowed for.

Leap-year, which happens every fourth year, thus consists of 366 days instead of 365 by the addition of a day to the 28 days in other years of February. The day thus added was by Julius Cæsar appointed to be the day before the 24th of February, which among the Romans was the sixth of the calends, and which on this occasion was reckoned twice, hence the term *bissextile*.

Lease [either from *locatio*, Lat., the letting of property, or *laisser*, Fr., to let, or *leapum*, or *leasum*, Sax., to enter lawfully], sometimes also called *demise* (*demissio*), is a grant of property for life, or years, or from year to year or at will, by one who has greater interest in the property. The person granting is called the lessor, who is possessed of the reversion (as to a reversion being essential to a lease, see 1 *Platt on Lease*, pp. 9 *et seq.*); he to whom the property is granted, the lessee. The consideration is usually the payment of a rent or other annual recompense. The ancient operative words were 'demise, lease, and to farm let,' or 'demise and lease.'

The Law of Property Act, 1925, makes a distinction between leases for years which become legal estates if they consist of terms of years absolute and leases for life which have been converted into merely equitable interests if created under a settlement, but by s. 149 of the Act leases for life at a rent or in consideration of a fine have been converted into terms of 90 years, terminable by notice as there provided. A term of years absolute is defined (see s. 205 (xxvii.) of the Act) as a term of years, whether or not at a rent either certain or determinable, but not a lease for life or lives, or (not after 1925) limited to take

effect in possession within 21 years as required by the Act; see *infra*.

Until 1926, under a lease for years, except a lease operating under the Statute of Uses, the lessee must have entered into the leased premises, for before entry he had only an *interesse termini* by virtue of his Common Law assurance, a right which could be assigned, but not surrendered, and which did not prevent the merger of two estates by its interposition, nor itself occasion a merger. The interest in a term *in futuro* is also called the *interesse termini*. By the L. P. Act, 1925, s. 149, the doctrine of *interesse termini* was abolished and as from 1st January, 1926, all terms of years absolute, whether created before or after that date, take effect from the date fixed for commencement of the term without actual entry, and a term at a rent or in consideration of a fine limited after 1925 to take effect more than 21 years from the date of its creation is void, a contract for such a term is also void but leases of an equitable interest under settlement or power to mortgage in settlements, or by way of indemnity and like purposes under the settlement are excepted from the prohibition, and a further exception to the rule is made by sub-s. (5) of s. 149, which saves legal terms taking effect in reversion expectant on a larger term.

The Law of Property Act, 1925, ss. 51 to 55, reproducing and amending the Statute of Frauds, ss. 1, 2 and 3, and the Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 3, requires that for the purposes of creating a legal estate all leases are to be by deed except leases taking effect in possession for a term not exceeding three years and at the best rent which can be reasonably obtained without taking a fine, and such excepted leases may be made otherwise than by deed, i.e., by parol. The doctrine of part performance is not affected (s. 55 (*d*)). Under that doctrine leases which would be void because they are not made by deed may be enforceable as an agreement upon the same terms as if the lease had been granted (*Walsh* v. *Lonsdale*, (1882) 21 C. D. 9). Further, all agreements for a lease except a lease which may be made by parol (see above) must in all cases be in writing; L. P. Act, 1925, s. 40 (reproducing part of s. 4 of the Statute of Frauds), unless the agreement is partly performed and specifically enforceable (see *Maddison* v. *Alderson*, (1883) 8 App. Cas. 467). Agreements which are not in writing and not specifically enforceable are interests at will only (see L. P. Act, 1925, s. 54). Possession by the tenant and receipt of rent by the landlord are good evidence of a tenancy.

By the Judicature Act, 1925, s. 56, causes for the specific performance of contracts for leases are assigned to the Chancery Division of the High Court. See LANDLORD AND TENANT; COMPENSATION; GOODWILL; APPORTIONMENT; FORFEITURE; CONDITION; RENEWAL; also *Chitty's Statutes*, tit. '*Landlord and Tenant*'; and consult *Foa*, *Woodfall* or *Redman on Landlord and Tenant*.

Lease and Release, a mode of conveyance which derived its effect from the Statue of Uses, compounded of a lease for a year at Common Law, or a bargain and sale for a year under the Statute of Uses, and a Common Law Release. This compound conveyance originated thus: The Statute of Enrolments (27 Hen. 8, c. 16) seemed to be confined to cases where an estate of inheritance or freehold, or the use thereof, was to be made or take effect by reason only of a bargain and sale; it was therefore concluded that if a bargain and sale were first made for an estate less than freehold, as for one year, and then the inheritance or freehold were superadded by a separate deed of release, the transaction could not be affected by the statute; and that such release to the bargainee would be valid, without his entry upon the lands, as a consequence of the strong words in the Statute of Uses which converts *all vested uses* at once into legal estates. The convenience and general applicability of the lease and release recommended and established it as a common assurance. For it was preferable to a bargain and sale, and to a covenant to stand seised to uses, because it effected a transfer of the legal estate under the rules of the Common Law, and therefore the declarations of uses upon it needed not to be confined to persons from whom a consideration moved. It was also preferable to a bargain and sale, and still more to a feoffment, because no additional ceremony was necessary to its operation; but the transfer of property in land might have been effected by it in any part of the world, as instantaneously as the payment of money. And where the subject of conveyance was land in reversion or remainder, it was also preferable to a mere deed of grant, as it made it unnecessary for the grantee, if his title were called in question, to prove that there was a particular estate in existence at the time of the grant. See 2 *Sand. Uses and Trusts*, 73; 4 *Reeves*, 355.

By 4 & 5 Vict. c. 21 (repealed by the Statute Law Revision Act, 1874, No. 2) conveyance by release without a lease was made effectual; and by the Real Property Act, 1845, s. 2 (see now L. P. Act, 1925, s. 51), the immediate freehold of corporeal tenements is deemed to lie in grant as well as in livery, and the conveyance by lease and release has thus become obsolete.

Leasehold, a chattel, interest and a dependent tenure derived either from a freehold, leasehold or (before 1926) copyhold or larger leasehold estate. See LEASE and TERM OF YEARS ABSOLUTE.

Leases, Ecclesiastical. Leases by ecclesiastical corporations are made under certain restrictions imposed by statutes of which the principal one is the Ecclesiastical Leasing Act, 1842, and see Agric. Holdings Act, 1923, ss. 20 and 26. See *Chitty's Statutes*, tit. '*Lease* (*Ecclesiastical*)'; *Woodfall*, '*Landlord and Tenant*.'

Leasing, or **Lesing**, gleaning.

Leasing-making, slanderous and untrue speeches to the disdain, reproach, and contempt of the sovereign, his council and proceedings, or to the dishonour, hurt, or prejudice of the sovereign or his ancestors.—Scots Acts, 1584, 1585, and 1703, c. 4.

Leave and Licence, a defence to an action in trespass setting up the consent of the plaintiff to the trespass complained of.

Leave to Defend. The repealed Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), commonly called 'Keating's Act,' allowed actions on bills or notes commenced within six months after being due, to be by writ of summons in a form provided by the Act, and, unless the defendant should within twelve days obtain leave to appear and defend the action, allowed the plaintiff to sign judgment on proof of service. This procedure was retained by the Judicature Act, 1875, Ord. II., r. 6, but abolished in 1880 by Ord. II., r. 6 (annulled 1917).

By R. S. C. 1883, Ord. III., r. 6, as amended by R. S. C. 1933, in respect of forfeiture for non-payment of rent, it is provided that in all actions where the plaintiff seeks merely to recover a debt or liquidated demand (see QUANTUM MERUIT) in money, or possession where a tenancy has expired or been determined by notice to quit, or has become liable to forfeiture for non-payment of rent, the writ of summons may, at the option of the plaintiff, be specially endorsed with or accompanied by a statement of his claim as of the remedy to which he claims to be entitled; in which case, if the defendant fail to appear, judgment may be signed for the amount claimed; and by Ord. XIV., r. 1, as amended by R. S. C. 1933, it is further provided that where the defendant appears to a writ of summons specially indorsed with or accompanied by a statement of claim under Ord. III., r. 6, the plaintiff may on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any liquidated sum is claimed), and stating that in his belief there is no defence to the action except as to the amount of damages claimed, if any, apply to a judge for liberty to enter judgment for such remedy or relief or upon the statement of claim the plaintiff may be entitled to. The judge therefore, unless the defendant shall satisfy him that he has a good defence to the action on the merits or shall disclose such facts as may be deemed sufficient to entitle him to defend the action generally, may make an order empowering the plaintiff to enter such judgment as may be just, having regard to the nature of the remedy or relief claimed.

Relief from Forfeiture for Non-payment of Rent. By Rule 10 of Order XIV., added by the Rules of January, 1902 :—

> A tenant shall have the same right to relief after a judgment under this order for recovery of land on the ground of forfeiture for non-payment of rent as if the judgment had been given after trial.

Leccator, a debauched person.—*Cowel.*

Lecherwite [fr. *legum*, Sax., to lie with; *wite*, penalty], a fine for adultery or fornication, anciently paid to the lords of certain manors.—4 *Inst.* 206. See LAIRWITE.

Le congrès, a species of proof on charges of impotency in France, *coitus coram testibus*. Abolished A.D. 1677.

Lectrinum, a pulpit.—*Dugd. Mon.*, tom. iii. p. 243.

Lecture, in the Copyright Act, 1911, includes address, speech and sermon, and 'delivery,' in the case of a lecture, includes delivery by means of any mechanical instrument (s. 35 (1)); and see ss. 1 (2), 2 (1) (v.), 17. Consult *Macgillivray on the Copyright Act*, 1911.

Lecturer [fr. *prælector*, Lat.], an instructor, a reader of lectures; also a clergyman who assists rectors, etc., in preaching, etc. See the Lecturers and Parish Clerks Act, 1844 (7 & 8 Vict. c. 59).

Ledger-book, a book in the prerogative Courts, considered as their rolls.

Ledgreve or **Ledgrave.** See LATHREEVE.

Ledo, the rising water or increase of the sea.

Leeman's Acts. So called after the introducer, Mr. George Leeman, M.P. for York City. (1) The Banking Companies (Shares) Act, 1867 (30 & 31 Vict. c. 29), by which contracts for sale of bank shares are void unless the numbers of the shares sold are set forth in the contract; this Act is believed to be a dead letter on the Stock Exchanges, but is in full legal force (*Neilson* v. *James*, (1882) 9 Q. B. D. 546). (2) The Borough Funds Act, 1872 (35 & 36 Vict. c. 91), much amended (see BOROUGH FUND) by the Borough Funds Act, 1903—authorizing the application of the funds of municipal corporations, and other governing bodies, under certain conditions, towards promoting or opposing Parliamentary and other proceedings for the benefit or protection of the inhabitants. See now Local Government Act, 1933 (22 & 23 Geo. 5, c. 51), which repeals the Act of 1903 except as to London.

Leet, Court, an inferior court in manors. See COURT-LEET.

Leets or **Lacts,** meetings which were appointed for the nomination or election of ecclesiastical officers in Scotland.

Lega or **Lacta,** the alloy of money.

Legable [fr. *legabilis*, Lat.], capable of being bequeathed.

Legacy [fr. *legatum*, Lat.]. A legacy is a gift of personalty by will, and, arising as it does from the mere bounty of the testator, it is postponed to the claims of creditors. There are four kinds of legacies:—(1) *General*, when it does not amount to a bequest of any particular thing or money, as distinguished from all others of the same kind; as if a testator give A. 50*l.* or a diamond ring, not referring to any particular diamond ring as distinguished from others. (2) *Specific*, when it is a bequest of a particular thing, or sum of money, or debt, as distinguished from all others of the same kind, as if a testator give B. 'my diamond ring.' (3) *Demonstrative*, when it is in its nature a general legacy, but there is a particular fund pointed out to satisfy it, as if a testator bequeath 1,000*l.* out of his Reduced Bank Three per Cents. And (4) *Cumulative*, or *substitutional*, when a testator by the same testamentary instrument, or by different testamentary instruments, has bequeathed more than one legacy to the same person, and the question arises whether he intended the second legacy to be cumulative—i.e., in addition to the first, or substitutional for it. If by different instruments he has given legacies of equal, greater, or lesser sums to the same person, the Court, considering that he who has given more than once must, *primâ facie*, be intended to mean more than one gift, awards to the legatee all the legacies. If, however, they are not given *simpliciter*, but the motive of the gift is expressed, and in such instruments the *same motive* is expressed, and also the *same sum* is given, the Court considers these two coincidences as raising a presumption that the testator did not by a subsequent instrument mean another gift, but a repetition only of the former gift. See CUMULATIVE LEGACIES.

A legacy not exceeding 500*l.* can be recovered in the County Court, by s. 67 of the County Courts Act, 1888, taken from the repealed Act of 1865, which first gave an equitable jurisdiction to County Courts. See now County Courts Act, 1934, s. 52.

Pecuniary legacies bear interest from the expiration of twelve months from the testator's death; the executor may pay them before, but he is not compelled to do so.

Upon and subject to the particular construction of the will, if a legacy be bequeathed to a person to be paid or payable at the age of twenty-one, or any other age or certain determinate term, and the legatee die before that age, this is such an interest vested in the legatee immediately on the testator's death, that it goes to his executor or administrator, it being *debitum in præsenti*, though *solvendum in futuro*, the time being annexed to the payment and not to the gift itself; but if a legacy be bequeathed to a person at twenty-one, or if, or when, or in case, or provided he shall attain twenty-one, or at any future definite period, and he die before that age or period, the legacy lapses, these expressions being construed as annexing the time to the substance of the legacy, so that the right of the legatee is made to depend upon his being alive at the time fixed for its payment. The giving of interest on a legacy to a legatee, let the interest be ever so small, or a provision for his maintenance until the time for payment of the legacy, provided it be equal in amount to the interest, as a rule, vests the legacy; but not, it seems, where the legacy is payable out of land, much less where anything appears on the will to show that the legacy was not intended to vest. See ADEMPTION; ABATEMENT; LAPSE; MAINTENANCE and SATISFACTION. Consult *Roper on Legacies*; *Theobald on Wills*.

In the Roman Law a legacy was an injunction given to the heir to pay or give

over a part of the inheritance to a third person. For its four kinds, see *Sand. Just.*, 7th ed. 222, or *Cum. Civ. Law*, 160.

Legacy Duty, a tax paid to Government on legacies and shares of residue, rising from 1 to 10 per cent. in proportion to the distance of relationship between the testator or intestate and legatee. The personal representative is liable to pay the duty. He must show a receipt signed by the legatee giving certain particulars, including the amount or value of the legacy and the duty payable thereon. Duty is then paid and the receipt is stamped. If the duty is not paid by the personal representative the legatee is chargeable. The principal Acts relating to the legacy duty are the Legacy Duty Act, 1796 (36 Geo. 3, c. 52); the Stamp Act, 1815 (55 Geo. 3, c. 184); the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12), ss. 41–43; and the Finance (1909–10) Act, 1910, pt. iii. See *Chitty's Statutes*, tit. '*Death Duties.*' Consult *Hanson* or *Norman on Death Duties.*

Legal, (1) lawful; according to law; (2) opposed to equitable.

Legal Rights of spouses and children in Scotland. See TERCE; COURTESY; JUS RELICTÆ; JUS RELICTI; LEGITIM.

Legalis homo, a person who stands *rectus in curiâ*, neither outlawed, excommunicated, nor infamous.

Legalis moneta Angliæ, lawful money of England.—*Co. Litt.* 207.

Legamannus. See LAGE-MAN.

Legantine, or **Legantine Constitutions,** ecclesiastical laws enacted in national synods, held under the Cardinals Otho and Othobon, legates from Pope Gregory IX., and Pope Clement IV., in the reign of King Henry III., about the years 1220 and 1268.

Legatary [fr. *legatum*, Lat.], a legatee.

Legate, a deputy, an ambassador, the Pope's nuncio.

There are three kinds:—(1) Legates *à latere*, being such as the Pope commissions to take his place in councils, and so called, because he never gives this office to any but his favourites and confidants, who are always *à latere*—at his side. (2) Legates *de latere* or *legati dati*, those entrusted with apostolical legation, and acting under a special commission. (3) Legates *by office*, or *legati nati*, those that were legates by virtue of their offices, as, in England, the Archbishop of Canterbury in former times.—*Encyc. Londin.*

Legatee, one who has a legacy left to him.

Legation, an embassy or mission.

Legator, one who makes a will, and leaves legacies.

Legatum, a legacy given to the church or an accustomed mortuary.

Legem facere, to make law upon oath. See *Selden's Notes on Hengham's Summæ*, 133.

Legem ferre or **rogare** [Lat.], to propose a law.—*Rom.*

Legem habere, to be capable of giving evidence upon oath. See OATH.

Legem scisсere [Lat.], to give consent and authority to a proposed law, applied to the consent of the people.—*Rom.*

Leger, Leiger, or **Ledger** [fr. *legger*, Dut., to lie], anything that lies in a place; as, a leger-book, a book that lies in a counting-house; leger-ambassador, a resident ambassador.

Legergild. See LAIRWITE.

Leges posteriores priores contrarias abrogant. 2 *Rol. Rep.* 410.—(Later laws abrogate prior contrary laws.) See REPEAL.

Legiosus, litigious, subjected to a course of law.

Legislation, the making of law; any set of statutes.

Legislature, the power that makes laws. See PARLIAMENT.

Legitim, the legal share of the father's free movable property due, by Scots law, on his death to his children. Where a father dies leaving a widow and children, his free movable estate is divisible into three equal parts; one-third part is divided equally amongst all the children, whether of his last or of any former marriage, as legitim; another third goes to his widow as her *jus relictæ;* and the remaining third is called 'dead's part,' which the father may dispose of as he pleases by will. If he die intestate, the 'dead's part' goes to his children as his next-of-kin. If the father leave no widow, the legitim is one-half instead of one-third.—*Bell's Scots Law Dict.* And see REASONABLE PARTS.

Legitimacy Declaration Act, 1858 (21 & 22 Vict. c. 93), which provides that any natural-born subject of the King, being domiciled in England or Ireland, or claiming any real or personal estate situated in England, may apply to the High Court of Justice for a decree, declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for a decree declaring that his own marriage was valid. See also Legitimacy Act, 1926 [16 & 17 Geo. 5, c. 60), applying the 1858 Act in cases also of

legitimation by subsequent marriage of parents and giving jurisdiction therein to the County Court.

Legitimate Child, one between whose parents subsisted the relation of marriage either at time of procreation or of birth, or at some intervening or subsequent period.

Legitimation per subsequens matrimonium. The legitimation of a bastard by the subsequent marriage of his parents. Formerly not recognized by the Law of England, though always allowed under the Civil Law in Scotland and most European countries and many British colonies.

Now recognized in England and Wales by the Legitimacy Act, 1926 (16 & 17 Geo. 5, c. 60), as from 1st January, 1927. The Act provides for the legitimation of an illegitimate person by the subsequent marriage of the parents, but not if the other person was married to a third person at the time of the illegitimate person's birth. It further provides for declarations of legitimacy, the rights of legitimated persons to take interests in property, succession, personal rights and obligations, and as to persons legitimated by extraneous law. See for summary of law before 1927 an article by Sir Dennis Fitzpatrick, K.C.S.I., in the *Journal of the Society of Comparative Legislation*, No. 13, New Series (1904).

In the British Colonies such as Ceylon, Canada, and South Africa, where the civil law of legitimation prevailed before the British occupation, that law has been left undisturbed; in the other Colonies to which the colonists took the British law against legitimation with them, that law has been altered by statute and legitimation introduced, e.g., New Zealand (1894), S. Australia (1898), Queensland (1899), New South Wales (1902), Victoria (1903).

See the *Journal of the Society of Comparative Legislation*, New Series, vol. vi. Pt. I. (1904).

Legitime, that portion of a parent's estate of which he cannot disinherit his children without a legal cause.—*Civ. Law.* See LEGITIM.

Legitimi hæredes, *agnati* because the inheritance was given to them by a law of the Twelve Tables.—*Sand. Just.*, 7th ed. 280.

Legruita, a fine for criminal conversation with a woman.—*Old Records.*

Leidgrave, an officer under the Saxon government who had jurisdiction over a lath. See LATH.

Leigh, a meadow.

Leipa, one who escapes or departs from service.—*Spelm.*

Lent [fr. *lenten*, Sax., spring], the time from Ash Wednesday to Easter Day. The forty days of Lent are days of fasting or abstinence.

Leod, the people, nation, country, etc.

Leodium, liege.

Leoht-gesceot [*symbolum luminis*, Lat.], a tax for supplying the church with lights.—*Anc. Inst. Eng.*

Lep and Lace, a custom in the manor of Writtle, in Essex, that every cart which goes over Greenbury within that manor (except it be the cart of a nobleman) shall pay 4*d.* to the lord.—*Blount.*

Leporarius, a greyhound.—*Cowel.*

Leporium, a place where hares are kept.—*Dugd. Mon.*, tom. 2, 1035.

Leproso amovendo, an ancient writ that lay to remove a leper or lazar, who thrusts himself into the company of his neighbours in any parish, either in the church, or at other public meetings, to their annoyance.—*Reg. Brev.* 237.

Le Roy (or **la Reine**) **le veut.**—(The King (or the Queen) wills it.) The form of the royal assent to public Bills in Parliament.

Le Roy n'est lié par aucun statut s'il ne fut expressement nommé.—(The King is not bound by any statute unless he be expressly named therein, as, e.g., in the Patents, etc., Act, 1883, and the Interpretation Act, 1889.)

Le Roy (or **la Reine**) **remercie ses bons sujets, accepte leur bénévolence et ainsi le veut.** (The King (or the Queen) thanks his (or her) loyal subjects, accepts their benevolence, and wills it thus.) The form of the royal assent to a Bill of supply.

Le Roy (or **la Reine**) **s'avisera.**—(The King (or the Queen) will consider of it.) The form of words used to express a denial of the royal assent.

Leschewes, trees fallen by chance, or windfalls.—*Brooke's Abr.* 341.

Lesion, the injury suffered in consequence of inequality of situation by one who does not obtain a full equivalent for what he gives in a commutative contract.—*Civ. Law.*

Les lois ne se chargent de punir que les actions extérieures.—(Laws charge themselves with punishing overt acts only.) That is, 'so long as an act rests in bare intention it is not punishable.'

Lespegend, an inferior officer in forests to take care of the vert and venison therein, etc.

Les Prélats, Seigneurs, et Communes en ce présent Parlement assemblées, au nom de touts vos autres sujets, remercient très

humblement votre Majeste, et prient à Dieu vous donner en santé bonne vie et longue.—The prelates, lords, and commons, in this present Parliament assembled, in the name of all your other subjects, most humbly thank your Majesty, and pray to God to grant you in health a good and long life.) The form of words used by the clerk in an act of grace or indemnity, which originates with the Crown, or, so to speak, has the royal assent before it is agreed to by the two Houses.

Lessa, a legacy.—*Dugd. Mon.*, tom. i. p. 562.

Lessee, the person to whom a lease is made or given.

Lessons, Table of, see the Prayer Book (Table of Lessons) Act, 1871 (34 & 35 Vict. c. 37), whereby the use of a revised table of Lessons to be read in church was authorized and directed to be inserted in the Prayer Book in lieu of the existing table; and the Revised Tables of Lessons Measure, 1922 (12 & 13 Geo. 5, No. 3), which provides an alternative table.

Lessor, one who lets anything to another by lease.

Lessor of the Plaintiff. See EJECTMENT.

Lestagefry, lestage-free, or exempt from the duty of paying ballast-money.

Lestagium, lastage or lestage; a duty laid on the cargo of a ship.

Leswes or **Lesues,** pastures.—*Domesday; Co. Litt.* 4 *b.*

Let, 'without let or hindrance,' without obstruction.

Leta, a court-leet.

Lethal Weapon, deadly weapon.

Letherwite. See LAIRWITE.

Letter of Absolution, the mode formerly resorted to by an abbot for the release of his brethren, in order to qualify them for entering into some other order of religion.

Letter of Attorney. See POWER OF ATTORNEY.

Letter-claus (*literæ clausæ*), close letter, so called in contradistinction to letters-patent, because the former is commonly sealed up with the royal signet, or privy seal; whereas letters-patent are left open and sealed with the broad seal.

Letter of Credit, a letter written by a merchant or correspondent to another, requesting him to credit the bearer with a certain sum of money.

Letter of Exchange, a bill of exchange, which see.

Letter of Horning. See HORNING.

Letter of Licence, an instrument in writing whereby the creditors of a man who had failed to meet his engagements gave him time for the payment of his debts, and undertook that in the meantime he should be free from arrest for debt; but arrest for debt was abolished by the Debtors Act, 1869 (32 & 33 Vict. c. 62), subject to the provisions of that Act.

Letter-missive. When a peer was made a defendant in the Court of Chancery, the Lord Chancellor sent a letter-missive to him, to request his appearance, together with a copy of the bill, petition, and order; if he neglected to appear to this, he was then served with a copy of the bill and a citation to appear and answer; if he continued still in contempt, a sequestration *nisi*, which was made absolute in the usual way, issued immediately against his lands and goods, without any of the arresting processes of attachment, etc., which cannot affect a Lord of Parliament. See 1 *Dan. Ch. Pr.*

Also, for electing a bishop, a letter-missive from the sovereign is sent to the dean and chapter, containing the name of the person whom he would have them elect. See CONGÉ D'ÉLIRE.

Letters. The recipient or lawful possessor of letters has all the rights in them incident to property except that he is not entitled to publish them or paraphrase of them (*Philip* v. *Pennell*, 1907, 2 Ch. 577; *Oliver* v. *Oliver*, (1861) 31 L. J. C. P. 4). As to copyright, see *Macgillivray on Copyright.*

Letters of Administration. See ADMINISTRATION.

Letters of Marque, commissions for extraordinary reprisals for reparation to merchants taken and despoiled by strangers at sea, grantable by the Secretaries of State, with the approbation of the Sovereign and Council; and usually in time of war, etc.—*Lex Merc.* 173. The words *marque* and *reprisal* are used as synonymous terms, although the latter is, strictly, taking in return; the former passing the frontiers in order to such taking.—*Du Cange*, tit. '*Marcha.*'

These letters are grantable by the law of nations, wherever the subjects of one state are oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs. In this case letters of marque and reprisal may be obtained in order to seize the bodies or goods of the subjects of the offending state, until satisfaction be made, wherever they happen to be found; and, in fact, this custom seems dictated by nature. The necessity, however, is obvious of calling in the sovereign power

to determine when reprisals may be made, else every private sufferer would be a judge in his own cause.—4 Hen. 5, c. 7 ; *Muratori's Antichità Italiane*, tit. '*Rappresaglie*' ; *Malvezzi's Chron. of Brescia.*

But the term itself is now somewhat differently applied. If during war a subject should take an enemy's ship, without commission from the Crown, the prize would, by the effect of the prerogative, become a *droit* of Admiralty, and would belong, not to the captor, but to the Crown. To encourage merchants and others to fit out privateers or armed ships in time of war, the Lords of the Admiralty have been in former times empowered by various Acts of Parliament, and sometimes by proclamation of the Sovereign in Council, to grant commissions to the owners of such ships, and the prizes captured by them have been directed to be divided between such owners and the captains and crews. But the owners, before the commission is granted, give security to the Admiralty to make compensation for any violation of treaties between those powers with whom the nation is at peace ; and that such armed ship shall not be employed in smuggling. These commissions were called letters of marque, in which sense alone the term is now accepted.—2 *Steph. Com.* By Order in Council, dated 29th of March, 1854, 'general reprisals' were granted against the ships, vessels, and goods of the Emperor of Russia, and to give the benefit of all the prizes taken by her Majesty's ships to the captors.

On the 16th of April, 1856, the plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey assembled in congress at Paris, signed a declaration, of which the first article was 'Privateering is and remains abolished.' The United States of America were invited to accede to this declaration, but declined.

Letters-patent, or **Letters Overt** [fr. *literæ patentes*, Lat.], writings of the sovereign, sealed with the Great Seal of England, whereby a person or public company is enabled to do acts or enjoy privileges which he or it could not do or enjoy without such authority. They are so called because they are open with the seal affixed and ready to be shown for confirmation of the authority thereby given. Peers are sometimes created by letters-patent, and letters-patent of precedence were granted to barristers. By letters-patent aliens are made denizens, and especially new inventions are protected ; hence the incorporeal chattel of patent-right.

A 'patent-right' is a privilege granted by the Crown to the first inventor of any new contrivance in manufactures, that he alone shall be entitled, during a limited period, to make articles according to his own invention—Statute of Monopolies, 21 Jac. 1, c. 3.

To be the subject of a patent-right an article must be material and capable of manufacture, an idea or scientific law or hypothesis cannot be patented : it must be new within the United Kingdom and not known to the public at the date of grant and show some utility. The person applying for the patent must be the true and first inventor of it ; yet where the secret is acquired abroad by one who afterwards introduces it into the realm, he is considered by the law as the true inventor.

The various statutes regulating the procedure for obtaining a patent were consolidated, with amendments, by the Patents and Designs Act, 1907 (7 Edw. 7, c. 29), and further amended by Patents and Designs Act, 1919 (9 & 10 Geo. 5, c. 80), and 1932 (22 & 23 Geo. 5, c. 32), which, proceeding on the principle that an inventor is a person to be encouraged, simplifies and renders less expensive the procedure for granting a patent and enforcing the rights under it. The rights conferred do not extend beyond Great Britain and Northern Ireland and the Isle of Man (patents elsewhere, such as in any of the Dominions or foreign countries must be applied for locally) ; see *infra.* Section 1 is as follows :

1.—(1) An application for a patent may be made by any person who claims to be the true and first inventor of an invention, whether he is a British subject or not, and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form, and must be left at, or sent by post to, the Patent Office in the prescribed manner.

(3) The application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor, and for which he desires to obtain a patent, and must be accompanied by either a provisional or complete specification.

(4) The declaration required by this section may be either a statutory declaration or not, as may be prescribed.

Applications may be made at once for a complete specification or for a provisional specification. The provisional specification protects the inventor pending the examination of the complete specification when lodged and during formalities required for the grant of the letters patent on the complete specification, which must be lodged

within 12 months of first application. Opposition to the grant is heard by the Comptroller of the Patent Office subject to appeal to an Appeal Tribunal (s. 12 of the Act of 1932). When granted, the patent must be sealed on a stamped application within 21 months. The grant entitles the patentee to all rights and profits in the invention. Upon infringement of the patent the patentee can protect his rights by injunction and a claim for damages. The patent is valid for 16 years with a further period of 7 to 14 years if the High Court decide that the invention has not been sufficiently remunerated. The patent is subject to certain rights of the Crown which may be reserved on the grant, and if the invention is likely to be useful in war the naval and military authorities may acquire it upon compensation agreed by the Treasury. The patent may be registered in such foreign countries as are parties to a Convention with this country, within 12 months, and it is assignable under seal either absolutely or with time or regional limits. Upon death, the patent rights vest in the personal representatives. It should be noted that the invention may be revoked if it is worked exclusively outside the United Kingdom at the end of 4 years from the date of grant, and revocation or a compulsory licence may be obtained if the invention is not being worked adequately, or if it is capable of, and is not being worked on a commercial scale in the United Kingdom after 4 years from the date of grant. Inventors should obtain the assistance of a chartered patent agent.

See also Patents and Designs Acts, 1919 (9 & 10 Geo. 5, c. 80), and 1932 (22 & 23 Geo. 5, c. 32); and consult *Terrell on Patents*.

Letters of Request: (1) The mode of commencing an original suit in the Court of Arches, instead of proceeding in the first instance in the Consistory Court. These letters dispense with instituting a suit in an inferior ecclesiastical jurisdiction, and authorize it in the superior court, otherwise only a Court of Appeal. The judge of the inferior court waives his jurisdiction, which attaches to the appellate court, without consent from the intended defendant.—1 *Hagg. Eccl. R.* 4, note (*a*).

See also Church Discipline Act, 1840 (3 & 4 Vict. c. 86), s. 13, by which a bishop may send a case by letters of request to the Court of Appeal to the province.

(2) The words 'letters of request' are used with reference to the 'request to examine witnesses in lieu of a commission,' which may be made under R. S. C., Ord. XXXVII., r. (6) (*a*), to the courts of foreign countries and the Colonies. It is the only method of obtaining evidence in some countries. See notes to the above rule in *Annual Practice*.

Letters of Safe-conduct. No subject of a nation at war with us can, by the law of nations, come into the realm, nor can travel himself upon the high seas, or send his goods and merchandise from one place to another, without danger of being seized by our subjects, unless he has letters of safe-conduct, which, by divers old statutes, must be granted under the Great Seal, and enrolled in Chancery, or else are of no effect—the sovereign being the best judge of such emergencies as may deserve exemption from the general law of arms.—*Chitty's Prerogatives of the Crown*, p. 48, and *Vattel by Chit.* 416. But passports or licences from our ambassadors abroad are now more usually obtained, and are allowed to be of equal validity; see ALIEN ENEMY.

Lettres de Cachet. See CACHET.

Lettres d'État, letters formerly issued in France in favour of government officials suspending legal proceedings against them.

Leuca, a measure of land, the extent of which is not precisely known: some say 1,500 paces. Ingulphus, p. 910, says 2,000 paces. In *Dugd. Mon.*, tom. i. p. 313, it is 480 perches. Spelman says a mile.

Leucata, a space of ground as much as a mile contains.—*Dugd. Mon.*, tom. i. p. 768. And so it seems to be used in a charter of William the Conqueror to Battle Abbey.

Levant et couchant [*levantes et cubantes*, Lat.], cattle that have been so long in the ground of another that they have lain down and risen to feed; supposed to be a day and a night.—*Termes de la Ley.*

Levari facias (that you caused to be levied), a writ of execution at Common Law, commanding the sheriff to levy or make of the lands and chattels of the judgment-debtor the sum recovered by the judgment. The sheriff was not authorized to sell or extend the lands, or deliver them to the creditor, but could only collect the debt from the issues and profits of the land, and from the sale of the chattels. This writ, long superseded by the writ of *elegit*, was formally abolished by the Bankruptcy Act, 1883, s. 146, sub-s. 2.

Levitical Degrees, degrees of kindred within which persons are prohibited to marry. They are set forth in the eighteenth chapter of

Leviticus. By 32 Hen. 8, c. 38, it is declared that all persons may lawfully marry, but such as are prohibited by God's law; and it is declared by the same statute, that 'no reservation or prohibition (God's law except) shall trouble or impeach any marriage without the Levitical degrees.' See MARRIAGE.

Levy [fr. *levo*, Lat.], the act of raising money or men.

Lex, law. In the Roman Law it was a resolution adopted by the old Roman *populus* (Patricians and Plebeians) in the *comitia*, on the motion of a magistrate of senatorial rank, as a consul, a prætor, or a dictator.

The principal maxims under this head are as follows:—

Lex Angliæ nunquam sine Parliamento mutari potest. 2 *Inst.* 218.—(The Law of England cannot be changed but by Parliament.)

Lex citius tolerare vult privatum damnum quam publicum malum.—(The law more readily tolerates a private loss than a public evil.)

Lex finget ubi subsistit æquitas. 11 *Co.* 90.—(The law will supply a fiction where equity subsists.) See FICTION.

Lex non cogit ad impossibilia. *Hob.* 96.—(The law does not compel to impossibilities.) See IMPOSSIBILITY.

Lex non curat de minimis. *Hob.* 88.—(The law cares not about trifles.)

Lex respicit æquitatem. *Co. Litt.* 24 *b.*—(The law regards equity.)

Lex spectat naturæ ordinem. *Co. Litt.* 197 *b.*—(The law has regard to the order of nature.)

Lex deraisnia, the proof of a thing which one denies to be done by him where another affirms it; defeating the assertion of his adversary, and showing it to be against reason or probability; this was used among the old Romans as well as the Normans.—*Cowel.*

Lex fori, the law of the place of action.

The forms of remedies, modes of proceeding, rules of evidence and execution of judgments are regulated by the laws of the place where the action is instituted; or, as the civilians express it, according to the *lex fori*. See *British Linen Co.* v. *Drummond*, (1830) 10 B. & C. 903; 34 R. R. 595, and Preface vi.; and *Hansen* v. *Dixon*, (1907) 96 L. T. 32. Consult *Dicey's Conflict of Laws*.

Lex judicialis, an ordeal.—*Leg. H.* 1.

Lex Julia majestatis, a law promulgated by Augustus Cæsar among the Romans, comprehending all the ancient laws that had before been enacted to punish transgressors against the State.—4 *Steph. Com.*

Lex hostilia de furtis, a Roman law which provided that a prosecution for theft might be carried on without the owner's intervention.—4 *Steph. Com.*

Lex loci contractûs (the law of the place of the contract). Generally speaking, the validity of a contract is decided by the law of the place where it was made. If valid there, it is, by the general law of nations (*jure gentium*), held valid everywhere, by the tacit or implied consent of the parties. The rule is founded not merely in the convenience, but in the necessities of nations; for otherwise it would be impracticable for them to carry on an extensive intercourse and commerce with each other. The whole system of agencies, of purchases and sales, of mutual credits, and of transfers of negotiable instruments, rests on this foundation; and the nation which should refuse to acknowledge the common principles would soon find its whole commercial intercourse reduced to a state like that in which it now exists among savage tribes.

The same rule applies to the invalidity of contracts; if void or illegal by the law of the place of the contract, they are generally held void and illegal everywhere. This would seem to be a principle derived from the very elements of natural justice. The code expounds it: *Nullum enim pactum, nullam conventionem, nullum contractum, inter eos videri volumus subsecutum, qui contrahunt lege contrahere prohibente* (*Inst.* l. i., tit. 14, l. 5). If void in its origin, it seems difficult to find any principle upon which any subsequent validity can be given to it in any other country. But there is an exception to the rule as to the univeral validity of contracts:—'No nation is bound to recognize or enforce any contracts injurious to its own interests, or its subjects.' See *Ogden* v. *Ogden*, 1908, P. 46; CONFLICT OF LAWS; and consult *Dicey's Conflict of Laws*, and *Westlake on Private International Law.*

Lex loci delicti (the law of the place of the tort or wrong).

Lex loci rei sitæ (the law of the place where the thing is situate). It is sometimes also called *lex sitûs*. As to real or immovable property, the general rule of the Common Law is, that the laws of the place where such property is situate exclusively govern in respect to the power to contract, the rights of the parties, the modes of transfer, and the solemnities which should accompany them;

see *Freke* v. *Lord Carbery*, (1873) L. R. 16 Eq. 461; *Bank of Africa* v. *Cohen*, 1909, 2 Ch. 129. The title, therefore, to real property can be acquired, passed, and lost only according to the *lex loci rei sitæ*.—*Story's Confl. of Laws*, s. 424. See *Westlake on Private International Law*; *Dicey's Conflict of Laws*.

Lex mercatoria, the mercantile law or general body of European usages in commercial matters.—1 *Steph. Com.*

Lex non cogit ad impossibilia. (The law does not urge to impossibilities.)

Lex non scripta, the unwritten or Common Law, which includes general and particular customs, and particular local laws; 1 *Steph. Com.* See *Common Law*.

Lex sacramentalis, purgation by oath.—*Leg. H.* 1.

Lex scripta, the written or statute law.

Lex scripta si cesset, id custodiri oportet quod moribus et consuetudine inductum est; et si quâ in re hoc defecerit, tunc id quod proximum et consequens ei est; et si id non appareat, tunc, jus quo urbs Romana utitur servari oportet. 7 *Co.* 19.—(If the written law be silent, that which is drawn from manners and customs ought to be observed; and if that is in any matter defective, then that which is next and analogous to it. [See ANALOGY; COMMON LAW; and the remarks of Parke, J., in *Mirehouse* v. *Rennel*, (1830) 8 Bing. 515.] And if that does not appear, then the law which Rome uses should be followed.)

The last maxim of Lord Coke is so far followed at the present day that, in cases where there is no precedent of the English Courts, the Civil Law is always heard with respect, and often, though not necessarily, followed.

Lex semper intendit quod convenit rationi. (The law is to be taken to intend that which is reasonable.)

Lex situs. See LEX LOCI REI SITÆ.

Lex spectat naturæ ordinem. (The law contemplates the natural succession of things.)

Lex talionis, the law of retaliation.

Lex terræ, the law of the land.

Lex uno ore omnes alloquitur. 2 *Inst.* 184.—(The law speaks to all with the same mouth.)

Lex Wallensica, the Welsh law.

Ley or **Loi,** law; the oath with compurgators; also a meadow.

Ley Gager, a wager of law; one who commences a lawsuit.—*Cowel's Law Dict.*

Leyerwite. See LAIRWITE.

Leze-majesty, an offence against sovereign power; treason; rebellion.

Liard, a farthing.

Libel [fr. *libellus*, Lat.; *libelle*, Fr.]. False defamatory words, if written and published, constitute a libel: *Odgers on Libel*, p. 1. 'Everything printed or written, which reflects on the character of another, and is published without lawful justification or excuse, is a libel, whatever the intention may have been' (*O'Brien* v. *Clement*, (1846) 15 M. & W. 435, per Parke, B.). A statement in a talking film is a libel and not merely a slander (*Youssopoff* v. *Metro-Goldwyn-Mayer Picture Corporation*, 78 Sol. Jo. 617). As to publication by dictation, etc., to a typist, see *Osborn* v. *Boulter & Son*, 1930, 2 K. B. 226. All contumelious matter that tends to degrade a man in the opinion of his neighbours, or to make him ridiculous, will amount (when conveyed in writing, or by picture, effigy, or the like.—*Monson* v. *Tussauds, Ltd.*, 1894, 1 Q. B. 671) to libel. A writing of fictitious character which incidentally contains the name of a real person may be a libel: see *Jones* v. *Hulton & Co.*, 1910, A. C. 20, where Lord Loreburn said (p. 23): 'Libel is a tort which consists in using language which others knowing the circumstances would reasonably think to be defamatory of the person complaining of any injured by it.' The term also legally includes such writings as are of a blasphemous, treasonable, seditious, or immoral kind. As to the averment in an indictment for obscene libel, see *R.* v. *Barraclough*, 1906, 1 K. B. 201.

Both the author and the publisher of a libel are liable to be either sued or indicted by the party libelled; but it is a defence in either case that the matter complained of was written or printed on what is called a *privileged occasion*—either (*a*) *absolute privilege*, statements in judicial proceedings, in Parliament, or by Ministers of the Crown in advising their sovereign (*Dawkins* v. *Lord Rokeby*, (1873) L. R. 8 Q. B. 255); but a report not judicially determining a right or the guilt or innocence of any one is not absolutely privileged (*O'Connor* v. *Waldron*, 78 Sol. Jo. 859); or (*b*) *qualified privilege*, i.e., upon an occasion which justified the writing or printing of it; e.g., that the defendant was giving a character of a servant, or commenting upon a matter of general interest to the public. No privilege, however, attaches to information supplied by a trade protection society to its customers for the purposes of profit and not from sense of duty if such

information is injurious to the character of another. The mere fact of a contract to supply information does not create such a duty or common interest that communications made in fulfilment of the contractual obligations are privileged. The underlying principle is the common convenience and welfare of society, and not the convenience of individuals. See *Macintosh* v. *Dunn*, 1908, A. C. 390. The Libel Law Amendment Act, 1888 (51 & 52 Vict. c. 64), gives 'privilege' to fair and accurate newspaper reports of proceedings of a court, or public meeting. *Standen* v. *South Essex Recorders Ltd.*, (1934) 50 T. L. R. 365 (comments in newspaper on proceedings at local authority meeting).

Proof of malice or spite will rebut a defence of privileged occasion, but neither want of truth nor malice are relevant to the defence of absolute privilege.

Threatening to publish a libel with the intent to extort anything valuable, etc., is punishable as a misdemeanour (Larceny Act, 1916 (6 & 7 Geo. 5, c. 50), s. 31); and see BLACKMAIL.

It is a good defence to an action of libel, that the libel was true; see *M'Pherson* v. *Daniels*, (1829) 10 B. & C. at p. 272. A defence that the plaintiff assented to a publication which was made may also be good—on the principle *volenti non fit injuria* (*Chapman* v. *Lord Ellesmere*, 1932, 2 K. B. 431). As to the discretion of the judge in awarding or withholding costs upon a verdict for nominal damages, see *Martin* v. *Benson*, 1927, 1 K. B. 771. But to be a defence to an indictment, a plea justifying on the ground of the truth of the libel must further allege that its publication was for the public good (Libel Act, 1843 (6 & 7 Vict. c. 96), s. 6); but if the libel is blasphemous or seditious, no evidence of its truth will be received (*R.* v. *M'Hugh*, 1901, 2 Ir. R. 569). It is also by s. 6 a misdemeanour to maliciously publish any defamatory libel: see *R.* v. *Munslow*, 1895, 1 Q. B. 758. As to newspaper libels, see NEWSPAPERS; and for the law of the subject generally, consult *Odgers* or *Fraser on Libel*; also *Addison on Torts*, and *Clerk and Lindsell on Torts*. See FAIR COMMENT; JUSTIFICATION; PUBLICATION; and SLANDER.

As to trade libels, it has been held by the House of Lords in *White* v. *Mellin*, 1895, A. C. 154, that an action will not lie for a false statement disparaging a trader's goods where no special damage is proved. Nor will any injunction be granted to restrain a trade libel without proof of special damage (*ibid.*).

In the Spiritual Court a libel means the articles drawn out in a formal allegation setting forth the complainant's ground of complaint.—3 *Bl. Com.* 100.

In Scots law it is the form of the complaint or ground of the charge, on which either a civil action or criminal prosecution takes place.—*Bell's Scots Law Dict.*

Libellant, the suitor-plaintiff who files a libel in an ecclesiastical case.

Libellee, the suitor-defendant against whom a libel has been filed.

Libelli famosi, scurrilous publications of a libellous nature. See LIBEL.

Libellus conventionis, the statement of a plaintiff's claim in a petition presented to the magistrate, who directed an officer to deliver it to the defendant.—*Civ. Law.*

Liber assisarum, the Book of Assizes or Pleas of the Crown, being the fifth part of the Year-Books.

Liber feudorum, a code of the feudal law, compiled by direction of the Emperor Frederick Barbarossa, and published at Milan, A.D. 1170.

Liber homo, a freeman.

Liber judicialis of Alfred, King Alfred's Dome-Book, which see.

Liber niger domûs regis (the black book of the King's household), the title of a book in which there is an account to the household establishment of King Edward IV., and of the several musicians retained in his service, as well for his private amusement as for the service in his chapel.

Libera, a livery or delivery of so much corn or grass to a customary tenant, who cut down or prepared the said grass or corn, and received some part or small portion of it as a reward or gratuity.

Libera batella, a free boat, a right of fishing.

Libera chasea habenda, a judicial writ granted to a person for a free chase belonging to his manor, after proof made by inquiry of a jury that the same of right belongs to him.—*Reg. Brev.* 36.

Libera piscaria, a free fishery.

Libera wara, a free measure of ground.

Liberam legem amittere, to lose one's free law (called the villainous judgment), to become discredited or disabled as juror and witness, to forfeit goods and chattels and lands for life, to have those lands wasted, houses razed, trees rooted up, and one's body committed to prison. It was anciently pronounced against conspirators, but is now disused, the punishment substituted being

fine and imprisonment. *Hawk. P. C.* 61, c. lxxii., s. 9 ; 3 *Inst.* 221.

Liberate, a writ that lay for the payment of a yearly pension or other sum of money, granted under the Great Seal, and addressed to the treasurer and chamberlain of the Exchequer. Also a writ to the sheriff for the delivery of possession of lands and goods extended or taken upon the forfeiture of a recognizance. Also a writ that issued out of Chancery, directed to a gaoler, for delivery of a prisoner who has put in bail for this appearance.—*Fitz. N. B.* 432.

Liberatio, money, meat, drink, clothes, etc., yearly given and delivered by the lord to his domestic servants.—*Blount.*

Liberation, payment.—*Civ. Law.*

Libertas ecclesiastica, Church Liberty, or ecclesiastical immunity.

Libertas est naturalis facultas ejus quod cuique facere libet, nisi quod de jure aut vi prohibetur. *Co. Litt.* 116.—(Liberty is that natural faculty which permits every one to do anything he pleases except that which is restrained by law or force.)

Libertate probandâ, an ancient writ which lay for such as being demanded for villeins offered to prove themselves free ; addressed to the sheriff, that he should take security from them for the proof of their freedom before the justices of assize, and that in the meantime they should be unmolested.—*Fitz. N. B.* 77.

Libertatibus allocandis, a writ lying for a citizen or burgess, impleaded contrary to his liberty, to have his privilege allowed.—*Reg. Brev.* 262.

Libertatibus exigendis in itinere, an ancient writ whereby the king commanded the justices in eyre to admit of an attorney for the defence of another's liberty.—*Reg. Brev.* 19.

Liberticide, a destroyer of liberty.

Liberty, a franchise, being a royal privilege or a branch thereof, subsisting in the hands of a subject, as a liberty to hold pleas in a court of one's own.

The privileged districts, called liberties from being exempt from the sheriff's jurisdiction, having separate commissions of the peace, and not being incorporated boroughs, might, by Order in Council, be united with the counties in which they were situate upon petition of the justices of the liberty or of the Courts, under the Liberties Act, 1850 (13 & 14 Vict. c. 105), of which statute, it is believed, but little advantage was taken. As to election of a 'people's magistrate,' in 1891, by the tenants and inhabitants of the liberty of Havering-atte-Bower, in Essex, see *Law Journal* for July 11, 1891.

By. s. 48, sub-s. 1, of the Municipal Corporations Act, 1888, every liberty and franchise of a county forms for the purpose of that Act part of the county of which it forms part for the purposes of parliamentary elections.

Liberty of the Rules, a privilege to go out of the Fleet and Marshalsea prisons within certain limits and there reside. Abolished by 5 & 6 Vict. c. 22.

Liberum tenementum, a frank tenement or freehold. The plea of *liberum tenementum,* commonly pleaded by the defendant in an action of trespass, was the only case of usual occurrence in more modern practice, in which the allegation of a general freehold title in lieu of a precise allegation of title was sufficient. It was sustained by proof of any estate of freehold, whether in fee, in tail, or for life only, and whether in possession or expectant on determination of a term of years, but it did not apply to the case of a freehold estate in remainder or reversion, expectant on a particular estate of freehold, nor to copyhold tenure.—*Stephen on Pleading,* 7th ed. 257. Obsolete. See now PLEADING.

Liblac [*venecifium,* Lat.], witchcraft, particularly that kind which consisted in the compounding and administering of drugs and philtres.—*Leg. Athel.* 6.

Liblacum, bewitching any person ; also a barbarous sacrifice.—*Leg. Athel.* 6.

Libra pensa, a pound of money by weight. It was usual in former days, not only to sell the money, but to weigh it ; because many cities, lords, and bishops, having their mints, coined money, and often very bad money, too, for which reason, though the pound consisted of twenty shillings, they weighed it.—*Encyc. Londin.*

Libraries (Public). The Public Libraries Acts, 1855—1890, authorized the establishment, at the expense of the ratepayers, of free public libraries in municipal boroughs, Improvement Act districts, and parishes, in England, by the vote of a majority of two-thirds of the inhabitants, taking by voting papers, 'and not otherwise,' (Act of 1890, s. 2). These Acts were consolidated by the Public Libraries Act, 1892 (55 & 56 Vict. c. 53), amended in the following year by 56 & 57 Vict. c. 11, which allowed the Act to be adopted in urban districts by the urban authorities instead of by direct popular vote. In rural parishes the parish councils had this power transferred to them by the Local

Government Act, 1894. Land may be taken compulsorily. Libraries under the Act are absolutely free, save that a charge may be made to non-residents for the use of a lending library. The Act of 1892 provided that the library rate was not to exceed one penny in the pound in any financial year, and might be limited to one halfpenny by the adopting authority. This provision has been repealed by s. 4 of the Public Libraries Act, 1919, which substitutes a right of the library authority to limit the rate to such sum in the pound as it specifies by annual resolution. This Act empowers county councils to adopt the Public Libraries Acts for the whole or any part of their county, and provides for the reference and delegation of library powers to education committees established under the Education Acts.

The Libraries Offences Act, 1898 (61 & 62 Vict. c. 53), penalizes various kinds of misbehaviour in libraries, and the Public Libraries Act, 1901 (1 Edw. 7, c. 19), empowers library authorities to make byelaws in respect of such misbehaviour, and to exclude from the libraries persons disobeying the byelaw. By the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 26, the expenses incurred by a library authority under the Acts of 1892–1919, not being a County Council, is to be levied in the library district as an additional item of the general rate. See *Chitty's Statutes*, tit. '*Libraries*,' and the works of *Chambers and Fovargue* or *Greenwood*.

Librata terræ, a portion of ground containing four ox-gangs, and every ox-gang fourteen acres.

This is the same with what in Scotland was called *pound-land* of old extent.

Libripens, a scalesman.—*Civ. Law.*

Licence [fr. *licentia*, Lat.], a permission given by one man to another to do some act which without such permission it would be unlawful for him to do. It is a personal right, and is not transferable, but dies with the man to whom it is given. It can as a rule be revoked by the licensor unless the licensee has paid money for it (*Odgers on the Common Law*, pp. 25, 574). As to the nature and effect of the licence granted to the purchaser of a ticket for a theatre or other similar entertainment, see *Hurst* v. *Picture Theatres*, 1915, 1 K. B. 1, and the authorities there referred to, and *Allen & Sons* v. *King*, 1916, 2 A. C. 54. It may be either written or verbal; when written, the paper containing the authority is often called a licence. A licence amounting to or coupled with an interest in an incorporeal hereditament must be under seal (see *Wood* v. *Leadbitter*, (1845) 13 M. & W. 838), or it may be revocable, but see *Lowe* v. *Adams*, 1901, 1 Ch. 598.

A licence is necessary before doing many acts, as to marry without publication of banns, or to carry on various trades, as that of an auctioneer, hawker, or pedlar.

As to licences for the sale of intoxicating liquors by retail, see INTOXICATING LIQUORS.

As to marriage licence, see MARRIAGE.

As to motor driving licence, see MOTOR CAR, and the Road Traffic Acts, 1930 to 1934.

As to music and dancing licences, see MUSIC AND DANCING.

A landlord cannot now exact a 'fine or sum of money in the nature of a fine' from his tenant as a condition of granting him a licence to assign or underlet (see Law of Property Act, 1925), s. 144, and by the Landlord and Tenant Act, 1927, s. 19, covenants not to assign or underlet without licence or consent have become subject to the provisoes (*a*) that the licence or consent is not to be unreasonably withheld, and (*b*) that if a lease is for more than forty years and is made for building, improvement, or alteration of buildings, with the exception of some public or similar buildings, no licence or consent is required for an assignment or underletting effected more than seven years before the end of the term, provided that notice in writing of the transaction is given to the lessor within six months after the transaction is effected: see Law of Property Act, 1925, replacing Conveyancing Act, 1892 (55 & 56 Vict. c. 13), s. 3; *Jenkins* v. *Price*, 1907, 2 Ch. 229; 1908, 1 Ch. 10; *Andrew* v. *Bridgman*, 1907, 2 K. B. 494.

Licensed Victualler. The holder of the general publican's licence, under the Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), is the licensed victualler *par excellence*, but the term may be applied to any person selling any kind of intoxicating liquor under a licence from the justices of the peace. See INTOXICATING LIQUORS.

Licensee, a person to whom a licence has been granted.

Licentia concordandi, that licence for which the king's silver was paid on passing a fine. See FINE.

Licentia loquendi, an imparlance. See IMPARLANCE.

Licentia surgendi, licence to arise, which was a liberty or space of time anciently given by the Court to a tenant to arise out of his

bed, who was essoined *de malo lecti* in a real action ; and it was also the writ thereupon.—*Fleta*, l. 6, c. x.

Licentia transfretandi, a writ or warrant credited to the keeper of the port of Dover, or other seaport, commanding him to let such persons pass over sea as have obtained the royal licence thereto.—*Reg. Brev.* 193.

Licentiate, one who has licence to practise any art or faculty.

Licet [Lat.], it is lawful ; although.

Licet sæpius requisitus [Lat.] (although often requested).

Licitation [fr. *liceo*, Lat., to set a price for sale], the act of exposing for sale to the highest bidder.

Licking of Thumbs, a form by which bargains were complete. Obsolete.

Lidford Law, a sort of Jedburgh justice, whereby a person was first punished and then tried.

Liege [fr. *lige*, Fr. ; *ligio*, Ital.], bound by some feudal tenure ; a subject.

Liege Homage, an acknowledgment which included fealty and the services consequent upon it.—1 *Br. & Had. Com.* 442.

Liege-lord, a sovereign ; superior lord.

Liegeman, he that oweth allegiance.

Liege poustie (*legitima potestate*], a state of health which gave a person lawful power in Scotland to dispose of his heritable property either *mortis causâ* or otherwise. But the Scots Law of Deathbed has now been abolished by 34 & 35 Vict. c. 81, which enacts that no deed, instrument, or writing made by any person who shall die after the passing of that Act shall be liable to challenge or reduction *ex capite lecti*.

Lieger or **Leger,** a resident ambassador.

Lieges or **Liege People.** See LIEGE.

Lien [answering to the *tacita hypotheca* of the Civil Law], a right in one man to retain that which is in his possession belonging to another, until certain demands of the person in possession are satisfied. It is neither a *jus in re*, nor a *jus ad rem*—i.e., it is not a right of property in the thing itself, or right of action to the thing itself.

It is either *particular*, as a right to retain a thing for some charge or claim growing out of, or connected with, the identical thing ; or *general*, as a right to retain a thing not only for such charges or claims, but also for a general balance of accounts between the parties in respect to other dealings of the like nature.

General and particular liens may arise : (1) by an express contract ; (2) by an implied contract, resulting from the usage of trade, or the manner of dealing between parties. General liens are not favoured in law, but some judicially recognized general liens are bankers', solicitors', factors', stockbrokers', warehouse-keepers' and insurance brokers'. See *Halsb. L. E.*, title '*Lien*.' Particular liens, on the other hand, are favoured by law and also arise by mere operation of law from the relation and acts of the parties, e.g., where the person claiming the lien was obliged by law to enter into the contract for service, e.g., common carriers, innkeepers, and a shipmaster's lien for freight.

The Civil Law derived its own liens, whether they were pledges or hypothecations, or simple privileges, from similar sources.

The following is an analysis of the mode in which the law on this subject has been treated.

(1) As to the manner and circumstances under which a lien may be acquired. To create a valid lien it is essential that the person through whom it is acquired should himself either have the absolute ownership of the property, or at least a right to vest it ; for *nemo plus juris ad alium transferre potest, quam ipse habet*. There must also be an actual or constructive possession by the party asserting it, with the express or implied assent of the party against whom it is asserted. It must not be inconsistent with the express terms or the clear intent of the contract.

(2) The debts or claims to which a lien properly attaches. It attaches only to certain and liquidated demands, and not to those which sound only in damages, and can be ascertained only through the intervention of a jury, unless, indeed, a special contract exists. The debt or demand for which the lien is asserted must be due to the person claiming it in his own right, and not merely as agent. It must also, in the absence of a special agreement, be a debt or demand due from the person for whose benefit the party is acting, and not from a third person, although the goods may be claimed through him.

(3) How a lien may be waived or lost. It may be waived by an act or agreement between the parties, by which it is surrendered, or becomes inapplicable. It is said (see *Hartley* v. *Hitchcock*, (1816) Stark. 408 ; 18 R. R. 790) that a lien is lost by temporarily relinquishing possession, but see *Great Eastern Railway* v. *Lord's Trustee*, 1909, A. C. 109.

A lien on goods is not lost when the

demand in respect of which it was acquired can no longer be enforced by an action, on account of the Statute of Limitations, for the statute does not put an end to the debt but only to the remedy by action.

(4) In what manner a lien may be enforced. There is but a mere right of retainer, which may be used as a defence to an action for the recovery of the property, or as a matter of title or special property, to reclaim the property, by action, if he have been unlawfully dispossessed of it. A lien does not import a right of sale. Sometimes a Court of Equity has decreed a sale as a part of its own system of remedial justice; and Courts of Admiralty have been constantly in the habit of decreeing a sale to satisfy maritime liens—such as bottomry-bonds, seamen's wages, repairs of foreign ships, salvage, and other claims of a kindred nature (see MARITIME LIEN), and exceptions occur under statute, e.g., the Innkeepers Act, 1878 (41 & 42 Vict. c. 38), the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20). The owner has a perfect right to dispose of the property, subject to the lien, and the person to whom he conveys it will have a perfect title to it upon discharging the lien. Consult *Smith's Merc. Law; Coote on Mortgages*, 9th ed., pp. 1375 *et seq.* and 1396 *et seq.*; *Atkinson on Sol. Lien.*

(5) By s. 41 of the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), the unpaid seller of goods in possession of them may, subject to the provisions of that Act, retain possession of them until payment or tender of the price: (*a*) where the goods have been sold without any stipulation as to credit; (*b*) where the goods have been sold on credit, but the term of credit has expired; (*c*) where the buyer has become 'insolvent'—i.e., by s. 62 (3) of the Act if he has ceased to pay his debts or cannot pay them, whether he has committed an act of bankruptcy or not.

Equitable liens are not necessarily possessory, they are charges arising by implication of equity on the property in the hands of any one who holds it with notice subject to any formalities which may be required by law such as registration (see LAND CHARGES; NOTICE). Such charges may be enforced by sale under order of the Court, and in cases where the lien is not possessory, may be defeated like other charges under the Statute of Limitations, from which possessory liens are exempt. Instances of equitable liens are vendor's lien (*q.v.*); partner's lien on partnership assets; trustee's lien for costs, charges and expenses; and other instances, where equity allows a lien. As to maritime lien, see the *Kong Magnus*, 1891, P. 223, and that title.

By the Judicature Act, 1925, s. 56 (1) (*b*), causes for the sale and distribution of the proceeds of any property, subject to lien, are assigned to the Chancery Division of the High Court.

In the Scottish law, the doctrine of lien is known by the name of *retention*, and that of set-off by the name of *compensation*.

Lien of a Covenant. The commencement of a covenant stating the names of the covenantors and covenantees, and the character of the covenant, whether joint or several.

Lieu [Fr.], place, room; *in lieu*, instead of.

Lieu conus, a castle, manor, or other notorious place, well known, and generally taken notice of by those who dwell about it.—2 *Lil. Abr.* 641.

Lieutenancy, Commission of. See COMMISSION OF ARRAY.

Lieutenant [fr. *lieu*, Fr., a place, and *tenant*, holding], a deputy; *locum tenens*; one who acts by vicarious authority; a naval and military rank.

Life Annuity, an annual payment during the continuance of any given life or lives. See ANNUITY and RENT CHARGE; LAND CHARGE; SETTLED LAND.

Life Assurance, a transaction whereby a sum of money is secured to be paid upon the death of the person whose life is assured, or upon the failure of one out of two or more joint lives. See INSURANCE.

Life-estate, an estate for (1) one's own life, or (2) the life of another—*pur autre vie.* See SETTLED LAND.

Life-peerage. Letters-patent, conferring the dignity of baron for life only, do not enable the grantee to sit and vote in the House of Lords, not even with the usual writ of summons to the House.—*Resolution of the Committee for Privileges*, February 22, 1856. But see LORDS OF APPEAL IN ORDINARY.

Life-rent, a rent received for a term of life. See SETTLED LAND.

Ligan [fr. *lier*, Fr., to tie], a wreck consisting of goods sunk in the sea, but tied to a cork or buoy, in order that they may be found again.—5 *Rep.* 106. See DROITS OF ADMIRALTY.

Ligeance, the true and faithful obedience of a subject to his sovereign; also the

dominion and territory of a liege-lord. See ALLEGIANCE.

Ligeas, a liege.

Light. No right to have the access of the sun's rays to one's windows free from any obstruction exists at Common Law (see DAMNUM ABSQUE INJURIA) but by virtue of the Prescription Act, 1832 (2 & 3 Wm. 4, c. 71), uninterrupted enjoyment of light for twenty years—commonly called 'ancient lights'—constitutes in every case, an absolute and indefeasible right to it, unless the enjoyment took place under some deed or written consent or agreement (*Hyman* v. *Van den Bergh*, 1908, 1 Ch. 167). See PRESCRIPTION.

The Prescription Act has not altered the previous law as to ancient lights (*Colls* v. *Home and Colonial Stores*, 1904, A. C. 179). And the right is to uninterrupted access of such light only as is ordinarily required for ordinary purposes and not to light peculiarly appropriate to the particular purpose for which the light has been used (*ibid.*, overruling *Warren* v. *Brown*, 1900, 2 Q. B. 722), and see also *Price* v. *Hildich*, 1930, 1 Ch. 500.

If two tenements belong to a common landlord, the right to light can be acquired by one tenement not only against the other tenement, but also against the landlord (*Morgan* v. *Fear*, 1907, A. C. 425), and see *Foster* v. *Lyons & Co.*, 1927, 1 Ch. 219. Consult *Goddard* or *Gale on Easements*.

Lighthouse, a building, from which lights are shown to guide ships at sea. The power of erecting and maintaining them is a branch of the royal prerogative. By the Harbours, Docks and Piers Clause, etc. Act, 1847 (10 & 11 Vict. c. 27), lighthouses are not to be erected without the sanction of Trinity House. The management of lighthouses is now regulated by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), Part, XI., ss. 634–675, as amended by the Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44), which creates a General Lighthouse Fund in substitution for the Mercantile Marine Fund, and, subject to the rights of persons having authority over local lighthouses, is vested in the following bodies :—

(1) As to lighthouses in England, Wales, Jersey, Guernsey, Sark, and Alderney, and the adjacent seas and islands, and in Gibraltar, in the Trinity House.

(2) In Scotland and the adjacent seas and islands, and in the Isle of Man, in the Commissioners of Northern Lighthouses.

(3) In Ireland and the adjacent seas and islands, in the Dublin Corporation. See now the Irish Free State (Agreement) Act, 1922 12 Geo. 5, c. 4), s. 1, Sched., Art. 4 and Annex.

The Act of 1898 provides that light dues are to be levied with respect to the voyages made by ships, or by way of periodical payment, and no longer with respect to the lights which a ship passes, or from which it derives benefit, provides a scale of light dues and rules for levying them, and enacts that the expenses of Colonial lights are to be paid out of the General Lighthouse Fund. See FALSE LIGHTS.

Lighting and Watching Act, 1833 (3 & 4 Wm. 4, c. 90), superseding 2 Geo. 4, c. 27. An Act which may be adopted in any parish by the votes of a majority of two-thirds of the ratepayers, and which, if adopted, regulates the lighting of the parish 'by gas, oil, or otherwise' (s. 45), and the appointment (s. 39), employment, and dismissal of watchmen or constables therein. The Act may be abandoned in three years after adoption (s. 15).

The Act was repealed as to the metropolis by the Sanitary Act, 1866 (29 & 30 Vict. c. 90), s. 35, and is superseded by the Public Health Act in districts where that Act is in force (see Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 163).

In a rural parish the parish meeting has exclusive power of adoption by virtue of s. 7 (1) (*a*) of the Local Government Acts, 1894 and 1933 (23 & 24 Geo. 5, c. 51), ss. 307 and 308, Sched. II. By the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 3 (1), the rate is to be levied by the rural authority in each special area as a 'special' rate.

Light Railway. Light railways, on which engines and carriages of eight tons weight or less may be brought upon the rails by any one pair of wheels, and the speed of trains is not to exceed twenty-five miles an hour, could and still can be authorized by the Board of Trade under s. 27 of the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119).

These powers have been little, if at all, exercised; but the Light Railways Act, 1896 (59 & 60 Vict. c. 48), established a Light Railway Commission for the purpose of authorizing light railways, with special aid from the Treasury in certain circumstances and cases. By the Light Railways Act, 1912 (2 & 3 Geo. 5, c. 19), the powers of the Light Railway Commissioners were continued for

five years and several amendments made in the Act of 1896. See also Part V. of the Railways Act, 1921.

Lights on Vehicles. The Road Transport Lighting Act, 1927 (17 & 18 Geo. 5, c. 37), provides for the lighting of vehicles of every description (except railway locomotives, carriages and trucks, tramcars, trolley vehicles), but including machines and implements of any kind, whether drawn by animal or propelled mechanically. Briefly, the Act deals as follows :—

Sect. 1. Obligatory lights to be carried by vehicles at night.

Sect. 2. Restrictions on the number and nature of lamps to be carried.

Sect. 3. Conditions regulating the use of lamps on vehicles.

Sect. 4. Restrictions on movement of lamps.

Sect. 5. Special provisions as to bicycles and tricycles.

Sect. 6. Horse-drawn vehicles.

Sect. 7. Vehicles carrying overhanging or projecting loads.

Sect. 8. Special provisions as to vehicles towing and being towed.

Sect. 9. Regulations as to reflectors.

Penalties, repeals, provisions as to regulations, etc.

As to bicycles, see the Road Traffic Act, 1934 (24 & 25 Geo. 5, c. 50), s. 19.

Ligius, a person bound to another by a solemn tie or engagement; now used to express the relation of a subject to his sovereign.

Lignagium, a right of cutting fuel in woods; also a tribute or payment due for the same.—*Jac. Law Dict.*

Lignamina, timber fit for building.—*Du Cange.*

Ligula, a copy or transcript of a court-roll or deed.

Liguritor, a flatterer; perhaps a glutton.

Limitation, restriction or circumspection; defining an estate or property; a certain time allowed by a statute for litigation. See next title.

Limitation of Actions and Prosecutions. By various statutes, of which the first was 21 Jac. 1, c. 16, the Limitation Act, 1623, and the principal succeeding ones, the Real Property Limitation Act, 1833 (3 & 4 Will. 4, c. 42), the Civil Procedure Act (3 & 4 Will. 4, c. 27) (see *Read* v. *Price*, 1909, 2 K. B. 724), and 37 & 38 Vict. c. 57, the Real Property Limitation Act, 1874, certain periods are fixed within which, upon the principle *Interest reipublicæ ut sit finis litium*, particular actions must be brought or proceedings taken.

In the case of simple contract the remedy on the contract is barred, leaving the creditor free to enforce his claims by other means which may be still available, such as enforcing a lien, subsequent acknowledgment by the debtor or appropriation of payments, but not by way of set-off (9 Geo. 4, c. 14, s. 3). In regard to land, the right to it is destroyed after the statutory period and neither re-entry nor acknowledgment after the lapse of the statutory period will revive it.

No *verbal* acknowledgment of a debt is sufficient to prevent the operation of the statutes (*Benest* v. *Pipon*, (1829) Knapp's Rep. 60). By Lord Tenterden's Act (9 Geo. 4, c. 14), the Statute of Frauds Amendment Act, 1828, s. 1, in actions of debt, or on the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of 21 Jac. 1, c. 16, unless such acknowledgment or promise be contained in some writing, to be signed by the party to be chargeable thereby, or by his agent duly authorized (19 & 20 Vict. c. 97, s. 13). By 19 & 20 Vict. c. 97, s. 14, where there are two or more co-contractors, or co-debtors, by simple contract or specialty, none of them shall lose the benefit of the limitation, by reason only of payment of any principal or interest by any of the others. The same principle is not applicable to an acknowledgment by one of several persons jointly liable. It appears that the acknowledgment of any one binds them all (*Roddam* v. *Morley*, 1 De G. & J., and *Read* v. *Price*, 1909, 1 K. B. 577).

By the Civil Procedure Act, 1833 (3 & 4 Will. 4, c. 42), s. 3, the period of limitation for actions of debt by deed or upon recognizance is twenty years after the cause of action has accrued, except in the case of mortgage debts which are now barred after twelve years, whether by covenant or collateral bond, by the R. P. Act, 1874, s. 8.

By the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), no land or rent is to be recovered but within twelve years after the right of action accrued, and under s. 2 of the same Act in the case of claimants entitled to particular interests (in remainder, reversion or other future estate or interest) the right to recover land etc., is limited to six years from the time when the estate shall have vested in possession or

twelve years from the date when the right first accrued to the person whose interest was determined, whichever period is the longer. By s. 3, persons who, at the time their right to recover land, etc., first accrues, are under the disability of infancy, coverture, idiotcy, lunacy, or unsoundness of mind, are allowed six years from the termination of their disability, and their representatives the same time from their death, but coverture is no longer a disability (Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), ss. 1, 5 and 12).

An allowance to the plaintiff for 'absence beyond the seas' which formerly obtained is excluded by s. 4 of the Real Property Limitation Act, 1874, as to real property, and see ss. 10 to 14 of the Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97), as to personal actions under the statutes there referred to and other matters, etc. 'Beyond the seas' is defined in s. 12 (*ibid.*), extending 4 & 5 Anne, c. 16, s. 19, as 'no part of the United Kingdom of Great Britain and Ireland nor the Islands of Man, Guernsey, Jersey, Alderney and Sark, nor any islands adjacent to them shall be deemed to be beyond the seas within the meaning of 4 & 5 Anne, c. 16.'

As to real property, there are four general cases when the possession is not *adverse*, viz.:—1st, when both parties claim under the same title; 2ndly, when the possession of the one is consistent with the title of the other; 3rdly, when the claimant or his successor has never, in contemplation of law, been out of possession; and 4thly, when the occupier has acknowledged the plaintiff's title.

A person dispossessing persons entitled to possession of settled land did not before 1926 obtain a title free from the claims of remaindermen or the reversioner under the settlement unless each of the remaindermen attaining vested possession in succession had become entitled in possession for at least six years (Real Property Limitation Act, 1874, s. 2), but as against a tenant-in-tail in possession, the statutory period is twelve years, even if he dies in the interim (Real Property Limitation Act, 1833, s. 21, as amended by the Act of 1874).

As a rule a title by possession for the statutory period of land against trustees will be good against all persons claiming as *cestui que trustent* under their trust (see *Williams* v. *Papworth*, 1900, A. C. 563), but this does not apply in regard to any person affected with notice of the trust either as a voluntary grantee from the trustee of the land or as a grantee for value with notice.

Trespassers acquire an inchoate transmissible right upon entry of land or perception of profits. Successive trespassers together completing the statutory period of limitation acquire a good title, but the ouster must be continuous. If there is a discontinuance, i.e., interim during which no one enters or is paid the rent, the rightful owner regains his cause of action until a statutory limitation is completed against him from the date of the fresh trespass. A trespasser acquires no right of which the rightful owner was not dispossessed by the trespasser, for instance; a trespasser occupying land held under a lease acquires no rights against the reversioner, whatever the length of the term may be, even though the rent has not been paid to the reversioner for the statutory period (see *Walter* v. *Lorden*, 1902, 2 K. B. 304), but if a stranger obtains any rent reserved exceeding 20*s.* per annum from the lessee and no rent is paid afterwards to the person rightfully entitled, the statutory period accrues from the date when the rent was received by the stranger and not upon determination of the lease (3 & 4 Will. 4, c. 27, s. 9).

A trespasser's possessory title may be forced on a purchaser's if the vendor can show forty years' undisturbed possession (*Sands* v. *Thompson*, (1883) 22 Ch. D. 614). The period may, possibly, have been reduced to thirty in most cases under the Law of Property Act, 1925, s. 44.

A title under the Statutes of Limitation can be acquired to land although it has been registered under the Land Registration Act, 1925, s. 75, if the claimant satisfies the registrar and obtains registration in his own name for 'absolute' 'good leasehold,' or 'possessory' titles according to the case. The Law of Property Act, 1925, s. 12, expressly saves the operation of the statutes and general law affecting the limitation of actions.

In equity, the rule has been, that, although the statute 21 Jac. 1, c. 16, s. 3, and other Acts do not mention suits in equity, yet that courts of equity in giving effect to equitable claims, and affording equitable relief, will observe the principles of these enactments, in cases where the legal and equitable titles to demands correspond, and differ only in the court where the right happens to be enforced (*Stackhouse* v. *Barnston*, (1805) 10 Ves. 466, 467). The Real Property Limitation Act, 1833 (3 & 4

Wm. 4, c. 27), expressly enacts that no suit in equity shall be brought after the time in which the plaintiff, if entitled at law, might have brought an action (s. 24). But as to an action for assignment of dower, see *Williams* v. *Thomas*, 1909, 1 Ch. 713.

Trustees are empowered to plead statutes of limitation by the Trustee Act, 1888, s. 8, if an action or other proceeding is brought to recover money or property to which no existing Statute of Limitation applies. The statutory period in such case is six years (sub-s. (1) (*b*) of that section), but this protection does not extend to cases of retention by the trustee of the property or any fraud or fraudulent breach of trust. It is also provided by s. 25 of the Judicature Act, 1873, which section has not been repealed by the Judicature Act, 1925, that no claim of *cestui que trust* against trustee for any property held on any express trust, or in respect of any breach of such trust, should be held to be barred by any statute of limitations, but s. 8 of the Trustee Act, 1888, being applicable, it will apply to express trustees (*Re Swain*, 1891, 3 Ch. 233; *Toates* v. *Toates*, 1926, 2 K. B. 30).

Proceedings against any person for any act done in pursuance or execution or intended execution of any Act of Parliament, or public duty or authority, or any neglect or default in execution thereof, are limited to six months (Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61)), and many statutes provide for special periods of limitation. Under modern statutes, e.g., Housing Act, 1936, a time limit of six months is imposed for questioning the validity of statutory orders: see *Re Somerset*, 1894, 1 Ch. 231.

By the Real Property Limitation Act, 1874, which did not come into operation until the 1st January, 1879, the period within which actions for the recovery of land may be brought was shortened, in the case of recovery of land or rent-charge, from twenty to twelve years.

No advantage can be taken of the statutes of limitation in an action unless an issue thereon be raised by the pleadings.—R. S. C. 1883, Ord. XIX., r. 15. As to land, see Ord. XXI.

As to renewal of writs to save statutes of limitations, see RENEWAL OF WRITS.

At Common Law there is no period of limitation for prosecution of criminal offences generally, except where they are punishable on summary conviction, in which cases the period is six months, by the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), and there are many other statutory limitations on prosecutions of indictable offences (see *Archbold's Cr. Pl.*), and there is no period of limitation for proceedings to claim a peerage before the Committee for Privileges of the House of Lords.

Treason (see that title) must be prosecuted within three years.

As to the limitation of the time during which a writ of summons remains in force, see SUMMONS, WRIT OF.

Consult *Darby and Bosanquet* or *Banning on the Statutes of Limitation;* and see *Chitty's Statutes*, tit. '*Limitation of Actions.*' See also *Interim Report of the Law Revision Committee*, '*Times*,' 23rd December, 1936.

TABLE OF PRINCIPAL PERIODS OF LIMITATION.

The following is an alphabetical arrangement of the periods fixed by the principal Statutes of Limitation. It must, however, be remembered that many of the names of actions are no longer technical, though in substance the actions will still lie :—

PROCEEDING.	PERIOD.	STATUTE.
Assault, battery, wounding, or false imprisonment.	4 years . . .	21 Jac. 1, c. 16, s. 3.
Assumpsit agreement or promise, action on.	6 years . . .	21 Jac. 1, c. 16, s. 3.
Award, action of debt upon, where the submission was not by specialty.	6 years . . .	3 & 4 Wm. 4, c. 42, ss. 3-7.
Award, etc., if submission by specialty.	20 years . . .	*Ibid.*

PROCEEDING.	PERIOD.	STATUTE.
Bill of Exchange, or Promissory Note, payable at a certain period after date.	Within 6 years after it falls due.	21 Jac. 1, c. 16, s. 3.
Bond or specialty . . .	20 years . . .	3 & 4 Wm. 4, c. 42, s. 3.
Case (except for words actionable in themselves).	6 years . . .	21 Jac. 1, c. 16, s. 3 and 3 & 4 Anne, c. 9, s. 2. See *Barnes* v. *Pooley*, 153 L. T. 78.
Contract. See Assumpsit.		
Copyright, action for infringement of.	3 years after the infringement.	Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), s. 10.
Covenant, action of . . .	20 years . . .	3 & 4 Wm. 4, c. 42, s. 3.
Crown, suits by, relating to land .	60 years next before suit or claim.	9 Geo. 3, c. 16 ; 24 & 25 Vict. c. 62.
Crown quit rents or perpetual rents (in Ireland).	60 years since rent last received.	Crown Lands Act, 1906 (6 Edw. 7, c. 28), s. 9.
Debt (if not on specialty) . .	6 years . . .	21 Jac. 1, c. 16, s. 3.
— on specialty. See Bond .	20 years . . .	3 & 4 Wm. 4, c. 42, s. 3.
Detinue	6 years . . .	21 Jac. 1, c. 16, s. 3.
Distress for rent-charge . .	12 years . . .	Real Property Limitation Act, 1874, s. 1.
— for other rents . . .	6 years . . .	3 & 4 Wm. 4, c. 27, s. 42.
Ejectment. See Real Property.		
Intestate's personal estate. See Personal Estate.		
Land, recovery of . . .	12 years . . .	Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), s. 1.
Legacies	12 years . .	*Ibid.*, s. 8.
Libel	6 years . . .	21 Jac. 1, c. 16, s. 3.
Local Authority acting in pursuance of or in execution of a public duty under an Act of Parliament, action against.	6 months . . .	Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).
Mistake, equitable relief from .	6 years after its discovery.	In analogy to 21 Jac. 1, c. 16.
Mortgage, money secured by, recovery of.	12 years.	Real Property Limitation Act, 1874, s. 8.
Mortgage, redemption of . .	12 years from mortgagee taking possession.	Real Property Limitation Act, 1874, s. 7.
Penal actions	2 years when forfeiture goes to Crown ; 1 year when it goes to Crown and prosecutor ; and, in default, then 2 years by Crown, 2 years by party grieved.	31 Eliz. c. 5, s. 5, and 3 & 4 Wm. 4, c. 42, s. 3.

PROCEEDING.	PERIOD.	STATUTE.
Penal actions against Corporate officers for acting without being qualified, etc.	3 calendar months .	Municipal Corporations Act, 1882, s. 224.
Personal estate of intestate, suit to recover from legal personal representative.	20 years after accruing of right, the last accounting, payment, or acknowledgment in writing.	23 & 24 Vict. c. 38, s. 13.
Promissory note. See Bill of Exchange.		
Public Duty, action against person acting under, or acting in pursuance of any Act of Parliament, or neglecting to execute any such Act.	6 months. . .	Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61).
Real property, action to recover	12 years after right accrued (*vide supra*).	Real Property Limitation Act, 1874.
Rent, under lease by deed . .	20 years . . .	3 & 4 Wm. 4, c. 42, s. 3.
— under written or oral lease .	6 years . . .	3 & 4 Wm. 4, c. 27, s. 42.
Rent-charge, proceeding for, though secured by deed.	12 years . . .	3 & 4 Wm. 4, c. 42, s. 3, as altered by the Real Property Limitation Act, 1874, s. 1. See *Shaw* v. *Crompton*, 1910, 2 K. B. 370.
Replevin	6 years . . .	21 Jac. 1, c. 16, s. 3.
Seduction	6 years . . .	*Ibid.*
Slander (unless special damage) .	2 years . . .	*Ibid.*
Tithe	Its payment for 30 years next before must be proved.	2 & 3 Wm. 4, c. 100.
Tort, action of, surviving against the estate of a deceased person.	6 months before death and 6 months after representation taken out by his personal representatives.	Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), and see s. 1, *ibid.*
Trespass	6 years . . .	21 Jac. 1, c. 16, s. 3.
Trespass (to the person), e.g., assault, battery, wounding, or false imprisonment. See *Barnes* v. *Pooley*, 51 T. L. R. 391, where an action for expenses incidental to the care of an injured child was held to be 'case' and not trespass to the person.	4 years . . .	*Ibid.*
Trover	6 years . . .	*Ibid.*

Limitation of Estate, a modification or settlement of an estate determining how long it shall continue, or a qualification of a preceding estate.—1 *Inst.* 204, 234.

Limitation, Words of, those which operate by reference to, or in connection with, other words, and extend or modify an estate given by such other words, as 'heirs,' 'heirs of the body.' See 1 *Smith's Real and Pers. Prop.*, 4th ed. 63–65, 160. As to deeds executed after December 31, 1881, see Conveyancing Act, 1881, s. 51; *Re Ethel*, 1901, 1 Ch. 945; and as to deeds executed after 1925, Law of Property Act, 1925, ss. 60 and 130.

Limitation of Damages. See ACTIO PERSONALIS; LAW REFORM; LIMITED LIABILITY.

Limited Administration, a special and temporary administration of certain specific effects of a testator or intestate granted under varying circumstances. See 1 *Wms. Exors.*

Limited Executor, an executor whose appointment is qualified by limitations as to the time or place wherein, or the subject-matter whereon, the office is to be exercised; as distinguished from one whose appointment is absolute, i.e., certain and immediate, without any restriction in regard to the testator's effects or limitation in point of time.—1 *Wms. Exors.*

Limited Liability. At Common Law every person is liable, upon his contracts, up to the whole amount of his estate, and every partner is so liable upon all the contracts of the partnership. So extensive a liability being apt to prevent persons from engaging in business as partners, the statutes authorizing the construction of railways, etc., have always limited the liability of each shareholder to the amount of the shares held by him. Similar limitations, extending in some cases to double the amount of shares held, have also long been found (though not universally) in the charters of incorporated banks and insurance companies.

Companies Acts.—Under the Companies Acts, limited liability means that the members are not liable beyond the unpaid-up part (if any) of the nominal amount of the shares in respect of which they are registered in the books of the company. When a share has been fully paid up, no further liability exists. As to shares which have not been fully paid up, see CONTRIBUTORY, and see also JOINT STOCK BANKS, COMPANY, PROSPECTUS, ESTOPPEL, or other titles on company matters. The statutes relating to companies have been consolidated by the Companies Act, 1929 (19 & 20 Geo. 5, c. 23). Consult *Palmer; Hemmant; Lindley on Company Law.*

Shipowners, Canals, Docks, and Railways.—The liability of shipowners for loss or injury to goods or passengers carried in their ships is limited by s. 503 of the Merchant Shipping Act, 1894 (which section can be contracted out of: see *Clarke* v. *Dunraven, Lord*, 1897, A. C. 59), re-enacting s. 54 of the Merchant Shipping Act, 1862, and see the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), s. 15, repealing s. 633 of the Merchant Shipping Act, 1894 (exemptions under compulsory pilotage); that of dock and canal owners and harbour and conservancy authorities by the Merchant Shipping (Liability of Shipowners and Others) Act, 1900 (63 & 64 Vict. c. 32); and that of common carriers (including railway companies) by the Carriers Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 68), as amended by the Railways Act, 1921 (11 & 12 Geo. 5, c. 55), as to goods of the value of 10*l.* or for railways, 25*l.*; and that of railway companies in respect of the carriage of certain animals, by s. 7 of the Railway and Canal Traffic Act, 1854.

Air Navigation.—As to limitation of liability for certain damage caused by aircraft, see Air Navigation Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 44), s. 15, the limits of liability for various forms, descriptions of aircraft are set out in the several schedules: airships 25,000*l.*, balloons 500*l.*, gliders 2,000*l.*, and other aircraft according to weight, usually only half the limited amount to be payable in respect of loss of or damage to property.

Limited Owner. A tenant for life, in tail or by the courtesy, or other person not having a fee-simple in his absolute disposition. The legal estates of limited owners were reduced to equitable interests after 1925 by the Law of Property Act, 1925, ss. 1 and 4. See SETTLED LAND.

Limited Owners Residences Act (33 & 34 Vict. c. 56). This Act, as amended by the Limited Owners Residences Act, 1870, Amendment Act, 1871 (34 & 35 Vict. c. 84), enables the tenant for life of a settled estate to charge the estate with the expense of building a mansion house to the extent of two years' rental of the estate; see *Re Dunn*, 1877, W. N. 39.

Limited Partnership. See PARTNERSHIP.

Limogia, enamel.—*Du Cange.*

Linarium, a flax plat, where flax is grown.—*Du Cange.*

Lincoln's Inn, one of the four Inns of Court. See INNS OF CORUT.

Lindesfern, or **Lindesfarne,** Holy Island, in Northumberland, which was formerly a bishop's see.—4 *Inst.* 288.

Line, succession of relations (see INHERITANCE); boundary; the twelfth part of an inch.

Lineage [fr. *lignage*, Fr.], race, progeny, family, ascending or descending.

Lineal Consanguinity, that relationship which subsists between persons descended in a right line, as grandfather, father, son, grandson.

Lineal Descent, the descent of an estate from ancestor to heir in a right line.

Lineal Warranty, where the heir derived, or might by possibility have derived, his title to the land warranted, either from or through the ancestor who made the warranty; as where a father or an elder son in the life of the father released to the disseisor of themselves, or of the grandfather, with warranty, this was lineal to the younger son.—*Litt.* s. 703. Abolished by the Fines and Recoveries Abolition Act, 1833 (3 & 4 Wm. 4, c. 74), s. 14.

Liquidated Damages, the amount agreed upon by a party to a contract to be paid as compensation for the breach of it, and intended to be recovered, whether the actual damages sustained by the breach be more or less, in contradistinction to a penalty; which is only the maximum amount agreed to be paid, and is intended to be reducible in proportion to the actual damage sustained. See *Kemble* v. *Farren*, (1829) 6 Bing. 141; *Lord Elphinstone* v. *Monkland Iron Co.*, (1886) 11 App. Cas. 332; *Diestel* v. *Stevenson*, 1906, 2 K. B. 345. See DAMAGES; PENALTY.

Liquidated Demand, where an action is brought for the recovery of a liquidated sum the writ of summons may be specially endorsed; as to which, see the title LEAVE TO DEFEND.

Liquidation. As to liquidation by arrangement with creditors, see the repealed Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), s. 125; but the procedure was not re-established by the Bankruptcy Act, 1883. The liquidation of joint stock companies is provided for by Part IV. of the Companies Act, 1929. See next title and WINDING-UP.

Liquidator. A person appointed to conduct the winding-up of a company under the Companies Act, 1929. Liquidators are of three kinds:—

(1) Appointed by the Court in a winding-up by the Court. Pending appointment the Official Receiver in Bankruptcy is to act as as Official Receiver and Liquidator in the winding-up (s. 185). By s. 186, in England, liquidators other than the Official Receiver must provide security to the satisfaction of the Board of Trade. His duties comprise the collection of the company's property, and this property or any part of it may vest in him on his application. He may bring or defend actions relating to that property in his own official name (s. 190). Powers which he may exercise subject to the sanction of the Court or a Committee of Inspection are set out in s. 191 (1); sub-s. (2) of that section gives a list of powers for which such sanction is not required. The duties of a liquidator are to collect, administer, and distribute the assets, having regard to the direction of creditors and contributories, and subject to the requirements of the Act. He must send in his accounts twice a year at least to the Board of Trade for the purposes of audit. As to settling the lists of contributories and the acceptance or rejection of creditors' proofs by the liquidator, subject to the control of the Court, see the Companies (Winding-up) Rules, 1929, and ss. 183–197 of the Act.

(2) Liquidators of a company winding-up voluntarily are appointed by the company in general meeting to wind up its affairs and thereupon the powers of the directors shall cease except so far as the company in general meeting or the liquidator sanctions the continuance thereof (s. 232). The assets do not vest in the liquidator. On completion of the winding-up the liquidator must present his accounts to the company in general meeting and to a meeting of creditors and send the accounts to the Registrar of Companies with a return of the holding of the respective meetings.

(3) Liquidators in a winding-up subject to the supervision of the Court have the powers, with some exceptions (see ss. 259 and 260) of a liquidator in a voluntary winding-up. The excepted powers are only exercisable with the sanction of the Court or if the winding-up is a creditors' voluntary winding-up, the sanction of the Committee of Inspection (*ibid.*); see also, generally, ss. 183–197 of the Act, and WINDING-UP.

A liquidator appointed by the Court is an agent of the company and not personally liable for contracts within the scope of his duties, but if he is appointed to be receiver and manager by the Court he is not an agent of the company and is personally liable for contracts entered into by him as such (*Stead, Hazel & Co.* v. *Cooper*, 1933, 1 K. B. 870).

Liquor Licences. A duty is payable in respect of licences for the manufacture or sale of intoxicating liquors (see INTOXI-

CATING LIQUORS). The Finance (1909–10) Act, 1910, very largely increased these duties, and for a publican's licence and a beerhouse licence a duty of half and a third of the annual value of the licensed premises is payable respectively.

Lis [Lat.], a suit, action, controversy, or dispute.

Lis mota (the dispute commenced). Declarations of deceased members of a family, in matters of pedigree, are inadmissible in evidence, if made after a controversy has arisen as to the facts on which the claim is founded (or, as it is called, *post litem motam*), which for that purpose is to be deemed the commencement of the *lis mota*.

Lis pendens (a pending suit). The pendency of another action between the same parties for the same cause of action might, under the former practice, have been pleaded in abatement, though not in bar; but the pendency of an action in an inferior or foreign court could not be so pleaded. Such matter may now be set up by way of defence, or the action may be stayed by the Court, under the Judicature Act, 1925, s. 41, replacing Judicature Act, 1873, s. 24 (5).

The actual pendency of a suit in equity was regarded as notice of the suit to all the world, though after a complete decision the public attention may be supposed to be drawn off to other matters, and therefore a person was allowed to be ignorant of a final decree of the Court made in a cause in which he was not concerned: see *Price* v. *Price*, (1887) 35 Ch. D. 297. But by the Judgments Act, 1839 (2 & 3 Vict. c. 11), s. 7, it was enacted that no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof unless registered and re-registered as prescribed by the Act. The Judgment Act, 1839, was repealed by the Land Charges Act, 1925.

A pending action is defined in s. 2, Land Charges Act, 1925, as any action, information or proceeding pending in Court relating to land or any interest in or charge on land, and a petition in bankruptcy filed after the 31st December, 1925, may be registered in the register of pending actions. For registration of *lis pendens* and satisfaction thereof, see the Act and LAND CHARGES. The doctrine of *lis pendens* does not apply to personal estate other than chattel interests in land (*Wigram* v. *Buckley*, 1894, 3 Ch. 483).

Lis pendens affecting registered land should be registered at the Land Registry under s. 59 of the Land Registration Act, 1925.

Lit de Justice. See BED OF JUSTICE.

Literæ Humaniores, Greek, Latin, general philology, logic, moral philosophy, metaphysics; the name of one of the principal courses of study in the University of Oxford.

Literal Contract, a written agreement subscribed by the contracting parties.—*Civ. Law.* See *Colq. Rom. Civ. Law*, 1623.

Literal Proof, written evidence.—*Ibid.*

Literary Property. See COPYRIGHT.

Literary and Scientific Institutions Act, 1854 (17 & 18 Vict. c. 112), as amended, affords facilities for procuring and settling sites and buildings in trust for institutions established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, and makes provisions for improving the legal conditions of such institutions. As to the proper purposes of these institutions, see *Re Badger*, 1905, 1 Ch. 568. As to their exemption from poor rates, see 6 & 7 Vict. c. 36.

Literate, one who qualifies himself for holy orders by presenting himself as a person accomplished in classical learning, etc., not as a graduate of Oxford, Cambridge, etc.

Literatura. *Ad literaturam ponere* means to put children to school. This liberty was anciently denied to those parents who were servile tenants, without the lord's consent; the prohibition against the education of sons arose from the fear that a son, being bred to letters, might enter into holy orders, and so stop or divert the services which he might otherwise do as heir to his father.—*Paroch. Antiq.* 401.

Lithographs are included under 'engravings' for purposes of copyright; and photolithograph is included under 'photograph' (Copyright Act, 1911, s. 35 (1)). See COPYRIGHT.

Litigant, one engaged in a law-suit.

Litigation, judicial contest; law-suit.

Litigious Church, where two presentations to a church are offered to the bishop upon the same avoidance.—*Jenk. Cent.* 11.

Litis æstimatio, the measure of damages.

Litis contestatio, (1) in the Ecclesiastical Courts the issue of an action; (2) a submission to the decision of a judex.—*Civ. Law.*

Litispendence [fr. *lis*, Lat., strife, and *pendeo*, to hang], the time during which a law-suit is going on. Obsolete.

Little Goes, a species of lottery, declared unlawful.—42 Geo. 3, c. 119.

Littleton, a judge of the Common Pleas

in the reign of Edward IV., who composed a book of tenures for the use of his son, to whom it is addressed. Sir Edward Coke's *Commentary upon Littleton*, 'Not the name of the author only, but of the law itself,' is one of the most renowned and authoritative works on English law in existence.

Liturgy [fr. λειτουργία, Gk., a public service], the Book of Common Prayer used in the Established Church, as confirmed by the Act of Uniformity (14 Car. 2, c. 4). Consult *Wheatley on the Book of Common Prayer*.

The Prayer Book (Table of Lessons) Act, 1871 (34 & 35 Vict. c. 37), passed 'to amend the law relating to the Table of Lessons and Psalter contained in the Prayer-Book,' provides a new Table of Lessons, and the Act of Uniformity Amendment Act, 1872 (35 & 36 Vict. c. 35), provides 'a shortened form of Morning and Evening Prayer.' An alternative Table of Lessons has been provided by the Revised Tables of Lessons Measure, 1922 (12 & 13 Geo. 5, No. 3). See ACT OF UNIFORMITY.

Livelode, maintenance, support.

Liverpool Court of Passage. See PASSAGE, COURT OF.

Livery [fr. *livrer*, Fr.], the act of giving possession, now superseded by the Real Property Act, 1845 (8 & 9 Vict. c. 106), s. 2. 'Livery of seisin simply means the delivery of the feudal possession'; *Williams on Seisin*, p. 99. Also, release from wardship; also the writ by which possession was obtained; also, simply delivery, as a horse is said to stand at livery where the livery stable keeper delivers him to the owner for use as required. In London, the collective body of liverymen. Also the privilege of a particular company or society. See SEISIN.

Livery-man, a member of some company in the City of London; also called a freeman.

Livery-office, an office appointed for the delivery of lands.

Lives, Estate for. A lease to A. during the life of another or the lives of others was a tenure of very long standing in England, chiefly in the west and north, or where the lease was granted by a corporation, and in Ireland. Now such a lease is either a lease for 90 years determinable by notice after any event determining the term under the original demise as provided by the Law of Property Act, 1925, s. 149, if the lease is at a rent or in consideration of a fine, or is a converted copyhold lease for life without right of perpetual renewal under Part V. of the L. P. Act, 1922. In all other cases it is an equitable interest and governed by the Settled Land Act, 1925. The tenant under the lease was called a tenant *pur autre* [or *auter*] *vie*, and the person during whose life the lease is to last, the *cestui que vie*. By 18 & 19 Car. 2, there is a *primâ facie* presumption of death after seven years; and by the Cestui que Vie Act, 1707 (6 Anne, c. 72), an order may be made by the Chancery Division for the production of the *cestui que vie* on an application by the person interested: see *Re Isaacs*, (1838) 1 My. & C. 1; *Re St. John's Hospital*, (1868) 18 L. T. 12. The lease for lives, which was abolished on the Duchy of Cornwall estates by the Duchy of Cornwall Management Act, 1863, has now greatly and properly fallen into desuetude, though it has by no means disappeared. It was at one time very common in Inns of Court leases. See *Woodfall's Law of Landlord and Tenant; Selon on Judgments*.

The Cestui que Vie Act applies generally to all cases where an estate is held during the lives of others, as well as to a lease for lives. See *Mews's Digest*, vol. vi., tit. '*Estate pur Autre Vie*,' at p. 322. See AUTRE VIE.

Living. See BENEFICE.

L. J. Lord Justice of Appeal.

Lloyd's. In the second half of the seventeenth century a number of merchants, shipowners, and insurance brokers were accustomed to meet in Lloyd's Coffee House in the City of London. From these meetings arose the present association of underwriters, which is famous throughout the world as a centre of marine insurance. Shipping intelligence of all kinds is collected by Lloyd's agents all over the world and forwarded to London. Signal stations have been established under the provisions of Lloyd's Signal Station Act, 1888 (51 & 52 Vict. c. 29). Derelict ships have to be reported to Lloyd's (Derelict Vessels (Report) Act, 1896 (59 & 60 Vict. c. 12)). 'Lloyd's List' thus forms a record of shipping news of great importance to the commercial community. Lloyd's Act, 1871 (34 & 35 Vict. c. xxi.), incorporates and regulates Lloyd's. Besides marine insurance, almost any risk can be covered there, and by the Assurance Companies Act, 1909 (9 Edw. 7, c. 49), ss. 28 and 33, members of Lloyd's or any other association of underwriters must comply with the requirements of the 8th Schedule of the Act.

Lloyd's Bonds. Instruments under the seal of a railway company, admitting the indebtedness of the company to a specified amount to the obligee, with a covenant to pay him such amount with interest on a

future day. So called from the name of the counsel who originally settled such a bond. All such 'loan notes' issued otherwise than under the authority of some statute are invalid, and by the Railway Regulation Act, 1844 (7 & 8 Vict. c. 85), s. 17, the railway company issuing them forfeits to the Crown a sum equal to the sum for which any note purports to be a security.

Lloyd's Register, the abbreviated title of 'Lloyd's Register of British and Foreign Shipping,' published annually by Lloyd's Registry. The register contains an alphabetical list of all British ships, and such foreign ships as are classed in the Register, classified according to type, materials, state of repair, etc., the classification being indicated by letters and numerals. Ships intended for classification are built under the inspection of Lloyd's surveyors or in accordance with rules published by the Registry.

Load-line, a line painted on the sides of a ship to show how far up the sides the water will rise when the ship is loaded. The Merchant Shipping Act, 1890 (53 & 54 Vict. c. 9), substituted a 'maximum load-line in salt water, to which *it should be lawful* to load a ship,' i.e., a compulsory load-line, for a load-line indicating a point beyond which the owner intended that it should not be loaded, as prescribed by the Merchant Shipping Act, 1876, i.e., an optional load-line; and this provision of the Act of 1890 was re-enacted by s. 437 of the Merchant Shipping Act, 1894, and see also s. 8 of the Merchant Shipping Act, 1906. Both these sections have now been repealed by the Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 Geo. 5, c. 9), and ss. 43 to 46 now prescribe the law.

Under the M. S. Act, 1894, s. 442, submergence beyond the load-line by reason of weather was held to be an offence (*Radcliffe* v. *Brickwell*, 1927, 2 K. B. 273); see now s. 44 (4) of the Act of 1932; and UNSEAWORTHY SHIPS.

Loadmanage, the pay to a pilot for conducting a ship from one place to another.

Loan [*hlæn*, SAX.], anything lent or given to another on condition of return or repayment. As to loan of money, see MONEY LENDERS ACT.

Loan Commissioners. See PUBLIC WORKS LOANS ACT, 1875.

Loan, gratuitous, a class of bailment called *commodatum* in the Roman Law, and denominated by Sir William Jones a *loan for use* (*prêt à usage*), to distinguish it from *mutuum*, a loan for consumption.

The borrower has the right to use the thing during the time and for the purpose agreed upon by the parties. The loan is to be considered as strictly personal, unless from other circumstances a different intention may fairly be presumed. The borrower must take proper care of the thing borrowed, use it according to the lender's intention, and restore it at the proper time, and in a proper condition.

The lender must suffer the borrower to use and enjoy the thing lent during the time of the loan, according to the original intention, without any molestation or impediment, under the peril of damages. He must reimburse the borrower the extraordinary expenses to which he has been put for the preservation of the thing lent. He is bound to give notice to the borrower of the defects of the thing lent; and if he do not, but conceal them, and an injury occurs to the borrower thereby, the lender is responsible. Where the thing has been lost by the borrower, and, after he has paid the value thereof, is restored to the lender, the latter must return either the price paid or the thing; for, by such payment of the loss, the property is effectively transferred to the borrower.

Mr. Justice Story thus concludes his observations on gratuitous loans. 'It has, however,' says he, 'furnished very little occasion for the interposition of judicial tribunals, for reasons equally honourable to the parties and to the liberal spirit of polished society. The generous confidence thus bestowed is rarely abused; and if a loss or injury unintentionally occurs, an indemnity is either promptly offered by the borrower, or compensation is promptly waived by the lender.' —*Story's Bailments*, c. iv.

Loan Societies, institutions established for the purpose of advancing money on loan to the industrial classes, and receiving back payment for the same by instalments, with interest. They are exempt from the provisions of the Money Lenders Act, 1900.

By the Loan Societies Act, 1840 (3 & 4 Vict. c. 110 (continued by 21 & 22 Vict. c. 19, and made perpetual by 26 & 27 Vict. c. 56), forms of proceeding of a similar nature to those prescribed in the Acts regulating savings banks and friendly societies are requisite to enable loan societies to avail themselves of this Act, and see 51 & 52 Vict. c. 41, and 59 & 60 Vict. c. 25, s. 2, as to certification of Rules by the Registrar of Friendly Societies.

These societies are entitled to issue debentures for money deposited with them (other-

wise than by way of gift), and these as well as all other notes and instruments given in pursuance of the Act are exempted from stamp duty. They are also placed on the same footing with savings banks, in the event of the death of a claimant intestate who is entitled to less than 50*l.*, the production of a will or letters of administration not being requisite.

The amount which a society may advance is limited to 15*l.*; and no second loan can be granted until the first is repaid. The society is permitted to receive, by way of discount, at the time of the loan, interest under its enrolled rules, not exceeding 12*l.* per cent., and to receive the principal by such instalments as the rules specify, so that the first repayment shall not be sooner than the eleventh day from the time of the advance.

With respect to the recovery of loans, the Act has provided a form of note to be signed by the borrower and two sureties; and upon failure in payment, the person liable may be summoned before any justice of the peace, who may levy by distress and sale of the goods. The society (by its treasurer) may proceed against the person liable, in any county court having jurisdiction, and where the sum due happens to exceed the amount for which the Court has jurisdiction, may recover such part of the debt as that Court can give judgment for, in lieu of the whole.

An abstract of the accounts is to be made out yearly to the 31st December, and sent during January to the proper authority, to be laid before Parliament.

Local Actions, those referring to some particular locality, as actions for trespasses to land, in which the venue must have been laid in the county where the cause of action arose.

Real actions and the mixed action of ejectment were local: but personal actions were for the most part transitory, i.e., their cause of action might be supposed to take place anywhere, but when they were brought for anything in relation to realty, they were then local. See *Mostyn* v. *Fabrigas*, (1775) 1 *Smith, L. C.*, and 2 *Chit. Arch. Prac.*

And see COUNTY COURT (JURISDICTION), and VENUE.

Local Allegiance, such as is due from an alien or stranger born, as long as he continues within the sovereign's dominions and protection; it ceases the instant such stranger transfers himself from this kingdom to another. But if an alien, seeking the protection of the Crown, and having a family and effects here, should, during a war with his native country, go thither, and there adhere to our enemies for purposes of hostility, he may be dealt with as a traitor.—*Fost.* 115. See ALIEN.

Local and Personal Acts. See ACTS OF PARLIAMENT. Provisions in local and personal Acts giving double and treble costs, and allowing the general issue to be pleaded, and special matter to be given in evidence, are repealed by 5 & 6 Vict. c. 97, ss. 1, 3. The same Act provides for uniformity of notice of action in such actions—one month in all cases—and equalizes the periods of limitation under such Acts. See LIMITATION, STATUTES OF. By the Interpretation Act, 1889, s. 9, re-enacting 13 & 14 Vict. c. 21, every statute made after 1850 is to be taken to be a public one, and judicially noticed as such, unless the contrary be expressly declared.

Some Public and General Acts contain provisions for the alteration by Regulations, Statutory or Provisional Order, or otherwise, of local Acts in conformity with the general enactment, e.g., Land Drainage, 1930 (20 & 21 Geo. 5, c. 44); see s. 41; London Traffic Act, 1924; Rating and Valuation Act, 1925, ss. 66 and 68; Public Health Acts, etc.

Local Authority. The term is used in a great number of Acts affecting local administration, and means the persons or bodies who give effect to the particular Act in question. (Cf. s. 4, Public Health Act, 1875).

The Local Authorities (Admission of the Press to Meetings) Act, 1908 (8 Edw. 7, c. 43), defines (s. 2 (*a*)) a 'local authority' as meaning:—

> 2. (*a*) A council of a county, county borough, borough (including a metropolitan borough), urban district, rural district, or parish, and a joint committee or joint board of any two or more such councils to which any of the powers or duties of the appointing councils may have been transferred or delegated under the provisions of any Act of Parliament or Provisional Order; and a parish meeting under the provisions of the Local Government Act, 1894.

By the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), it is defined as meaning the council of a county, county borough, county district or rural parish; see the Act generally.

Local Board. A body of persons established by an order of the Local Government Board, upon a resolution of the owners and ratepayers of a rural district, for the purpose of administering the Public Health Act

(which see) within such district, which was called a 'local government district' or urban sanitary district, the local board being called an 'urban sanitary authority.' They were elected by open voting of the owners and ratepayers, a property qualification being required for membership, each voter having from one to six votes, in proportion to the property occupied by him; but the Local Government Act, 1894 (56 & 57 Vict. c. 73), by s. 23 (see now Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), ss. 35 (3), 39, 40 (1), 57), abolished both the property qualification and the plural voting, and by s. 21 directed that 'urban sanitary authorities' (except the councils of municipal boroughs) should be called 'urban district councils.'

Local Courts, tribunals of a limited and special jurisdiction, as the several county courts throughout the country, the Court of Passage at Liverpool, and the Mayor's Court of London. See, further, BOROUGH COURTS; INFERIOR COURTS.

Local Government. That part of the government of the country which, by delegation from the Imperial Government, is conducted by bodies appointed or elected to conduct it within limited areas, as parishes, boroughs, local government districts, poor law unions, petty sessional districts, county boroughs, and counties. See these titles respectively, and COUNTY COUNCIL; DISTRICT COUNCIL; PARISH COUNCIL; and BOROUGH COUNCIL.

Local Government Act, 1888 (51 & 52 Vict. c. 41). The Act established county councils throughout England and Wales, and has been amended and extended by many other Acts.

Transfer of Imperial Powers to County Councils.—The Local Government (Transfer of Powers) Act, 1903 (3 Edw. 7, c. 15), though permissive only, extended general, tentative, unused and almost unknown powers of decentralization which had previously been entrusted to the Local Government Board by the Local Government Act, 1888. The Local Government Act, 1894 (56 & 57 Vict. c. 73). This Act established throughout England and Wales a parish meeting for every rural parish, a parish council for every rural parish having a population of 300 or upwards, and district councils. The Local Government Act, 1929 (19 & 20 Geo. 5, c. 17), ss. 1 and 134, abolished guardians of the poor and other poor law authorities, and substituted county councils and county borough councils in their stead.

The Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), consolidates with amendments many of the enactments relating to the constitution and powers of local authorities in England and Wales. The Act as a whole does not apply to London, except certain provisions of Part III., Part X., Part XI. Schedule I. contains a list of administrative counties, county boroughs, and non-county boroughs. The Parts of the Act are as follows:—

Part I. Constitution and Elections.
Part II. General Provisions as to Members and Meetings of Local Authorities and Elections.
Part III. Committees and Joint Committees.
Part IV. Officers.
Part V. Offices and Buildings.
Part VI. Alteration of Areas.
Part VII. Acquisition of, and Dealings in, Land.
Part VIII. County Councils.
Part IX. Borrowing.
Part X. Accounts and Audit.
Part XI. Local Financial Returns.
Part XII. Bye-laws.
Part XIII. Promotion of, and Opposition to, Local or Personal Bills by Local Authorities.
Part XIV. Freemen.
Part XV. General Provisions.
There are also eleven schedules.

Local Government Board (now Ministry of Health). This Board was established by the Local Government Board Act, 1871 (34 & 35 Vict. c. 70), which concentrated in one department of the Government 'the supervision of the laws relating to the public health, the relief of the poor, and local government,' and transferred thereto all the powers of the Poor Law Board, all the powers of a Secretary of State as to registration of births, deaths, and marriages, public health, drainage, local government, etc. (as mentioned in scheduled Acts), and all powers of the Privy Council as to prevention of disease, and vaccination (as mentioned in scheduled Acts). The Ministry of Health Act, 1919, s. 11, transferred all the powers and duties of the Local Government Board to the Ministry of Health. All references in statutes to the Local Government Board must be read as referring to the Ministry of Health (s. 11, Sched. I.).

Local Government District. See LOCAL BOARD.

Local Government of Towns. See PUBLIC HEALTH.

Local Improvements. By the Public Improvements Act, 1860 (23 & 24 Vict. c. 30), a majority of two-thirds of the ratepayers of any parish or district may, by 'adopting' that Act, rate their district in aid of certain public improvements (e.g., public walks, playgrounds, etc.) for general benefit within their district. Half the proposed expenditure must have been privately subscribed, and the rate must not exceed sixpence in the pound. The power of adopting and exercising the Act for a rural parish is vested in the parish council (if any) of that parish, by s. 7 of the Local Government Act, 1894 (56 & 57 Vict. c. 73).

Local Land Charges. Charges on land acquired at any time by any local authority, including county, borough or rural district councils under the Public Health Metropolis Management or Private Street Works Act, or under any similar statute (public, general or local or private) passed at any time, must be registered in the local land-charge registry (see Local Land Charges Rules, 1927, S. R. & O., 1927, 869/L, 33), as provided by the Land Charges Act, 1925, s. 15, as amended by Law of Property (Amendment) Act, 1926, or they will be void as against a purchaser for money or money's worth of a legal estate in the land affected. The following are included: town planning schemes and resolutions, and restrictions created after 1925 on user of land or buildings, imposed or enforceable by a local authority with some exceptions (see s. 15 (7) (*b*), *ibid.*), and this applies to local land charges affecting both registered and unregistered land. As to searches and official certificates of search, see ss. 16 and 17, L. C. Act, 1925; see also LAND CHARGES.

Local Taxation Licences. Licences to sell intoxicating liquors, etc., to keep dogs, guns, carriages, etc., and to trade as horse dealers, pawnbrokers, etc.; the proceeds of the duties are transferred to county councils for their county funds by s. 20 of the Local Government Act, 1888. A full list of the licences is given in Sched. I. of the Act.

By s. 6 of the Finance Act, 1908, power is given to levy the duties on certain of these licences, namely, dealing in game, killing game, guns, dogs, armorial bearings, and (formerly) male servants.

Local Taxes, those assessments which were limited to certain districts, as poor rates, parochial taxes, county rates, etc. (7 & 8 Vict. c. 33). As to the recovery of local rates, see 25 & 26 Vict. c. 82; as to recovery from owners, 32 & 33 Vict. c. 41, ss. 7, 8 and 12; 15 & 16 Geo. 5, c. 90, s. 11.

Local Venue. See VENUE.

Locatarius, a depositee.—*Civ. Law.*

Locatio, hire, a letting-out.

Locato-conductio, or **Hiring,** a bailment for reward or compensation. See HIRE.

Locatio Custodiæ, the receiving of goods on deposit for reward.—*Civ. Law.*

Locatio mercium vehendarum, a contract for the carriage of goods for hire.—*Ibid.*

Locatio operis, or **operis faciendi,** the hiring of labour and services.—*Civ. Law.*

Locatio rei, the hiring of a thing.—*Ibid.*

Location, a contract for the temporary use of a chattel, or the service of a person, for an ascertained hire.

Locator, a letter of a thing or services for hire.—*Civ. Law.*

Locke's Act (23 & 24 Vict. c. 127), the Solicitors Act, 1860, amending the law as to the admission, etc., of solicitors. Sects. 22 (in part) and 34, 35 have not been repealed by the Solicitors Act, 1932 (23 & 24 Geo. 5, c. 37).

Locke-King's Act (17 & 18 Vict. c. 113), the Real Estates Charges Act, 1854 (amended by the Real Estate Charges Act, 1867 and 1877 (30 & 31 Vict. c. 69, and 40 & 41 Vict. c. 34)), whereby the heir or devisee of real estate was first precluded from claiming payment of a mortgage on such estate out of the personal assets of the ancestor or testator. In respect of deaths after 1925, both these Acts were repealed and reproduced and extended by the Administration of Estates Act, 1925; see s. 35.

Lock Hospital, a hospital for the treatment of venereal disease.

Lockman, an officer in the Isle of Man, to execute the orders of the governor, much like our under-sheriff. Also an old Scots term for the hangman; so called because one of his dues consisted in taking a small ladleful (Scotticé, *lock*) of meal out of every caskful exposed in the market.

Lock-up Houses, places for the temporary confinement of prisoners—5 & 6 Vict. c. 109, s. 22 (counties); 11 & 12 Vict. c. 101 (borders of counties); and 31 Vict. c. 22 (counties and boroughs).

Locosession, the act of giving place.

Locomotives. I. *On Highways.*—Locomotives on highways are of two classes: (*a*) Light Locomotives; (*b*) Heavy Locomotives.

(*a*) Formerly the expression light locomotive and motor car meant the same

apart from certain provisions as to registration. As to motor cars, see MOTOR CAR.

Now light locomotives as defined by the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), are mechanically propelled vehicles which are not constructed themselves to carry any load (other than water, fuel, equipment, tools, etc.), and the weight of which unladen does not exceed 11½ tons, but does exceed 7¼ tons.

A person under 21 shall not drive a light locomotive (s. 9), two persons must be employed in driving or attending, and if driving a trailer one or more in addition (s. 17). The period of continuous driving by any one person is limited by (s. 19) to 5½ hours or amounting to not more than 11 in the aggregate in 24 hours, and the driver is to have at least 10 hours' rest in the 24 hours. The Motor Vehicles (Construction and Use) Regulations, 1931 (S. R. & O. 1931, No. 4), deal with the construction regulations.

As light locomotives are one of the classes of motor vehicles, all regulations, e.g., licensing, rate of speed, offences, duty as regards cases of accident, which refer to motor vehicles apply, so far as are applicable to light locomotives; see, generally, the Road Traffic Acts, 1930, 1931, 1934, etc. See *Stone's Justices' Manual*, and consult, generally, *Mahaffy and Dodson's Law Relating to Motor Cars*, and *Pratt and Mackenzie's Law of Highways*.

(*b*) *Heavy Locomotives* are one of the class of motor vehicles as defined by Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43); mechanically propelled vehicles which are not constructed themselves to carry any load (other than the following articles: water, fuel, accumulators and other equipment used for the purpose of propulsion, loose tools and loose equipment), and the weight of which unladen exceeds 11½ tons. A person under 21 may not drive (s. 9); as to rate of speed (Schedule I.) and regarding construction, overall width, etc., see Motor Vehicles (Construction and Use) Regulations (S. R. & O. 1931, No. 4), Articles 31–38). Heavy vehicles, being one of the classes of motor vehicles, all regulations, e.g., licensing, rate of speed, offences, and duty regarding accidents, which refer to motor vehicles, apply so far as are applicable to heavy locomotives. See, generally, the Road Traffic Acts, 1930, 1931, 1934, etc. See *Stone's Justices' Manual*, and consult, generally, *Pratt and Mackenzie's Law of Highways*.

II. *Railway Engines.*—Locomotive engines on railways are regulated by ss. 114–116 of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), s. 114, as amended by s. 19 of the Regulation of Railways Act, 1868, directing their construction on the principle of consuming their own smoke and inflicting a penalty on it appearing that they were so constructed but failed to consume by reason of default of the company owning them or its servants. As to fire caused by sparks from a locomotive, see Railway Fires Act, 1905 (5 Edw. 7, c. 11); *Martin* v. *G. E. Ry. Co.*, 1912, 2 K. B. 406. See, further, RAILWAY.

Loculus, a coffin, a purse.—*Old Records.*

Locum tenens [Lat.], a deputy.

Locus in quo (the place in which).—1 *Salk.* 24.

Locus partitus, a division made between two towns or counties, to make trial where the land or place in question lies.—*Fleta*, l. 4, c. xv.

Locus pœnitentiæ (a place or chance of repentance), a power of drawing back from a bargain before any act has been done to confirm it in law.—*Bell's Scots Law Dict.*

Locus regit actum (the place governs the act); that is, the act is governed by the law of the place where it is done.

Locus sigilli [Lat.], abbrev. L.S., the place of the seal, as designated by an O at the foot of a document requiring a seal.

Locus standi, the right of a party to appear and be heard on the question before any tribunal, frequently disputed in private bill legislation. Consult the works of *Smethurst*, or of *Clifford and Stephens*, on this subject.

Lode-manage, or **Lode-merege,** the hire of a pilot for conducting a vessel from one place to another. See LOADMANAGE.

Lodger, a tenant, with the right of exclusive possession, of a part of a house called lodgings, the landlord, by himself or an agent, retaining general dominion over the house itself.

Lodgings may be let in the same manner as lands and tenements; in general, however, they are let either by agreement in writing or verbally. An executory verbal agreement may be void by the Law of Property Act, 1925, s. 40; and see *Edge* v. *Strafford*, (1831) 1 C. & J. 391, as being a contract in relation to land, and a written agreement is often desirable to avoid dispute.

Lodgers in rooms which have been let as a separate dwelling to them, unfurnished, may be tenants of a dwelling-house for the purpose of the Rent Restrictions Acts, 1920, 1935, and if that dwelling or the house

of which the rooms form part is not decontrolled, their tenancy is within those Acts (see INCREASE OF RENT). As to rent-books generally, in small houses, see Housing Act, 1936, s. 4, and Part IV. of that Act as to overcrowding (see that title).

Lodgings, other than those in common lodging houses, are regulated by the Public Health Act, 1875, s. 90, repealed and replaced by the Public Health Act, 1936 (which came into operation on 1st October, 1937), ss. 235 *et seq.*, and the Housing Acts, and in London by the Public Health (London) Act, 1891, s. 94. See LODGING HOUSES, COMMON.

The Lodgers' Goods Protection Act, 1871 (34 & 35 Vict. c. 79), passed for the protection of lodgers' goods, is repealed by the Law of Distress Amendment Act, 1908 (8 Edw. 7, c. 53), in as far as that Act applies (see DISTRESS). The case of *Morton* v. *Palmer*, (1881) 51 L. J. Q. B. 7, decides that a person may be a 'lodger' even though his landlord does not reside on the premises, so long as the landlord retains the dominion and control which the master of a house usually has.

As to the stealing by lodgers of chattels and fixtures let to be used by them, see Larceny Act, 1916, s. 16.

Lodger-Franchise. This was first conferred upon the occupiers of lodgings in boroughs of 10*l.* yearly value, if let unfurnished, by the Representation of the People Act, 1867, and was afterwards extended to the occupiers of lodgings in counties by the Representation of the People Act, 1884. Lodger-franchise was abolished by the Representation of the People Act, 1918. See ELECTORAL FRANCHISE.

Lodging Houses, Common. The term is defined in the Public Health Act, 1936, s. 235, as 'meaning a house (other than a public assistance institution), provided for the purpose of accommodating by night poor persons, not being members of the same family, who resort thereto and are allowed to occupy one common room for the purpose of sleeping or eating, and include, where part only of a house is so used, the part so used.' As to the test of sleeping and having meals in a common room, see the judgment of Cozens-Hardy, L.J., in this case, and *Langdon* v. *Broadbent*, (1877) 37 L. T. 434. As to its use by persons of the poorer classes, see also *L. C. C.* v. *Hankins*, 1914, 1 K. B. 490. The Public Health Act, 1875, ss. 76 *et seq.*, provided for their registration and inspection, and enacted that they might be kept only by registered keepers. These provisions were amplified and rendered more stringent by Part V. of the Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53). Both these enactments are repealed and replaced by Part IX. of the Public Health Act, 1936, coming into operation on the 1st October, 1937.

Lodging Houses for the Labouring Classes. See LABOURERS' DWELLINGS.

Logating, an unlawful game mentioned in 33 Hen. 8, c. 9.

Log-book. A book kept by the master of a ship in which he enters all the events of importance happening in and to his ship. See OFFICIAL LOG-BOOK.

Logia, a small house, lodge, or cottage.—*Dugd. Mon.*, tom. 1, p. 400.

Logium, a lodge, hovel, or outhouse.

Logomachy, a contest of words.

Lollardy [fr. *lullen*, *lollen*, or *lallen*, Old Germ., to sing with a low voice; and *hard*, from the singing of funeral dirges, *Mosh.*], a vulgar term of reproach brought from Belgium and given to the early Protestants (the followers of Wycliffe) as far back as the reign of Edward III. The Lollards closely resembled the Puritans of Elizabeth's reign. —*Stow's Annals*, 425.

London, the metropolis of England. For a short account of early London, see 3 *Hallam, Mid. Ages*, p. 219.

The 'city' of London, which is not subject to the Municipal Corporations Act, contains only 671 acres and is divided into twenty-six wards, over each of which there is an alderman, and is governed by a lord mayor, who is chosen yearly. As to the customs of the city, see *Pulling's Customs of London*, pp. 5 *et seq.*

The customs of London as to the distribution of intestates' effects are abolished by 19 & 20 Vict. c. 94.

The administrative 'county' of London was established by the Local Government Act, 1888, s. 40, and consists of the city of London and the various metropolitan parishes in the counties of Middlesex, Surrey, and Kent, which prior to that Act were subject to the jurisdiction of the Metropolitan Board of Works, constituted by the Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), the powers of which board are transferred to the London County Council, the number of councillors consisting of double the number of parliamentary members.

The general government of London was entrusted by the Metropolitan Management Act, 1855, to the Metropolitan Board, the

members of which were elected by the members of about 100 vestries representing parishes, and district boards representing combinations of parishes, which conducted its local government. The franchise and qualifications were, by the Local Government Act, 1894, assimilated to those obtaining in the case of the district councils created by that Act. The London Government Act, 1899 (62 & 63 Vict. c. 14), substitutes twenty-eight boroughs for the vestries and district boards, each of which boroughs has a council consisting of a mayor, aldermen, and councillors, the total number of aldermen and councillors for each borough not exceeding seventy. To these councils are transferred many powers of the County Council, and they have also concurrent jurisdiction with the County Council as to making bye-laws, as to the regulation of water companies, as to procuring railway traffic facilities by Order of the Railway and Canal Commission, and other matters. See also the London County Council (General Powers) Acts.

The Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), does not apply to London except where expressly mentioned, namely, the provisions of Part III. relating to Joint Committees, Part X., Accounts and Audit, Part XI., Local Financial Returns and Schedule XI., Part V., Repeals.

The Public Health Act, 1875, and the Public Health Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 49) (see PUBLIC HEALTH), do not apply to London (except when expressly provided), which till 1891 was governed in sanitary matters by Nuisance Removal Acts, Metropolis Management Acts, and other Acts passed either before or after that Act. In 1891 these enactments were consolidated, with amendments, by the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76)—a statute of 144 sections and four schedules, repealing more than thirty previous Acts or parts of Acts. The whole of this Act has been repealed by the Public Health (London) Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 50); this Act has fourteen Parts and seven Schedules.

Part I. Local Administration.
Part II. Sewerage and Drainage.
Part III. General Sanitation and Cleanliness.
Part IV. Offensive Trades.
Part V. Smoke Consumption.
Part VI. Tenements and Lodging-houses.
Part VII. Public Baths and Wash-houses.
Part VIII. Food.
Part IX. Prevention and Treatment of Disease.
Part X. Hospitals, Medical Service, Ambulances and Mortuaries.
Part XI. Registration of Nursing Homes.
Part XII. Maternity and Child Welfare.
Part XIII. Child Life Protection.
Part XIV. Miscellaneous and General.

As to the control of Traffic in and near London, see The London Traffic Act, 1924, and London Passenger Transport Act, 1933 (23 Geo. 5, c. 14), and the various Provisional Orders made thereunder; see also *London Passenger Transport Board* v. *Sumner*, 99 J. P. 387, as to validity of a bye-law.

London Building Act, 1930 (20 & 21 Geo. 5, c. clviii.), a local and personal Act, consolidates the enactments relating to streets and buildings in London, of which the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.), was the most important. The Act has seventeen Parts.

I. Introductory.
II. Formation and Widening of Streets.
III. Lines of Building Frontage.
IV. Naming and Numbering of Streets.
V. Open Spaces about Buildings and Height of Buildings.
VI. Construction of Buildings.
VII. Special and Temporary Buildings and Wooden Structures.
VIII. Means of Escape in Case of Fire.
IX. Rights of Building and Adjoining Owners.
X. Dangerous and Neglected Structures.
XI. Dangerous and Noxious Businesses.
XII. Dwelling-houses on Low-lying Land.
XIII. Sky Signs.
XIV. Superintending Architects and District Surveyors.
XV. Bye-laws.
XVI. Legal Proceedings.
XVII. Miscellaneous.

London Commissioners to Administer Oaths. In pursuance of s. 2 of 16 & 17 Vict. c. 78 (repealed by the Commissioners for Oaths Act, 1889), persons practising as solicitors, within ten miles from Lincoln's Inn Hall, at their respective places of business were from time to time appointed by the Lord Chancellor to administer oaths. See, further, COMMISSIONER FOR OATHS.

London Gazette. See GAZETTE.

London Police. See METROPOLITAN POLICE.

London, Port of. The administration is provided for by the Port of London (Consolidation) Act, 1920 (10 & 11 Geo. 5, c. clxxiii.); s. 6 enacts :—

(1) There shall be a chairman and vice-chairman and other members of the Port Authority elected and appointed in manner provided by this Act for the purpose of administering, preserving and improving the Port of London and otherwise for the purposes of this Act, and the several persons who now constitute and shall, from time to time constitute the Port Authority, shall notwithstanding the repeal of enactments effected by this Act, continue and be a body corporate by the name of 'the Port of London Authority,' and by that name shall continue to have perpetual succession and a common seal having power to acquire and hold land for the purposes of this Act without licence in mortmain.

(2) The several persons who were respectively the chairman, vice-chairman and other members of the Port Authority immediately before the passing of this Act, and shall be and continue in office from and after the passing of this Act for the same period and on the same terms and conditions as if the Port of London Act, 1908, had not been partially repealed by this Act.

(3) Subject to the provisions of the section the chairman and vice-chairman shall be appointed by the Port Authority. The person to be appointed to either such office may but need not be an elected or appointed member.

(4) Subject to the provisions of this section the number of elected members shall be eighteen, of whom seventeen shall be elected by payers of rates (as defined in Part IV. of the Second Schedule to this Act), wharfingers and owners of river craft, and one shall be elected by wharfingers.

(5) Subject to the provisions of this section, the number of elected members shall be ten, appointed as follows :—

By the Admiralty	1
By the Ministry of Transport	2
By the London County Council (being members of the Council)	2
By the London County Council (not being members of the Council)	2
By the Corporation (being members of the Corporation)	1
By the Corporation (not being members of the Corporation)	1
By the Trinity House	1

(6) With a view to providing for the representation of labour on the Port Authority, one of the members of the Port Authority appointed by the Minister of Transport shall be appointed by the Ministry after consultation with such organizations representative of labour as the Ministry think best qualified to advise them upon the matter, and one of the members of the Port Authority appointed by the London County Council shall be appointed by that Council after consultation with such organizations representative of labour as that Council think best qualified to advise them upon the matter.

(7) Subject to the provisions of this section the Port Authority may pay to the chairman, vice-chairman and chairman of any committee or to any of them, such salaries or salary as the Port Authority may determine.

(8) Subject to the provisions of this section, the provisions contained in the Second Schedule to this Act shall have effect with respect to the constitution and proceedings of the Port Authority and the election of and appointment of members.

The Act provides very fully for the financing and general management of the Port, and Schedule I. of the Act defines the limits of the Port, which extend landwards to Teddington and Twickenham, and seawards to Havengore Creek and the Isle of Sheppey. See also Port of London (Various Powers Act, 1932 (23 & 24 Geo. 5, c. xxxviii.)), which makes certain amendments.

London Sessions, Quarter Sessions for the County of London. See also CENTRAL CRIMINAL COURT.

London Sittings. See GUILDHALL SITTINGS, and ROYAL COURTS OF JUSTICE.

Long Vacation. By R. S. C. Ord. LXVIII., r. 4 (1), the Long Vacation shall commence on 1st of August and terminate on the day appointed by Order in Council for that purpose. By Order in Council dated 1st March, 1907, the Long Vacation is to commence in August and was to terminate on 11th October. For the year 1935 the Long Vacation terminated on 6th October (Long Vacation (1935) Order, 1935).

Loquela, an imparlance ; a declaration.

Loquela sine die, a respite to an indefinite time.

Lord [fr. *hlaford, laford, lord,* Sax., *hlaf,* a loaf of bread, and *ford,* to give, because such great men kept extraordinary houses, and fed all the poor ; for which reason they were called *givers of bread*], monarch, governor, master.

Lord Advocate. See ADVOCATE, LORD.

Lord Chamberlain. See CHAMBERLAIN.

Lord Chancellor. See CHANCELLOR.

Lord Chief Justice, etc. See CHIEF JUSTICE, etc.

Lord in Gross, he who is lord, not by reason of any manor, but as the king in respect of his crown, etc. *Very lord,* is he who is immediate lord to his tenant; and *very tenant,* he who holds immediately of that lord. So that, where there is lord paramount, lord mesne, and tenant, the lord paramount is not very lord to the tenant.

Lord High Admiral. See ADMIRALTY.

Lord High Commissioner, the representative of the King at the General Assembly of the Church of Scotland.

Lord High Steward. See HIGH STEWARD.

Lord Justice General, the highest judicial officer in Scotland. Head of the High Court of Justiciary. The office is united with that of the Lord President of the Court of Session.

Lord Justice Clerk, the second judicial officer in Scotland. See SESSION, COURT OF.

Lord Lieutenant, formerly the chief

governor or viceroy of Ireland. See IRELAND.

Lord Lieutenant of a County, an officer of great distinction, appointed by the Crown for the managing of the standing militia of the county, and all military matters therein. Lords Lieutenant are supposed to have been introduced about the reign of Henry VIII., for they are mentioned as known officers in the 4 & 5 Ph. & M. c. 3, though they had not been long in use; for Camden speaks of them in the time of Queen Elizabeth as extraordinary magistrates, constituted only in times of difficulty and danger. They are generally of the principal nobility, and of the best interest in the county; they are to form the militia in case of a rebellion, etc., and march at the head of them, as the Crown shall direct. They have the power of presenting to the sovereign the names of deputy-lieutenants, who are to be selected from the best gentry in the county, and act in the absence of the Lord Lieutenant. Their jurisdiction and privileges in relation to the militia, yeomanry, and volunteers reverted to her Majesty by 34 & 35 Vict. c. 86, s. 6, and see Militia Act, 1882 (45 & 46 Vict. c. 49), as affected by the Territorial Army and Militia Act, 1921 (11 & 12 Geo. 5, c. 37). Lords Lieutenants are appointed for life or *quamdiu se bene gesserint*.

Lord Lyon King-of-Arms, the principal Officer of Arms in Scotland. His duties are both ministerial and judicial, and include control of all arms, badges, and signs armorial, the execution of royal proclamations, the appointment and control of messengers-at-arms, the granting of certificates in connection with changes of name, etc. Under him are three heralds, and three Pursuivants.

Lord of a Manor, the grantee or owner of a manor. See COPYHOLD.

Lord Mayor's Court in London. An inferior (*Cox* v. *Mayor of London*, (1867) L. R. 2 H. L. 239) court of the king, held before the lord mayor and aldermen. Its practice and procedure were amended and its powers enlarged by the Mayor's Court of London Procedure Act, 1857. In this court the recorder presided, or, in his absence, the common serjeant (s. 43), or the assistant judge appointed under the Borough Courts of Record Act, 1872. The Mayor's and City of London Court Act, 1920, amalgamated the City of London Court (see that title) (the jurisdiction of which was that of a county court) with the Mayor's Court, and by the County Court Act, 1934 (24 & 25 Geo. 5, c. 53), s. 186, now to be deemed a county court, subject to the Mayor's Court Act of 1920, and the London (City) Small Debts Extension Act, 1852, with all its powers, rights and privileges preserved; and see *Bowater & Sons Ltd.* v. *Davidson's Paper Sales*, 1936, 1 K. B. 465. The conjoint court thus established has all the powers and jurisdiction of the two courts, and is presided over by the judges of the old Mayor's Court with an additional judge. For some purposes the provisions of the Act of 1857 still apply to 'original Mayor's Court actions': see *Newman* v. *Klausner*, 1922, 1 K. B. 228.

Lord Ordinary. See SESSION, COURT OF.

Lord President of the Court of Session. See SESSION, COURT OF. The office is united with that of Lord Justice General.

Lord President of the Council, the President of the Privy Council, the fifth great officer of State. He is appointed by the King in Council and, as a rule, is a member of the Cabinet.

Lord Privy Seal. An office with, at the present time, no definite duties, but to which Lord Salisbury attached a salary of 2,000*l*. It may confer Cabinet rank upon the holder. See PRIVY SEAL.

Lord and Vassal. In the feudal system the grantor of land, who retained the dominion or ultimate property, is called the lord, and the grantee, who had only the use or possession, is called the vassal or feudatory.

Lord Warden of the Cinque Ports. See CINQUE PORTS.

Lords' Act (32 Geo. 2, c. 28), so called from having originated in the House of Lords, amended by 33 Geo. 3, c. 5, and made perpetual by 39 Geo. 3, c. 50, passed for the relief of debtors 'with respect to the imprisonment of their persons; and to oblige debtors continuing in execution in prison beyond a certain time, and for sums not exceeding what are mentioned in the Act, to make discovery of and deliver upon oath their estates for their creditors' benefit,' in great part repealed by 1 & 2 Vict. c. 110, and other Acts.

Lord's Day. See SUNDAY.

Lords, House of. See APPELLATE JURISDICTION ACT, 1876, and HOUSE OF LORDS.

Lords Justices of Appeal, the title of the ordinary judges of the Court of Appeal, by the Jud. Act, 1877, s. 4 (see now Jud. Act, 1925, s. 6 (3)). As to the functions of the Lords Justices sitting as a Court of Appeal from a judge without a jury, see *Powell* v. *Streatham Manor Nursing Home*, 1935, A. C. 243; and from a judge with a jury, *Mechanical and General Inventions Co. Ltd.*

v. *Austin Motor Co. Ltd.*, 1935, A. C. 346. Prior to the Jud. Acts there were two 'Lords Justices of Appeal, in Chancery,' to whom an appeal lay from a vice-chancellor by 14 & 15 Vict. c. 83.

Lords Marchers, those noblemen who lived on the marches of Wales or Scotland, who in times past had their laws and power of life and death, like petty kings. Abolished by 27 Hen. 8, c. 26, and 6 Edw. 6, c. 10. See MARCHES.

Lords of Appeal in Ordinary, originally two persons having held high judicial office, or practised at the bar for not less than fifteen years, appointed, with a salary of 6,000*l.* a year, to aid the House of Lords and the Judicial Committee of the Privy Council in the hearing of appeals (App. Jur. Act, 1876, s. 6). On the death or resignation of any two members of the Judicial Committee of the Privy Council the Crown was empowered to appoint a third and fourth Lord of Appeal in Ordinary (*ibid.*, s. 14), and may now appoint two more in addition to the four (App. Jur. Act, 1913, s. 1), and a further one in addition to the six (App. Jur. Act, 1929, s. 2). Any Lord of Appeal in Ordinary who at the date of his appointment would have been qualified to be appointed an ordinary judge of the Court of Appeal, or at that date was a judge of that Court, is an *ex-officio* judge of the Court of Appeal (Jud. Act, 1925, s. 6 (2)). Lords of Appeal in Ordinary rank as barons for life and sit and vote in the House of Lords (Appellate Jurisdiction Act, 1887, s. 2).

Lords of Erection. On the Reformation in Scotland, the king, as proprietor of benefices formerly held by abbots and priors, gave them out in temporal lordships to favourites, who were termed Lords of Erection.

Lords of Parliament, those who have seats in the House of Lords.

Lords of Regality, persons to whom rights of civil and criminal jurisdiction were given by the Crown.—*Bell's Scots Law Dict.*

Lords of Session, the judges of the Court of Session in Scotland. Otherwise known as Senators of the College of Justice.

Lords Spiritual, the archbishops and bishops who have seats in the House of Lords.

Lords Temporal, those lay peers who have seats in the House of Lords. See HOUSE OF LORDS.

Lordship, dominion, manor, seigniory, domain; also title of honour of a nobleman not being a duke. It is also the customary titular appellation of the judges and some other persons in authority and office.

Loriners [fr. *lorum*, Lat., a rein], one of the London Livery Companies; the guild of bridle, bit and spur makers.

Lost Bill of Exchange, Cheque, or Promissory Note. The Bills of Exchange Act, 1882, s. 69, replacing the repealed 9 & 10 Wm. 3, c. 17, s. 3, enacts that if a bill of exchange, or cheque, or note, be lost before it is overdue, 'the person who was the holder of it may apply to the drawer to give him another bill (or cheque, or note) of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill (or cheque, or note) alleged to have been lost shall be found again'; and that 'if the drawer on request as aforesaid refuses to give such duplicate bill (or cheque, or note), he may be compelled to do so.' By s. 70 of the same Act, re-enacting 17 & 18 Vict. c. 125, s. 87, 'in any action or proceeding on' a bill (or cheque, or note), the Court may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the Court against the claims of any other person upon the instrument in question.

Lost Document. The ordinary rule is that a document is proved by the production of the original, but on proof that a document has been destroyed, or cannot be found after a proper search made, it may be proved by the 'secondary evidence' of a copy or by oral evidence of its contents. See *Powell on Evidence*; and as to the case of a lost will, see *Woodward* v. *Goulstone*, (1886) 11 App. Cas. 469.

'Lost or not lost' are words used in marine insurance policies in order to prevent the policy being void if the ship is lost at the time of the insurance provided that this fact is unknown to the insurer.

Lot, a contribution or duty. See SCOT.

Lot or **Loth,** the thirteenth dish of lead in the mines of Derbyshire, which belonged to the Crown.

Lot Meads, common meadows which are divided yearly and distributed by lot among the owners, the share of each being called a dole. See *Williams on Rights of Common*. The owner of a dole may have a freehold in the soil, or he may only have *vestura terræ*.

Lotherwite or **Leyerwit,** a privilege to make amends for lying with a bond-woman without licence. See LAIRWITE.

Lots. Parcels of land under one ownership put up separately at one sale. By s. 45 (5) of the Law of Property Act, 1925, it is an implied condition of the sale that a pur-

chaser of two or more lots held wholly or partly under the same title shall not have a right to more than one abstract of the common title, except at his own expense. As a rule the purchaser of the largest lot in value is entitled to the documents of title on completion where all the lots have been sold (see, e.g., General Conditions of Sale, 34 (2) (i.)).

As to the position of a bidder purchasing a wrong lot by his own mistake, see *Van Praagh* v. *Everidge*, 1903, 1 Ch. 434.

Lottery, a game of chance ; a distribution of prizes by lot or chance (*Taylor* v. *Smetten*, (1883) 11 Q. B. D. 207). By 10 & 11 Wm. 3, c. 17, *Chitty's Statutes*, tit. '*Games*,' all lotteries were declared to be public nuisances, and all grants, patents, or licences for the same to be contrary to law ; and the Gaming Act, 1802 (42 Geo. 3, c. 119), imposes a penalty of 500*l.* on any person keeping any place for any lottery 'not authorized by Parliament' ; for as lotteries were found to be a ready mode for raising money for the service of the state, they were from time to time sanctioned by Acts of Parliament passed expressly for this purpose (see 4 Geo. 4, c. 60), but by 6 Geo. 4, c. 60, they were abolished. As to what constitutes 'keeping' within the Act of 1802, see *Martin* v. *Benjamin*, 1907, 1 K. B. 64 ; but a body corporate cannot be convicted (s. 41) as rogues and vagabonds (*Hawke* v. *Hulton*, 1909, 2 K. B. 93).

A physical lot is not essential to a lottery (*Barclay* v. *Pearson*, 1893, 2 Ch. 154). In that case the defendant had realized more than 20,000*l.* in one week by a shilling 'missing word competition,' and one of the successful competitors suing him for his proportion of the prize, Stirling, J., declined to assist the plaintiff, and ordered the 20,000*l.* which had been brought into court to be paid out to the defendant, 'to defend himself by means of it against any legal claim, and to dispose of the surplus as he might deem in honour bound to apply it.' For lottery by sale of tea in packets with prizes, see *Taylor* v. *Smetten*, (1883) 11 Q. B. D. 207 ; and see also *Willis* v. *Young*, 1907, 1 K. B. 448 ; *Hall* v. *Cox*, 1899, 1 Q. B. 198 ; *Barlett* v. *Parker*, 1912, 2 K. B. 497).

By the Betting and Lotteries Act, 1934 (24 & 25 Geo. 5, c. 58), subject to the provisions of Part II., all lotteries are unlawful. Sect. 22 sets out offences in connection with lotteries, e.g., printing, distributing tickets, advertising, sending money out of Great Britain etc. ; s. 23 exempts small lotteries incidental to certain entertainments ; s. 24 exempts private lotteries ; s. 25 deals with Art Unions, which are exempted ; s. 26 deals with newspaper competitions which do not depend to a substantial degree upon the exercise of skill ; s. 27 deals with the power of justices to issue a search warrant if satisfied upon oath that there is reasonable ground to believe that premises are being used for illegal lotteries. See the statutes collected in *Chitty's Statutes*, tit. '*Games and Gaming*.'

Lourcurdus, a ram, or bell-wether.

Love Day, the day on which any dispute was amicably settled between neighbours ; or a day on which one neighbour helps another without hire.

Lowbote, a recompense for the death of a man killed in a tumult.

Low-water Mark, that part of the seashore to which the waters recede when the tide is lowest.

L.S. See Locus Sigilli.

Lucid Interval. By a lucid interval is understood, in a legal sense, a temporary cessation of the insanity or a perfect restoration to reason. It differs entirely from a remission, in which there is a mere abatement of the symptoms. See per Lord Thurlow in *Attorney-General* v. *Parnther*, (1792) 3 Bro. C. C. 442 ; also *Ray's Med. Jur. of Insan.* ; *Beck's Med. Jur.* ; and *Browne's Med. Jur. of Insan.*

Lucri causâ [Lat.] (for the purpose of gain).

Lucrum, a small slip or parcel of land.

Luminare, a lamp or candle set burning on the altar of any church or chapel, for the maintenance whereof land and rent-charges were frequently given to parish churches, etc.—*Ken. Glos.*

Lunatic. By the Mental Treatment Act, 1930 (20 & 21 Geo. 5, c. 23), s. 20, the word 'lunatic,' except in the phrase 'criminal lunatic' and in relation to persons detained as lunatics outside England, shall cease to be used in relation to any person of or alleged to be of unsound mind, and the words 'person of unsound mind,' 'person,' 'patient of unsound mind,' or 'of unsound mind,' or such other expression as the context may require are to be substituted in any enactment or document thereunder. See Person of Unsound Mind.

The general principle governing contracts entered into by insane persons is laid down in *The Imperial Loan Co.* v. *Stone*, 1892, 1 Q. B. 559. 'Where a person enters into a contract, and afterwards alleges that he was so insane at the time that he did not know

what he was doing and proves the allegation, the contract is as binding on him in every respect, whether it is executory or executed, as if he had been sane when he made it, unless he can prove further that the party with whom he contracted knew him to be so insane as not to be capable of understanding what he was about.' A person of unsound mind must pay for necessaries sold and delivered to him (Sale of Goods Act, 1893, s. 2). As to deeds and wills executed by a person found of unsound mind by inquisition, see *In re Walker*, 1905, 1 Ch. 160. As to their liability for tortious acts, see *Clerk and Lindsell*, 7th ed. p. 45. As to the criminal responsibility of insane persons, see MACNAUGHTON'S CASE, RULES IN. A jury may return the special verdict that a prisoner is guilty of the offence charged but insane at the time he committed it (Trial of Lunatics Act, 1883, s. 2). A person found on arraignment to be insane by verdict of a jury may be detained during his Majesty's pleasure, as is also the case with a prisoner found guilty but insane. The Home Secretary may order insane prisoners to be removed from prison to asylums (Criminal Lunatics Act, 1884, s. 2). See *Archbold's Crim. Pleading, etc.*

As to Scotland, see the Lunacy (Scotland) Acts of 1857, 1862 and 1866, the Mental Deficiency and Lunacy (Scotland) Act, 1913 (25 & 26 Geo. 5, c. 32), ss. 4, 5 and 7, and Sale of Goods Act, 1893, s. 2.

Lundress, a sterling silver penny, which was only coined in London. *Lowndes's Essay on Coins*, 17.

Lupanatrix, a bawd or strumpet.—3 *Inst.* 206.

Lupinum caput gerere, to be outlawed, and have one's head exposed like a wolf's, with a reward to him who should take it.

Lurgulary, casting any corrupt or poisonous thing into the water.

Luxury. See SUMPTUARY LAWS.

Lych Gate, the gate into a churchyard, with a roof or awning hung on posts over it to cover the body brought for burial, when it rests underneath.

Lyef-yeld, or **Lef-silver,** a small fine paid by a customary tenant to his lord, for leave to plough or sow.

Lying by. A person who, by his presence and silence at a transaction which affects his interests, may fairly be supposed to acquiesce in it, if he afterwards propose to disturb the arrangement, may be prevented from doing so by reason that he has been *lying by*. See LACHES.

Lying in Franchise, waifs, wrecks, estrays, and the like, which may be seized without suit or action.—3 *Steph. Com.*

Lying in Grant, or **in Livery.** See GRANT.

Lying-in Hospitals, charities which could not be established without a previous licence from the quarter sessions; legitimate children born in them are not to be chargeable to the parish of their births.—13 Geo. 3, c. 82. See 24 & 25 Vict. c. 101, and Midwives Act, 1927 (16 & 17 Geo. 5, c. 32), s. 13, abolishing the necessity for a licence; also Public Health Act, 1936, Part VI., ss. 181 *et seq.*

Lynches, or **Linces.** The banks between the terraces formed where a common field is on a hillside by ploughing, so as to turn the sod downhill; also the terraces themselves. *Norton on Interpretation of Deeds.*

Lynch-law, the procedure whereby an offender is tried and executed by a self-appointed body of citizens acting generally in defiance of the law, alleging as an excuse either the slowness of the regular legal procedure, or the neglect of the duly constituted authorities to put it in force, or that no duly constituted authorities exist. Lynch-law has been often practised in the United States of America.

Lyndhurst's (Lord) Act (5 & 6 Wm. 4, c. 54) rendered marriages within the prohibited degrees of consanguinity or affinity absolutely null and void. Theretofore such marriages were voidable merely. See MARRIAGE.

Lyon's Inn, an Inn of Chancery. See INNS OF CHANCERY.

M.

M, the brand or stigma of a person convicted of manslaughter and admitted to the benefit of clergy. It was burned on the brawn of the left thumb. Abolished.

Maal, Mahl, Mehal, places, districts, departments; places or sources of revenue, particularly of a territorial nature; lands.—*Indian.*

Mace, a large staff, made of one of the precious metals, and highly ornamented. It is used as an emblem of authority, and carried before certain public functionaries by a mace-bearer.

Mace-Greff [fr. *machecarius*, Lat.], one who buys stolen goods, particularly food, knowing them to have been stolen.—*Brit.* c. xxix.

Mace-proof, secure against arrest.

Macer, a mace-bearer; officers of the High Court of Justiciary and Court of Session in Scotland, who carry the mace and perform the functions of usher in the several courts.

Machecollare, or **Machecoulare,** to make a warlike device over a gate, or other passage, like to a grate, through which scalding water or ponderous or offensive things may be cast upon the assailants.—*Co. Litt.* 5 *a.*

Machinery. As to the riotous destruction of machinery, see Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), s. 11, as amended. As to the fencing of machinery in factories, see FACTORY.

Macnaughton's Case, Rules in (4 St. Tr. (N. S.) 847). A discussion took place in the House of Lords upon the direction to the jury by Tindal, C.J., in the trial of Macnaughton, and as a result a series of questions were put to the judges. The answers of the majority constitute 'the rules in Macnaughton's case,' and have been accepted as laying down the law as to insanity with reference to criminal responsibility. See *Archbold, Crim. Pleading, etc.*, 25th ed. pp. 15 *et seq.* The rules have been the subject of much discussion and criticism by political, medical, and legal writers (see, for example, Lord Birkenhead's letter to *The Times*, May 26th, 1924). The main rule which is laid down is, that in order to establish a defence on the ground of insanity, it must be proved that, at the time of the committing of the act, the person accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know that he was doing what was wrong. The onus of proving insanity lies on the defence.

Mactator, a murderer.

Madras, Bishopric of, established by 3 & 4 Wm. 4, c. 85; and see 5 & 6 Vict. c. 119.

Mæc-burgh, kindred, family.

Mæg-bot, compensation for homicide paid by the perpetrator to the kinsman or family of the slain.—*Anc. Inst. Eng.*

Mære [fr. *mer*, Sax.], famous, great, noted; as *Ælmere*, all famous.—*Gibs. Camd.*

Magic, witchcraft and sorcery. See WITCHCRAFT.

Magis de bono quam de malo lex intendit. *Co. Litt.* 78 *b.*—(The law favours a good rather than a bad construction.) Where the words used in an agreement are susceptible of two meanings, the one agreeable to, the other against, the law, the former is adopted. Thus a bond conditioned 'to assign all offices' will be construed to apply to such offices only as are assignable.

Magister, a master or ruler; a person who has attained to some eminent degree in science.

Magister ad facultates, an ecclesiastical officer who grants dispensations.

Magister navis (the master of a ship).

Magister societatis (the manager of a partnership).

Magistracy, the body of officers who administer the laws; the office of a magistrate.

Magistrate. (1) A man publicly vested with authority, a governor, an executor of the laws. (2) A paid justice of the peace. See STIPENDIARY MAGISTRATE; METROPOLITAN POLICE. (3) An unpaid justice of the peace. See JUSTICES.

Magna assisa eligenda, Writ de. The first species of extraordinary trial by jury is that of the grand assize, which was instituted by Henry II., in parliament, by way of alternative offered to the choice of the tenant or defendant in a writ of right, instead of the barbarous and unchristian custom of duelling. The writ issued to the sheriff to return four knights, who were to elect and choose twelve others to be joined with them, and these, all together, formed the grand assize or great jury, which was to try the matter of right. Abolished by 3 & 4 Wm. 4, c. 27.—3 *Bl. Com.* 351.

Magna centum, the great hundred, or six score.

Magna Charta. This Great Charter is based substantially upon the Saxon Common Law, which flourished in this kingdom until the Norman invasion consolidated the system of feudality, still the great characteristic of the principles of real property. The barons assembled at St. Edmund's Bury, in Suffolk, in the latter part of the year 1214, and there solemnly swore upon the high altar to withdraw their allegiance from the Crown, and openly rebel, unless King John confirmed by a formal charter the ancient liberties of England; and they then engaged to demand this of the sovereign in the early part of the ensuing year, arming themselves in the meantime, so as to compel John, if necessary, to confirm those liberties which had been confirmed by the charters of his predecessors, and his own solemn but disregarded oath. As the first step the barons disclaimed all allegiance to him, were formally absolved from their oaths of fidelity, and chose for their general Robert Fitz-

walter, with the title of Marshal of the Army of God and of the Holy Church. After the fortess of Bedford had surrendered to them, and they were in possession of the metropolis, by private agreement with the citizens, the king sent a message to them to desire that a place and time of meeting might be fixed for the purpose of his complying with their demands. Accordingly, the famous meadow called Runingmede, or Runemede (from the Saxon word *rune*, signifying council), situated on the south-west bank of the Thames, between Staines and Windsor, in Surrey, was selected for the interview. The conferences between the king and the armed barons opened on Monday, the 15th of June, and closed on Friday, the 19th of June, 1215, being in the seventeenth year of his reign. After the adjustment of preliminaries, articles or heads of agreement were drawn up and sealed; these articles were then reduced to the form of a charter, to which the Great Seal of the realm was solemnly affixed, and the instrument was given by the king's hand as a confirmation of his own act, but it was not signed by him, as commonly supposed. This celebrated event in our history took place in a small island, still called Magna Charta Island, situated in the Thames, not far from Aukerwyke, in Buckinghamshire. Many originals of the great Charter were made, for the purpose of depositing one in every diocese. Two of these are extant in the British Museum, and it is said there are two others in existence, one in the cathedral at Salisbury, and the other in that at Lincoln.

Magna Charta was not firmly established as the common law of the realm and the inalienable right of the subject for nearly a century after the conferences at Runingmede, during which period the country was kept in a constant state of alarm and excitement by the struggles of the barons' war, but at length this constitutional barrier against regal encroachments was finally secured to the people by its solemn confirmation by Edward I. No fewer than thirty-two Acts of Parliament were obtained from 1267 to 1416, from the sovereigns of England, for the purpose of fixing the Great Charter as the broad basis of our legislation, and the material guarantee of the freedom of political opinion, and of vindicating the right of publicly discussing and scrutinizing the conduct and measures of the Government of the day.

The Great Charter, as set forth in the statutes at large, is expressed to be made in the ninth year of King Henry III. (that is, in 1225), and confirmed by King Edward I. in the 25th year of his reign (that is, in 1297). The original is written in the Latin language, which, although not of that pure classicality that will be appreciated by the scholar, is nevertheless simple, vigorous, and unmistakable. The original Latin is printed in the statute-book in one column, and an English translation of it in another.

This Great Charter is in fact a collection of statutes in thirty-seven chapters, which are for the most part declaratory of our ancient and cherished customs, supplying, however, many of the deficiencies of the Common Law. 'Codes are not made; they make themselves,' said Pourtalès, and this is true also of Magna Charta, of which many of the chapters in substance and detail contain provisions which could not have originated, *sua sponte*, in the mind of any legislator, however gifted he may have been. The 1st chapter is a confirmation of liberties in these words:—'First, we have granted to God, and by this our present charter have confirmed for us and our heirs for ever, that the Church of England shall be free and shall have her whole rights and liberties inviolable. We have granted also and given to all the freemen of our realm, for us and our heirs for ever, these liberties, underwritten, to have and to hold to them and their heirs, of us and our heirs for ever.'

The 2nd chapter relates to the relief of the Crown's tenants of full age:—'If any of our earls or barons, or any other, which holdeth of us in chief by knight's service, die, and at the time of his death his heir be of full age, and oweth to us relief, he shall have his inheritance by the old relief; that is to say, the heir or heirs of an earl, for a whole earldom, by one hundred pounds; the heir or heirs of a baron, for a whole barony, by one hundred marks; the heir or heirs of a knight, for one whole knight's fee, one hundred shillings at the most, and he that hath less shall give less, according to the old custom of the fees.'

The Great Charter only aimed at modifying the grievances of feudalism, which created the military tenure of knight's service. It was reserved for the vigorous administration of Cromwell to abolish this military tenure, which he did by intermitting the Court of Wards in 1645. So perfectly hopeless was the renewal of this oppressive system at the restoration of the second Charles, that the provision annihilating these feudal tenures, contained in the statute 12 Car. 2,

c. 24, simply embodied this wholesome law of the Commonwealth and rendered it perpetual.

The statute of Charles II. did away with the effect of the four next chapters of the Great Charter. It will be only necessary, therefore, to mention their subjects:—Chapter three related to the wardship of an infant heir of an earl, baron, or knight; chapter four prohibited the guardian from wasting the lands of his ward, and from destroying his tenants, a plain indication of the wretched condition of the serfs in those days; chapter five compelled such guardians to keep in repair such lands; and chapter six, that such heirs should be married without disparagements—that is, should not be compelled to contract an improper or unequal marriage.

The 7th chapter concerns widows, and enacts that:—'A widow, after the death of her husband, incontinent, and without any difficulty, shall have her marriage, and her inheritance, and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband by forty days after the death of her husband, within which days her dower shall be assigned her if it were not assigned her before, or that if the house be a castle, and if she depart from the castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as it is aforesaid, and she shall have in the meantime her reasonable estovers of the common; and for her dower shall be assigned unto her the third part of all the lands of her husband which were his during coverture, except she were endowed of less at the church door. No widow shall be distrained to marry while she chooses to live single; nevertheless, she shall find surety that she shall not marry without our license and assent if she hold of us, nor without the assent of the lord, if she hold of another.' See DOWER.

The 8th chapter relates to Crown debts:—'We or our bailiffs shall not seize any land or rent for any debt, as long as the present goods and chattels of the debtor do suffice to pay the debt, and the debtor himself be ready to satisfy therefor. Neither shall the pledges of the debtor be distrained, as long as the principal debtor is sufficient for the payment of the debt. And if the principal debtor fail in payment of the debt, having nothing wherewith to pay, or will not pay where he is able, the pledges shall answer for the debt. And if they will, they shall have the lands and rents of the debtor, until they be satisfied of the debt which they before paid for him, except that the debtor can show himself to be acquitted against the said sureties.'

This order of enforcing Crown debts from debtors and their sureties appears to be clear and satisfactory. It is the prerogative of the Crown to claim priority for taxes and penalties before all other creditors, and to recover them by a very prompt and efficacious process, because *thesaurus regis est pacis vinculum et bellorum nervi* (the public revenue is at once the security of peace and the sinews of war).

The 9th chapter perpetuates our right of self-government, the source and bulwark of our constitutional freedom. It enacts that:—'The City of London shall have all the old liberties and customs which it hath been used to have. Moreover, we will and grant that all other cities, boroughs, towns, and the barons of the five ports, and all other ports, shall have all their liberties and free customs.'

The 10th chapter prohibits excessive distress for more service for a knight's fee than was due, all which has been abolished.

The 11th chapter enacts that:—'Common Pleas shall not follow our Court, but shall be holden in some place certain.' See COMMON PLEAS; ROYAL COURTS.

The 12th chapter relates to assizes, and provides that:—'Assizes of novel disseisin and of mortdauncestor shall not be taken but in the shires, and after this manner; if we be out of this realm, our chief justicers shall send our justices through every county once in the year, which, with the knights of the shires, shall take the said assizes in those counties; and those things that at the coming of our foresaid justicers, being sent to take those assizes in the counties, cannot be determined, shall be ended by them in some other place in their circuit; and those things which for difficulty of some articles cannot be determined by them, shall be referred to our justicers of the bench, and there shall be ended.'

Assizes or actions of novel disseisin and mortdauncestor have long been abolished, and more simple remedies established. A novel disseisin was so called to distinguish it from an ancient disseisin, and it arose in this way:—The judges in the olden time, when travelling was perilous and slow, went their circuits but once in seven years; all dis-

seisins then or dispossessings of the lawful owners of lands which took place before the last circuits were ancient, but all disseisins since were novel. Mortancestor was an action brought against a person who had taken possession of property after the death of an ancestor, and before his heir-at-law had entered into their occupancy. This chapter of the Great Charter is interesting as showing that our circuits and the practice of reserving points of law arising on circuit, for the consideration of the Court, are a very old institution of our judicial system.

The 13th chapter relates to assizes of darrein presentment, a now abolished method of trying the right to present a priest to an ecclesiastical benefice.

The 14th chapter is directed against excessive fines, and provides that :—'A freeman shall not be amerced for a small fault, but after the manner of the fault, and for a great fault after the greatness thereof, saving to him his contenement; and a merchant likewise, saving to him his merchandise; and any other's villein than ours shall be likewise amerced, saving his wainage, if he fall into our mercy. And none of the said amerciaments shall be assessed but by the oath of honest and lawful men of the vicinage. Earls and barons shall not be amerced but by their peers, and after the manner of their offence. No man of the church shall be amerced after the quantity of his spiritual benefice, but after his lay-tenement, and after the quantity of his offence.'

A man's contenement is that which is absolutely necessary for his support and maintenance, as his tools and instruments of trade; and wainage is that which is necessary for the labourer and the farmer, for the cultivation of his land, as carts, and implements of husbandry.

The 15th and 16th chapters relate to the making of bridges and defending of river-banks, a subject which now forms part of local law.

The 17th chapter enacts that :—'No sheriff, constable, escheator, coroner, nor any other our bailiffs, shall hold pleas of our Crown.'

Pleas of the Crown comprehend the criminal department of the law. It was ever the anxious care of our ancestors that a person accused of crime should be tried by a superior judge and a jury, and not by an inferior magistrate. It has, however, from time to time been necessary and expedient to give to justices and local magistrates jurisdiction to a limited extent in dealing with crimes and *quasi* criminal matters. This jurisdiction is of two kinds :—(1) Relating to indictable offences; and (2) relating to offences punishable summarily. As to the latter jurisdiction, the proceedings and powers of the justices are regulated (except where otherwise provided by the particular statute) by the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43), and amending Acts. See JUSTICES.

The 18th chapter enacts that :—'If any that holdeth of us lay-fee do die, and our sheriff or bailiff do show our letters-patents of our summons for debt, which the dead man did owe to us, it shall be lawful to our sheriff or bailiff to attach and inroll all the goods and chattels of the dead, being found in the said lay-fee, to the value of the same debt, by the sight of lawful men, so that nothing thereof shall be taken away, until we be clearly paid off the debt, and the residue shall remain to the executor to perform the testament of the dead, and if nothing be owing unto us, all the chattels shall go to the use of the dead, saving to his wife and children their reasonable parts.' See REASONABLE PARTS.

Debts owing to the Crown take precedence of all other debts, and this appears to be perfectly fair, for it is only by the certain payment of taxes that the government of a country can be carried on. The old law which prohibited a man from willing away all his property from his wife and children has long since been abrogated, and a man can now by a valid will deprive his widow and children of any participation in the property which he may leave.

The subjects of the 19th, 20th, and 21st chapters, relating to purveyance for a castle, doing of castle ward, and taking of horses, carts, and woods for the service of the royal castles, have been rendered obsolete by the abolition of feudalism.

The 22nd chapter declares thus :—'We will not hold the lands of them that be convict of felony but one year and one day, and then those lands shall be delivered to the lords of the fee.'

The addition of the day to the year appears to have been intended to prevent any dispute about whether the year is to be calculated as inclusive or exclusive of its last day. By the Forfeiture Act, 1870 (33 & 34 Vict. c. 23), escheat and forfeiture for treason or felony were abolished.

The 23rd chapter enacts that :—'All wears from henceforth shall be utterly put down by Thames and Medway, and through all

England, but only by the sea-coasts.' It is obvious that wears in navigable rivers would be obstructive of free communication. See WEARS.

The 24th chapter relates to the writ called *præcipe in capite*, which has been abolished.

The 25th chapter directs that:—'One measure of wine shall be through our realm, and one measure of ale, and one measure of corn, that is to say, the quarter of London; and one breadth of dyed cloth, russets, and haberjects, that is to say, two yards within the lists, and it shall be of weights as it is of measures.' See WEIGHTS AND MEASURES.

The 26th, 27th, and 28th chapters, relating to the writ of inquisition of life and member, and the old feudal tenures and wager of law, have been superseded by their abolition.

The next chapter (29) is so often quoted that it is better to give it in the original, which is as follows:—

'Nullus liber homo capiatur vel imprisonetur aut disseisiatur de libero tenemento suo vel libertatibus vel liberis consuetudinibus suis, aut utlagetur aut exuletur aut aliquo modo destruatur, nec super eum ibimus nec super eum mittemus *nisi per legale judicium parium suorum, vel per legem terræ. Nulli vendemus, nulli negabimus aut differemus rectum vel justiciam.*'

'No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties or free customs, or be outlawed or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but *by lawful judgment of his peers, or by the law of the land. To no man will we sell, to no man deny, to no man delay, justice or right.*'

It is required by our law that the twelve jurors be unanimous in their verdict, the reason for which would appear on criminal trials to be out of compassion to the prisoner, by giving him the benefit of every doubt, in accordance with the benignant quality of mercy. The unanimity required in trials of a civil nature is said to have arisen from the now abolished punishment, to which every juror was liable for returning an improper verdict, and as each juror might have been subjected to a conviction, it was no doubt reasonable that every one should have a power of dissenting, and not be bound by the opinion of the others.

The 30th chapter evinces a liberal treatment of foreigners:—'All merchants if they were not openly prohibited before shall have their safe and sure conduct to depart out of England, to come into England, to tarry in and go through England, as well by land as by water, to buy and sell, without any manner of evil tolts [i.e., extortions], by the old and rightful customs, except in time of war. And if they be of a land making war against us, and be found in our realm at the beginning of the wars, they shall be attached without harm of body or goods, until it be known unto us, or our chief justice, how our merchants be intreated there in the land making war against us; and if our merchants be well intreated there, theirs shall be likewise with us.' See ALIENS.

The 31st, 32nd, and 33rd chapters, relating to the royal escheat, the lord's services, and the patronage of abbeys, have been entirely superseded; as also has the 34th chapter, which provided that no man should be taken or imprisoned upon the appeal of a woman for the death of any other than her husband.

The 35th chapter, relating to county courts, sheriffs' turns, and leets, has long since fallen into desuetude by reason of new laws upon these subjects, though the sheriff's county court still exists for the purpose of parliamentary elections, and the sheriff's turn was not expressly abolished until 1887 by the Sheriffs Act of that year, s. 18.

The 36th chapter enacts that:—'It shall not be lawful from henceforth to any to give his land to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any, and to lease the same to him of whom it received them. If any from henceforth give his lands to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall acrue, to the lord of the fee.' See CHARITABLE USES and MORTMAIN.

The concluding chapter of Magna Charta sets forth that its establishment was bought from the Crown, like most of our great liberties, with a fifteenth of our movable property, in consideration of which the king grants 'for us and our heirs, that neither we nor our heirs shall attempt to do anything whereby the liberties contained in this charter may be infringed or broken. And if anything should be done to the contrary, it shall be held of no force or effect.' Consult 2 *Hallam's Middle Ages*, p. 326; *McKechnie's Magna Carta*.

Magna Charta et Charta de Forestâ sont appellés les deux grandes chartres. 2 *Inst.* 570.—(Magna Charta and the Charta of the Forest are called the two great charters.) 'The two famous charters of English liberties, *magna carta* and *carta de foresta*' (4 *Bl. Com.* 423).

Magna precaria, a great or general reap-day.

Magnus portus, the town and port of Portsmouth.

Maha-gen, a banker or any great shop-keeper among the Hindoos.

Mahal [*Indian,* literally a place], any land or public fund producing a revenue to the government of Hindostan. *Mahalaat* is the plural.

Maiden, an instrument formerly used in Scotland for beheading criminals. It consisted of a broad piece of iron about a foot square, very sharp in the lower part, and loaded above with lead. At the time of execution it was pulled up to the top of a frame about eight feet high, with a groove on each side for it to slide in. The prisoner's neck being fastened to a bar underneath, and the sign being given, the maiden was let loose, and the head severed from the body. The prototype of the guillotine.

Maiden Rents, a noble paid by the tenants of some manors on their marriage. This was said to be given to the lord for his omitting the custom of *mercheta,* whereby he was to have the first night's lodgings with his tenant's wife; but it seems more probably to have been a fine for licence to marry a daughter.—*Jac. Law Dict.*

Maignagium [fr. *maignem,* Fr.], a brasier's shop, or perhaps a house.

Maihem. See MAYHEM.

Maihematus, maimed or wounded.

Mail [fr. *malle,* Fr., a trunk], a bag of letters carried by the post, or the vehicle which carries the letters. As to theft, embezzlement by Post Office officer, or receiving mail bag, see Larceny Act, 1916 (6 & 7 Geo. 5, c. 50), ss. 12, 18, 33, and Post Office Act, 1908 (8 Edw. 7, c. 48), ss. 50, 52, 55. Also, armour.

Maile, a kind of ancient money, or silver halfpence; a small rent.—*Jac. Law Dict.*

Maills and Duties, this phrase means rents, the word 'Maills' being an old coin, the word 'Duties' referring to the services as opposed to the money rents, which used to be exigible. Nowadays the term is seldom used except in 'Action of M. and D.,' which is an action to enforce payment of rents: assignation of M. and D., commonly known as assignation of rents and prescription of M. and D. The years of prescription only begin to run when the tenant leaves, and the period is five years.

Maiming, depriving of any necessary part. See MAYHEM.

Mainad, a false oath, perjury.

Maine-port, a small tribute, commonly of loaves of bread, which in some places the parishioners paid to the rector in lieu of small tithes.

Mainour, Manour, or **Meinour,** a thing taken away which is found in the hand (*in manu*) of the thief who took it.

Mainovre, or **Mainœuvre,** a trespass committed by hand. See 7 Rich. 2, c. 4.

Mainpernable, that which may be held to bail. See Stat. Westm. I., 3 Edw. 1, c. 15.

Mainpernor [fr. *main,* Fr., hand, and *preneur,* taker]. See MAINPRIZE.

Mainprize [fr. *main,* Fr., and *pris,* taken]. The writ of *mainprize, manucaptio,* was a writ directed to the sheriff, commanding him to take sureties for a prisoner's appearance, usually called *mainpernors,* and to set him at large.—3 *Bl. Com.* 128; *Fitz. N. B.* 250.

Main-rent, vassalage.

Mainsworn, forsworn.

Maintainors, persons who second or support a cause in which they are not interested, by assisting either party with money, or in any other manner. See next title.

Maintenance, an officious intermeddling in a suit which in no wise concerns one, by assisting either party with money or otherwise to prosecute or defend it; both actionable and indictable (see *Bradlaugh* v. *Newdegate,* (1883) 11 Q. B. D. 1), and invalidates contracts involving it. By the Roman Law it was a species of *crimen falsi* to enter into any confederacy, or do any act to support another's law-suits, by money, witnesses, or patronage.—4 *Bl. Com.* 134.

It is either *ruralis,* in the country, as where one assists another in his pretensions to lands, by taking or holding the possession of them for him; or where one stirs up quarrels or suits in the country; or it is *curialis,* in a court of justice, where one officiously intermeddles in a suit depending in any court, which does not belong to him, and with which he has nothing to do.—2 *Rol. Abr.* 115. Maintaining suits in the spiritual courts is not within the statutes relating to maintenance.—*Cro. Eliz.* 549. A man may, however, maintain a suit in which he has any interest, actual or contingent; and also a suit of his near kinsman, servant, or poor neighbour, out of charity and compassion, with impunity.—*Bac. Abr.,* tit. '*Maintenance.*'

Further, any legitimate common interest will justify a person or persons jointly subscribing to pay the expenses of a suit, even when it is carried on by a third party, and a person will not be guilty of maintenance

in indemnifying his customers from actions brought against them by a trade rival (*British Cash, etc., Conveyors* v. *Lamson Store Service Co.*, 1908, 1 K. B. 1006). An action for maintenance does not lie without proof of special damage. The success of the maintained action is not a bar to the right of action for maintenance (*Neville* v. *London Express Newspaper*, 1919, A. C. 368).

This offence is punished by Common Law, and also by 1 Rich. 2, c. 4, by fine and imprisonment; and by 32 Hen. 8, c. 9, by a forfeiture of 10*l*. See CHAMPERTY.

As to maintenance of infants and persons until they attain a vested interest if they are entitled to the intermediate income or otherwise as provided under settlements created after 1925, see Trustee Act, 1925, s. 31, reproducing and extending the Conveyancing Act, 1881, s. 43, and *Re Raine*, 1929, 1 Ch. 716; see also the Administration of Estates Act, 1925, s. 47 (1) (ii.), and Legitimacy Act, 1926, s. 6; and as to maintenance in matrimonial cases, Judic. Act, 1925, ss. 187, 190 *et seq.*; for the law before 1926, consult *Jarman* or *Godefroi on Trusts*, and *Wolst. and Cherry, Conveyancing Statutes*. As a rule, powers or trusts for the maintenance of children and accumulation of the residue of income were included in all carefully drafted settlements and wills.

Maisnada, a family.—*Dugd. Mon.*, tom. 2, p. 219.

Maison de Dieu. See MEASON-DUE.

Maisura, a house or farm.

Majestas is defined by Ulpian (*Dig.* 48, tit. 4, s. 1) to be '*crimen illud quod adversus populum Romanum vel adversus securitatem ejus committitur.*' He then gives various instances of the crime of *majestas*, some of which pretty nearly correspond to treason in English law; but all the offences included under *majestas* comprehend more than our term treason. One of the offences included in *majestas* was the effecting, aiding in, or planning the death of a *magistratus populi Romani*, or of one who had *imperium* or *potestas*. Though the phrase '*crimen majestatis*' was used, the complete expression was *crimen læsæ majestatis*.

Majesty, a title of sovereigns. It was first used among ourselves in the reign of Henry VIII.

Major regalia, the greater rights of the Crown, such as regard the royal character and authority.—2 *Steph. Com.*

Majority. 1. The full age of 21 years; a minor comes of age in the eye of the law on the day preceding the anniversary of his birth. 2. The greater number. In a deliberative body, questions are ordinarily decided by a majority of those present at a meeting and voting, provided that the whole number present be not less than a certain quorum (see QUORUM) of the whole body. See, e.g., Local Government Act, 1933, s. 75, and Parts I. to V. of the Third Schedule thereto. See MEETING, and as to restrictions upon the powers of a company exercised by a majority in general meeting, see *Re Hoare & Co. Ltd.*, 150 L. T. 374.

Majua, a petty dealer in Hindostan.

Majun, a banker or considerable trader in Hindostan.

Majus jus, a writ or law proceeding in some customary manors, in order to try a right to land.

Maker, the person who signs a promissory note; by making it he 'engages that he will pay it according to its tenour, and is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse.'—Bills of Exchange Act, 1882, s. 88.

Mal, a prefix, meaning bad, wrong, fraudulent; as mal-administration, mal-practice, malversation, etc.

Mala, a mail, or port-mail; a bag to carry letters, etc.

Malâ fide, in bad faith.

Mala fides, bad faith; the opposite to *bona fides*, good faith.

Mala grammatica non vitiat chartam. 6 *Co.* 39.—(Bad grammar does not vitiate a deed.) See CLERICAL ERROR.

Mala in se, acts which are wrong in themselves, whether prohibited by human laws or not, as distinguished from *mala prohibita*. Of this class are murder, robbery, perjury, planning or provoking riot, injury to persons, or destruction of property, etc. See CRIME, and 1 *Steph. Com.*; 1 *Broom and Hadley's Com.* 52.

Malandrinus, a thief or pirate.—*Walsing.* 338.

Mala praxis. If the health of an individual be injured by the unskilful or negligent conduct of a surgeon, or apothecary, or general practitioner, in assuming to heal a dislocated or fractured limb, or internal disorder, an action for compensation may be sustained (*Seare* v. *Prentice*, (1807) 8 East, 348).

Mala prohibita, wrongs which are prohibited by human laws, but are not necessarily *mala in se*, or wrongs in themselves,

e.g., contraventions of the Shops Acts; breaches of positive law.—4 *Steph. Com.*

Malary, judicial, belonging to a judge or magistrate.—*Roberts' Indian Glos.*

Malberge [*mons placiti*, Lat.], a hill where the people assembled at a court, like our assizes, which by the Scots and Irish were called *parley hills.*—*Du Cange.*

Malconna, a treasury or storehouse in Hindustan.—*Rob. Ind. Glos.*

Malecreditus, one of bad credit, who is not to be trusted.—*Fleta*, l. 1, c. xxxviii.

Maledicta expositio quæ corrumpit textum. 4 *Co.* 35.—(It is a bad exposition which corrupts the text.)

Malediction, a curse such as was anciently annexed to donations of lands made to churches or religious houses, against those who should violate their rights.

Malefaction, a crime, an offence.

Malefactor, a contemptible or formidable wretch; one who commits a *malum in se.*

Maleficium, waste; damage; injury.—*Civ. Law.*

Maleson, or **Malison** [fr. *malum*, Lat., evil; and *sonus*, a sound], a curse.—*Bailey.*

Malesworn, or **Malsworn,** forsworn.—*Cowel.*

Maletent, Maletoute, a toll for every sack of wool.—25 Edw. 1, c. 7.

Malfeasance, the commission of some evil or unlawful act.

Malice [fr. *malitia*, Lat.], a formed design of doing mischief to another, technically called *malitia præcogitata*, or malice prepense or aforethought. It is either *express*, as when one with a sedate and deliberate mind and formed design kills another, which formed design is evidenced by certain circumstances discovering such intentions, as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm; or *implied*, as where one wilfully poisons another; in such a deliberate act the law presumes malice, though no particular enmity can be proved. The nature of implied malice is also illustrated by the maxim, '*Culpa lata dolo æquiparatur*'—when negligence reaches a certain point it is the same as intentional wrong—'Every one must be taken to intend that which is the natural consequence of his actions'—if any one acts in exactly the same way as he would do if he bore express malice to another, he cannot be allowed to say he does not.—4 *Steph. Com.*

'Malice in common acceptance means ill-will against a person, but in its legal sense it means a wrongful act done intentionally without just cause or excuse': Bayley, J., in *Bromage* v. *Prosser*, (1825) 4 B. & C. at 255; and see *McPherson* v. *Daniels*, (1829) 10 B. & C. 272.

Ill-will or improper motive is often called actual or express malice, or malice in fact, to distinguish it from malice in law, which merely denotes absence of legal excuse. To amount to murder, a killing must be committed with 'malice aforethought.' 'Aforethought' does not necessarily imply premeditation, but it implies intention, which must necessarily precede the act intended. See *Archbold, Crim. Pleading and Practice*, sub tit. '*Homicide*,' and MANSLAUGHTER.

In the law of defamation the defence that the occasion was privileged (i.e., one of qualified privilege) may be rebutted by establishing actual malice in the defendant, for he is not entitled to protection if he uses such an occasion for some indirect and wrong motive: see *Clark* v. *Molyneux*, (1877) 3 Q. B. D. 246. Similarly, proof of actual malice will defeat the defence of fair comment. See *Odgers on Libel.*

An act lawful in itself is not converted by malice into an actionable wrong (*Allen* v. *Flood*, 1898, A. C. 1).

Malicious Damage Act, 1861 (24 & 25 Vict. c. 97), consolidating and amending the law as to arson (*q.v.*) and other damage to property. The Act has been amended by the Criminal Justice Administration Act, 1914, s. 14; also (animals), 1 & 2 Geo. 5, c. 27, and 2 & 3 Geo. 5, c. 17; (fishing waters), 13 & 14 Geo. 5, c. 16; (trees and commons), 15 & 16 Geo. 5, c. 86; (ancient monuments), 19 & 20 Geo. 5, c. 17, and other Acts.

Malicious Injuries to the Person. See Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), consolidating and amending the law as to murder, manslaughter, wounding, etc.

Malicious Prosecution, a prosecution, preferred maliciously, without reasonable or probable cause; the remedy is an action on the case, in which damages may be recovered. The allegation of want of probable cause must be substantively and expressly proved, and cannot be implied; but it is for the judge, not the jury, to determine upon it (*Abrath* v. *North Eastern R. Co.*, (1886) 11 App. Cas. 247; *Cox* v. *English, Scottish and Australian Bank*, 1905, A. C. 168). *Animus injuriæ* cannot be inferred from the mere fact that the prosecution has failed (*Corea* v. *Peiris*, 1909, A. C. 549). See *Addison* or *Clerk and Lindsell on Torts.*

Malignare, to malign or slander; also to maim.

Malik, a proprietor.—*Indian.*

Malins' (Sir Richard) Act.—The Married Women's Reversionary Interest Act, 1857 (20 & 21 Vict. c. 57), enabling married women to dispose of reversionary interests in personalty; see now Law of Property Act, 1925, ss. 167 and 169.

Malitia præcogitata, malice aforethought. See MALICE.

Malitia supplet ætatem. *Dyer,* 104 *b.*—(Malice supplies [the want of] age); as in the case of a child between 7 and 14 years of age, who can be convicted of a crime if, and if only, it be affirmatively shown that he had sufficient capacity to know that the act which he did was wrong (*R.* v. *Owen,* (1830) 4 C. & P. 236). But see now CHILDREN.

Mallum and **Mallus.** See METHEL.

Mal grato, in spite; unwillingly.

Malt mulna, a quern or malt mill.—*Mat. Par.*

Malt-shot, or **Malt-scot,** a certain payment for making malt.—*Somner.*

Malt-tax, abolished by the Inland Revenue Act, 1880 (33 & 34 Vict. c. 20), which substitutes a duty on beer.

Malta, an island in the Mediterranean, a Crown Colony governed by the Crown, by a Governor and a Legislature; see Malta Constitution Act, 1932 (22 & 23 Geo. 5, c. 43), and Letters Patent, thereby validated, and the Malta (Letters Patent) Constitution Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 29).

Malum in se. See MALA IN SE.

Malum non præsumitur. 4 *Co.* 72.—(Evil is not presumed.)

Malum prohibitum. See MALA PROHIBITA.

Malum quo communius eo pejus. (The more common an evil is, the worse.)

Malus usus est abolendus. *Litt.* s. 212.—(An evil or invalid custom [or an abuse] ought to be abolished.)—*Broom's Max.*

Malveilles [fr. *malveillance,* Fr.], ill-will; crimes and misdemeanours; malicious practices.

Malveisa, a warlike engine to batter and beat down walls.—*Mat. Par.*

Malveisin [fr. *mauvais voisin,* Fr.], an ill neighbour, a warlike engine so called.—*Mat. Par.*

Malveis procurors, such as were wont to pack juries, by the nomination of either party in a cause, or other practice.—*Art. super Chart.* c. x.

Malversation, misbehaviour in an office, employment, or commission, as breach of trust, extortion, etc.

Man, Isle of (Mona), in the Irish Sea, off the coast of Cumberland, Westmoreland, and Lancashire, granted by Henry the Fourth and James the First to members of the Stanley family, whose successor in the female line, the Duke of Athol, sold it to the Crown for 70,000*l.*, being about ten years' purchase of the annual revenue, by the Isle of Man Purchase Act, 1765 (5 Geo. 3, c. 26).

The Isle of Man is not subject to British Acts of Parliament unless expressly named therein (as in the Customs Acts, for the purposes of which, by s. 277 of the Customs Consolidation Act, 1876, it is deemed part of the United Kingdom), being legislated for by its own parliament, called the House of Keys, but an Isle of Man (Customs) Act is passed every year by the Imperial Parliament.

Mana, an old woman.—*Jac. Law Dict.*

Manacle [fr. *manus,* Lat.], chain for the hands; shackle.

Manager, a superintendent, a conductor, or director. As to the appointment of a manager of a business at the instance of a mortgagee, see *Coote on Mortgages.* As to managers appointed by debenture holders, see Companies Act, 1929, s. 86, and Part VI. of that Act relating to receivers and managers. As to special manager, see Bankruptcy Act, 1914, s. 10; Companies Act, 1929, s. 209.

Managium, a mansion-house or dwelling-place.

Manbote, a compensation or recompense for homicide, particularly due to the lord for killing his man or vassal, the amount of which was regulated by that of *wer.*—*Anc. Inst. Eng.*

Manca, Mancus, or **Mancusa,** a square piece of gold coin, commonly valued at thirty pence.

Manceps [Lat.], a farmer of the public revenues; one who sold an estate with a promise of keeping the purchaser harmless; one who bought an estate by outcry; one who undertook a piece of work and gave security for the performance.

Manche-present, a bribe; a present from the donor's own hand.

Manchester became a municipal borough in 1838 and a county borough by the Local Government Act, 1888. Its bishopric was established by 10 & 11 Vict. c. 108; as to the cathedral, see 23 & 24 Vict. c. 69; 31 & 32 Vict. c. 114, s. 15. The 'Manchester

Parish Division Act, 1850,' is 13 & 14 Vict. c. 41.

Mancipate, to enslave ; to bind ; to tie.

Mancipatio. Every father, in the Roman law, had such an authority over his son, that before the son could be released from his subjection and made free he must be twice sold and bought, his natural father being in the first instance the vendor. The vendee was called *pater fiduciarius.* After this fictitious bargain, the *pater fiduciarius* sold him again to his natural father, who could then, but not till then, manumit or make him free. The imaginary sale was called *mancipatio ;* and the act of giving him liberty, or setting him free, was called *emancipatio.*

Also selling or alienating of certain lands by the balance or money paid by weight, and in the presence of five witnesses. This mode of alienation took place only among Roman citizens, and that only in respect to certain estates situated in Italy, which were called *mancipia.—Encyc. Londin.* Abolished by Justinian, when he obliterated the distinction between things *mancipi* and things *nec mancipi.* See *Sand. Just. ; Maine's Ancient Law.*

Mancipie [fr. *manceps,* Lat.], a clerk of the kitchen, or caterer, especially in colleges.

Mandamus (we command). (1) A high prerogative writ of a most extensive remedial nature. In form it is a command issuing in the king's name from the King's Bench Division of the High Court only, and addressed to any person, corporation, or inferior court of judicature requiring them to do something therein specified, which appertains to their office, and which the Court holds to be consonant to right and justice. It is used principally for public purposes, and to enforce performance of public duties. It enforces, however, some private rights when they are withheld by public officers.

It is a general rule that this writ is only to be issued where a party has no other specific remedy ; and he must apply to the Court without delay. The jurisdiction is altogether in the discretion of the Court. It can only be obtained from the King's Bench Division, and on motion, and not in an action ; (R. S. C., Ord. LIII., r. 4). For rules of procedure, see Crown Office Rules, 1906, rr. 49–69.

By the Justices Protection Act, 1848 (11 & 12 Vict. c. 44), ' Jervis's Act,' s. 5, the Court may, in lieu of a *mandamus,* grant a rule ordering justices to do any act appertaining to their office, and the County Courts Act, 1888, s. 131 (see now County Courts Act, 1934, s. 114), makes a similar provision as to county court judges.

(2) Ordinary mandamus. Where a plaintiff in an ordinary action is personally interested in the fulfilment of some duty by the defendant he may in certain cases endorse his writ with a claim for a *mandamus,* either with or without a claim for other relief, and an order in such action has the same effect as a writ of *mandamus* formerly had ; see Ord. LIII., rr. 1–4.

An interlocutory *mandamus* may be granted by order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made (Jud. Act, 1873, s. 25 (8)), (see now Jud. Act, 1925, s. 45 (1)).

Mandant, the principal in the contract of mandate.

Mandata licita strictam recipiunt interpretationem ; sed illicita latam et extensam. *Bac. Max. Reg.* 16.—(Lawful authority is to receive a strict interpretation ; unlawful authority, a wide and extended interpretation.) See per Byles, J., in *Parkes* v. *Prescott,* (1869) L. R. 4 Ex. 182.

Mandatary [fr. *mandatarius,* Lat.], he to whom a mandate, charge, or commandment is given ; also he that obtains a benefice by *mandamus.*

Mandate [fr. *mandatum,* Lat.], a judicial command, charge, commission.

Also, a bailment of goods, without reward, to be carried from place to place, or to have some act performed about them. The person employing is called in the Civil Law *mandans* or *mandator,* and the person employed *mandatarius* or mandatary. The distinction between a mandate and a deposit is that in the latter the principal object of the parties is the custody of the thing ; and the service and labour are merely accessorial. In the former, the labour and service are the principal objects of the parties, and the thing is merely accessorial. Three things are necessary to create a mandate : (1) that there should exist something which should be the subject of the contract, or some act or business to be done ; (2) that it should be done gratuitously ; (3) that the parties should voluntarily intend to enter into the contract. A mandatary incurs three obligations : (1) to do the act which is the object of the mandate, and with which he is charged ; (2) to bring to it all the care and diligence that it requires ; (3) to render an account of his doings to the mandator. A

mandator contracts to reimburse a mandatary for all expenses and charges reasonably incurred in the execution of the mandate, and also to indemnify him for his liability on all contracts which arise incidentally in the proper discharge of his duty. The contract of mandate may be dissolved either by the renunciation of the mandatary at any time before he has entered upon its execution, or by his death; for, being founded in personal confidence, it is not presumed to pass to his representatives, unless there is some special stipulation to that effect. But if the mandate be partly executed, there may in some cases arise a personal obligation on the part of the representatives to complete it. *Story on Bailments*, c. iii.

The granting of royal mandates to judges for interfering in private causes constituted a branch of the royal prerogative, which was given up by Edward I. And 1 W. & M. st. 2, c. 2, declares that the pretended power of suspending or dispensing with laws, or the execution of laws, by regal authority, without consent of parliament, is illegal.

Mandated Territories. Countries and islands, the regulation of which has been entrusted by mandate of the League of Nations to governments who are willing and able to take over the responsibility of government and development of the country. Countries which are now governed under mandate are Palestine, parts of Togoland, Cameroons, and East Africa, by Great Britain; South West Africa, by the Union of South Africa; part of New Guinea, by the Commonwealth of Australia; Nauru Island and the Samoa Islands, by New Zealand; part of East Africa, by Belgium; the Caroline Islands, by Japan; and parts of Togoland, Cameroons, Syria and Lebanon, by France.—*Halsb., L. E.*

Mandati Dies, Maundy Thursday.

Mandati, Panes de, loaves of bread given to the poor upon Maundy Thursday.

Mandator, director. See MANDATE.

Mandatory, perceptive; directory.

Mandatory Injunction. An injunction requiring the performance of some Act, e.g., the removal of a building or obstruction; see R. S. C. Ord. L., r. 6, and notes in *A. P.*

Mandatum, a fee or retainer given by the Romans to the *procuratores* and *advocati*. *Mandatum* is also used in the sense of a command from a superior to an inferior. See also MANDATE.

Mandavi ballivo (I have commanded the bailiff). If a bailiff of a liberty have the execution and return of a writ, the sheriff may return that he commanded the bailiff to execute it; and if the bailiff have not made a return, the sheriff should return that fact accordingly (*mandavi ballivo, qui nullum dedit responsum*); or if he have made a return, the sheriff should return it.—1 *Chit. Arch. Prac.*

Manentes [fr. *maneo*, Lat., to continue], tenants. Obsolete.

Manerium, a manor, which see.

Manerium dicitur a manendo, secundum excellentiam, sedes magna, fixa, et stabilis. *Co. Litt.* 58.—(A manor is so called from '*manendo*,' according to its excellence, a seat, great, fixed, and firm.)

Mangonare, to buy in a market.—*Leg. Etheld.* c. 24.

Mangonellus, a warlike instrument for casting stones against the walls of a castle.

Mania, mental alienation.

Mania a potu, otherwise denominated *delirium tremens*, a disease induced from the intemperate use of spirituous liquors or certain other diffusible stimulants.

Manifesta probatione non indigent. 7 *Co.* 40.—(Things manifest do not require proof.)

Manifesto, or **Manifest,** a public declaration made by a prince, in writing, showing his intention to begin a war or other enterprise, with the motives that induce him to it, and the reasons on which he founds his rights and pretensions.—*Encyc. Londin.*

In commercial navigation, a document signed by the master, containing a general statement of the ship and cargo, i.e., the names of the places where the goods have been laden, and the places for which they are destined, the name and tonnage of the vessel, the name of the master, and the place to which the vessel belongs, a particular description of the packages on board, marks, numbers, etc., the goods contained in them, and the names of the shippers and consignees, as far as known. The manifest must be made out, dated, and signed by the captain, at places where the goods, or any part, are taken on board.

Manner, or **Mainour** [fr. the Fr. *manier*]. To be taken *with the mainour* is where a thief is taken with the stolen goods about him—as it were in his hands; that is, *in flagrante delicto*. In such a case he might be brought into court, arraigned and tried, without indictment.—4 *Bl. Com.* 308.

Manning, a day's work of a man.

Mannire, to cite any person to appear in court and stand in judgment there: it is different from *bannier*; for though both of

them are citations, this is by the adverse party and that is by the judge.

Mannus, a horse.

Manœuvres, Military. See MILITARY MANŒUVRES.

Manopus, goods taken in the hands of an apprehended thief. See MANU OPERA.

Manor [fr. *manerium*, Lat.; *manoir*, Fr., habitation, or *manendo*, of abiding there, because the lord usually resided there], an estate in fee-simple in a tract of land granted by the sovereign to a subject (usually of power and consequence) in consideration of certain services to be performed. The *tenementales* were granted out; the *dominicales* (whence the term demesne) were reserved to the lord; the barren lands which remained formed the 'wastes'; the whole fee was termed a lordship or barony; and the court appendant to the manor the court baron. Every manor (with some doubtful and unimportant exceptions) is of a date prior to the statute of *Quia Emptores* (18 Edw. 1, c. 1).

'A manor,' says Mr. Joshua Williams, 'was made by the owner of an estate in fee carving out other estates in fee to be held by other freeholders as his tenants. A manor consists of demesnes and services: of demesnes, that is, of lands of which the freeholder, now become lord of a manor, is seised in his demesne as of fee; of services, namely, of such yearly rent, called rent service, and other services as he reserved in the grant to his tenants of portions of land, which once were his, to be holden by them and their heirs of him and his heirs. Of the demesne, the lord was seised; of the lands held by free tenants by rent or other services, the tenants themselves were seised, each man in his own demesne as of his own fee. Two free tenants, at least, were necessary to constitute a manor; but there might be as many more as the lord could procure to become his men in the manner before mentioned.

'Copyholds, of which I shall speak hereafter, form no part whatever of the essence of a manor. The lord of a manor may have copyholders or may not; but I am not speaking of them at present. The rights and interests of copyholders are entirely apart from those of the freehold tenants of a manor.'—*Williams on Seisin*, p. 13. See *Co. Litt.* 58 *a*; *Scriven on Copyholds*, p. 1.

A Court Baron is an essential part of a manor, and this Court cannot be held without at least two freeholders as suitors. If there be not two suitors, the manor becomes a reputed manor and continues to have certain manorial rights and franchises (see *Wol. and Ch. Conveyancing Statutes*, p. 583). For the purposes of the Law of Property Acts, 1922, 1925, etc., 'manor' includes a lordship and reputed manor or lordship (L. P. Act, 1925, s. 205 (1) (ix.).

The land legislation of 1925 has not disturbed the property in fee simple or many valuable rights which are or may be incident to a manor, such as mines, minerals, lime, clay, stone, gravel pits or quarries, whether under the now enfranchised land or not, rights of entry, winning and search for the same; nor have franchises, royalties or privileges in respect of fairs, chase or warren, fisheries and hunting and shooting been affected subject to the enfranchised copyholder's right to disturb or remove soil for roads or building purposes, but Manorial Courts have been abolished, the lord's right to escheat has been transferred to the Crown or the Duchy of Lancaster or of Cornwall, rent and other services except Grand and Petty Serjeanty have been commuted and extinguished. See COPYHOLD and MANORIAL DOCUMENTS.

Manorial Documents, Court Rolls, surveys, maps, terriers, all documents and books relating to the boundaries, franchises, wastes, customs or courts of a manor but not deeds or evidence of title to the manor, are now placed under the superintendence of the Master of the Rolls. They may remain in the possession or under the control of the lord of the manor but he shall not be entitled to destroy or wilfully damage them. The Master of the Rolls has power to direct the documents to be sent to the Public Record or local institutions undertaking to be responsible for the preservation and indexing of the documents and the Master of the Rolls may make rules for these purposes. See Law of Property Act, 1924, 2nd Sched., 2 (4).

Man-queller [fr. *man* and *cwellan*, Sax.], a murderer.

Manrent, a kind of bond between lord and vassal, by which protection was stipulated on the one hand, and fidelity with personal service on the other.—*Rob. Scott.* b. 1.

Mansa, or **Mansum,** a mansion or house.—*Spelm.*

Manse, a house or habitation, either with or without land. See next title.

Manse, or **Mansum presbyteri,** the dwelling-house of the clergyman.—*Paroch. Antiq.* 431. Sometimes called *presbyterium*.

Manser, a bastard.

Mansion [*mansio*, Lat., *à manendo*], the lord's house in a manor. Cf. the Mansion House, the official residence of the Lord Mayor of London. See next title.

Mansion-house, a dwelling-house.—3 *Inst.* 64. See LIMITED OWNERS RESIDENCES ACT. The Settled Land Act, 1882 (45 & 46 Vict. c. 38, gave (see SETTLED LAND) a tenant for life a power to sell settled land, but by s. 10 of the Settled Land Act, 1890, repealing and re-enacting, with amendments, s. 15 of that Act, the 'principal mansion-house' (unless it be usually occupied as a farmhouse, or its site with its park, etc., do not exceed twenty-five acres in extent) was not to be sold, exchanged, or leased by such tenant for life without the consent of the trustees of the settlement, or the order of the Chancery Division of the High Court. Now, by the Settled Land Act, 1925, under settlements made after 1925, the mansion and park may be sold without the consent of the trustees or leave of the Court unless the settlement otherwise provides. For discussion on the meaning of the term 'the principal mansion-house,' see *Gilbey* v. *Rush*, 1906, 1 Ch. 11.

Manslaughter, the unlawful killing of another without malice express or implied. It is either—

(α) Voluntary, upon a sudden heat; or,

(β) Involuntary, upon the commission of some other unlawful act, or by culpable negligence.

Both are felony, and punished, at the discretion of the Court, by penal servitude for life, or not less than three years, or by a fine.—Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 5.

On the principle that any greater felony includes a less felony, a person indicted for murder may be convicted of manslaughter. See *Steph. Dig.*, art. 272. See MURDER.

A high degree of negligence is required before a charge of manslaughter can be established—the breach of a statutory duty causing death is not necessarily manslaughter (*Andrews* v. *Director of Public Prosecutions*, 1937, A. C. 576). See CHANCE.

Mansum capitale, the manor-house or lord's court.—*Paroch. Antiq.* 150.

Mansura, the habitation of people in the country.—*Domesday.*

Mansus, a farm.—*Selden's Hist. of Tithes*, 62.

Mantea, a long robe or mantle.—*Old Records.*

Mantheoff [fr. *mannus*, Lat., a horse; and *theft*, Sax., a thief], a horse-stealer.—*Leg. Alb.*

Manticulate, to pick pockets.—*Bailey.*

Man-trap, engines to catch trespassers, unlawful, unless set in a dwelling-house for defence between sunset and sunrise.—Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 31.

Manualia beneficia, the daily distributions of meat and drink to the canons and other members of cathedral churches for their present subsistence.

Manualis obedientia, sworn obedience or submission upon oath.

Manucaptio, a writ that lay for a man taken on suspicion of felony, etc., who cannot be admitted to bail by the sheriff or others having power to let to mainprise.—*Fitz. N. B.* 249. See MAINPRIZE.

Manucaptor, one who stands bail for another.

Manufacture, anything made by art. As to a patent for a manufacture, see LETTERS-PATENT. As to the operation of the Factory Acts, see that title, and consult *Notcutt on the Factory and Workshop Acts.*

Manu forti (with strong hand).

Manumission, the act of giving freedom to slaves. Among the Romans it was performed in three several ways: 1st, when with his master's consent a slave had his name entered in the census or public register of the citizens; 2nd, when the slave was led before the prætor, and that magistrate laid his wand (*vindicta*) on his head; 3rd, when the master, by his will, gave his slave freedom. Among us, in the time of the Conqueror, villeins were manumitted by their master delivering them by the right hand to the viscount or sheriff in full court, showing them the door, giving them a lance and a sword, and proclaiming them free. Others were manumitted by charter. There was also an implied manumission, as when the lord made an obligation for payment of money to the bondman at a certain day, or sued him where he might enter without suit, and the like.—*Jac. Law Dict.*

Manung, or **Monung,** the district within the jurisdiction of a reeve, apparently so called from his power to exercise therein one of his chief functions, viz., to exact (*amanian*) all fines.—*Anc. Inst. Eng.*

Manu opera, stolen goods taken from a thief caught in the act. *Manuopera*, cattle or any implements used in husbandry.—*Dugd. Mon.*, tom. 1, p. 977.

Manupastus, a domestic; perhaps the same as *hlafæta.*—*Anc. Inst. Eng.*

Manupes, a foot of full and legal measure.

Manurable, admitting of tillage.

Manus, an oath, from the ceremony of laying the hand on the book; also, the person taking an oath, or compurgator.

Manus mediæ or **infimæ homines,** men of a mean condition, or of the lowest degree.

Manutenentia, the old writ of maintenance.—*Reg. Brev.* 182.

Manwryth, the value or price at which a man is estimated, according to his degree; apparently synonymous with *wer-geld.* It occurs only in the laws of Hlothære and Eadric.—*Anc. Inst. Eng.*

Map. A graphic delineation of territory. See ORDNANCE SURVEY; PLAN.

Mara, a mere, lake, or great pond, that cannot be drawn dry.—*Par. Antiq.* 418; *Dugd. Mon.*, tom. 1, p. 666.

Marcatus, the rent of a mark by the year anciently reserved in leases, etc.

Merchandises avariées [Fr.], damaged goods.

Marchers, or **Lords Marchers,** those noblemen who lived on the marches of Wales and Scotland, who, in times past, had their laws and regal power, until they were abolished by 27 Hen. 8, c. 26.

Marches, the boundaries of countries and territories; the limits between England, Wales, and Scotland. Also, in Scotland, the boundaries between private properties, which are said to 'march' with one another.—*Co. Litt.* 106 *b.*

Marches, Court of, an abolished tribunal in Wales, where pleas of debt or damages, not above the value of 50*l.*, were tried and determined.—*Cro. Car.* 384.

Marchet, or **Marchetta,** a pecuniary fine, anciently paid by the tenant to his lord for the marriage of one of the tenant's daughters. This custom obtained, with some difference, throughout all England and Wales, as also in Scotland; and it still continues to obtain in some places. It is also denominated *gwahr-merched,* i.e., maid's-fee.—*Co. Litt.* 117 *b*, 140 *a.*

Marchioness [formed by adding the English female termination to the Latin *marchio*], a dignity in a woman answerable to that of marquess in a man, conferred either by creation, or by marriage with a marquess.

Mare Clausum, the title of a celebrated work by Selden, written in answer to the treatise called Mare Liberum.

Mare Liberum, a famous treatise by Grotius, to show that all nations have an equal right to use the sea.

Mareschall, or **Mareshal,** a marshal.

Marettum [fr. *maret, marais,* Fr., a fen or marsh], marshy ground overflowed by the sea or great rivers.—*Co. Litt.* 5.

Margarine. By the Food and Drugs Act, 1928 (18 & 19 Geo. 5, c. 31), defined as any article of food, whether mixed with butter or not, which resembles butter and is not milk-blended butter.

Every packet of margarine sold must be clearly marked as such (s. 6). Factories and wholesale premises must be registered (s. 8). A register of consignments must be kept (s. 9). See, generally, Part II. of the Act.

Margarine-Cheese, any substance, whether compound or otherwise, which is prepared in imitation of cheese, and which contains fat not derived from milk. See, generally, Food and Drugs Act, 1928 (18 & 19 Geo. 5, c. 31), Part II.

Marginal note, an abstract of a reported case, a summary of the facts, or brief statement of the principle decided, which is prefixed to the report of the case, usually in the earlier reports placed in the margin, and corresponding to the head-notes of later times and the present day; marginal notes are often conveniently appended to documents of any kind.

The marginal notes which appear in the statute-books as printed by the King's Printers have not the authority of the legislature, and cannot alter the interpretation of the text. See *Claydon* v. *Green,* (1868) L. R. 3 C. P. 5, per Willes, J.; *Sutton* v. *Sutton,* (1882) 22 Ch. D. 5, per Jessel, M.R. In the Revised Statutes they have been revised throughout to make them in accordance with the text; and in *Chitty's Statutes of Practical Utility* they have been much added to, abridged, or altered.

In some private Acts of Parliament the marginal notes may form part of the Act (*Re Woking, etc., Act,* 1911, [1914] 1 Ch. 300, per Phillimore, L.J.).

Marinariorum capitaneus, an admiral or warden of the ports.—*Par. Antiq.*

Marinarius, a mariner or seaman.—*Par. Antiq.*

Marine, a general name for the navy of a kingdom or state; as also the whole economy of naval affairs, or whatever respects the building, rigging, arming, equipping, navigating, and fighting of ships. It comprehends also the government of naval armaments, and the state of all the persons employed therein, whether civil or military. Also one of the marines. See MARINES.

Marine Insurance. See INSURANCE.

Marine Society, a charitable institution

for the purpose of apprenticing boys to the naval service, etc., incorporated by 12 Geo. 3, c. 67.

Marine-store Dealers. See Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 533–540, re-enacting Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), ss. 480–483; by which any dealer in 'anchors, cables, sails, old junk, old iron, or other marine stores of any kind, must have his name, with the words "dealer in marine stores," painted on all his warehouses and places of deposit, must not purchase marine stores from any person apparently under sixteen, must enter in a book all such marine stores as he may become possessed of, and may not cut up cables, etc., without obtaining a "permit" from a justice of the peace, which permit must be advertised before the dealer proceeds to act thereon.' A person as so defined is, by the Children Act, 1933 (see CHILDREN), prohibited by s. 9 from purchasing 'old metal' from a person under 16. See also Public Health Amendment Act, 1907, s. 86. See METALS, DEALERS IN OLD.

Marines, Royal, a military force drilled as infantry, whose special province is to serve on board ships of war when in commission. The force was first established about the middle of the 18th century. When serving on board ship, their discipline is regulated by the Naval Discipline Act (29 & 30 Vict. c. 109); and see 44 & 45 Vict. c. 38; when on shore, by an Act annually passed, called the Army (Annual) Act.

Marischal, an officer in Scotland, who, with the Lord High Constable, possessed a supreme itinerant jurisdiction in all crimes committed within a certain space of the Court, wherever it might happen to be.

Mariscus, a marshy or fenny ground.—*Domesday; Co. Litt.* 5 *a.*

Maritagio amisso per defaltam, an obsolete writ for the tenant in frank-marriage to recover lands, etc., of which he was deforced.

Maritagium, the portion which is given with a daughter in marriage. Also, the power which the lord or guardian in chivalry had of disposing of his infant ward in matrimony.—*Spelm.* See 1 *Reeves* (*Finlason's Edition*), 171.

Maritagium est aut liberum aut servitio obligatum; liberum maritagium dicitur ubi donator vult quod terra sic data quieta sit et libera ab omni seculari servitio. *Co. Litt.* 21.—(A marriage portion is either free or bound to service; it is called frank-marriage when the giver wills that land thus given be exempt from all secular service.)

Maritagium habere, for **Maritare,** to have the free disposal of an heiress in marriage.

Marital [fr. *maritus,* Lat.], pertaining to a husband; incident to a husband.

Marital Rights. Rights of a husband. Where a woman, during a treaty for marriage, made a settlement of property without the concurrence of her intended husband, the husband after the marriage was entitled to have such settlement set aside as a 'fraud on his marital rights' (see *Strathmore* v. *Bowes,* (1789) 1 Ves. Jun. 22; 1 *Wh. & T. L. C.*); but the Married Women's Property Act, 1882 (see MARRIED WOMEN'S PROPERTY), has virtually abolished this right of the husband, which was founded on the rule of the Common Law (abrogated by that statute) that the property of the wife became by marriage the property of the husband. The term is sometimes used as meaning conjugal rights (*q.v.*).

Maritima Angliæ, the profits and emoluments arising to the Crown from the sea, which anciently were collected by sheriffs; but they were afterwards granted to the Lord High Admiral.—*Par.* 8 *Hen.* 3, m. 4.

Maritime Courts. These were formerly the High Court of Admiralty and its court of appeal, the Judicial Committee of the Privy Council. But by the Judicature Act, 1873, s. 16, the jurisdiction of the High Court of Admiralty was transferred to and vested in the High Court of Justice; and all causes and matters pending in that court, or which would have been within its exclusive cognizance, were assigned to a division of the High Court, called the Probate, Divorce, and Admiralty Division (*ibid.*, s. 34) (see now Jud. Act, 1925, s. 56 (3)). The Admiralty jurisdiction of the High Court was extended by s. 5 of the Administration of Justice Act, 1920 (see now Jud. Act, 1925, s. 22 (1) (*a*)) to cases relating to the use or hire of a ship or carriage of goods in a ship, provided that the owner or part owner of the ship is domiciled in England or Wales. The appeal from the Admiralty branch of that division lies to the Court of Appeal (*ibid.*, s. 18 (5)) (see now Jud. Act, 1925, s. 26). Courts of Vice-Admiralty are established in his Majesty's possessions beyond the seas, with jurisdiction over maritime causes, including those relating to prize. See Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), and ss. 5 and 6 of the Statute of Westminster (22 & 23 Geo. 5, c. 4), relating, *inter alia,* to s. 4 of the Act of 1890, as to continuation or rescission of the

Jurisdiction of the Admiralty Courts in any Dominion; and consult *Williams & Bruce's Admiralty Practice; Chitty's Statutes*, tit. '*Admiralty.*'

Maritime Law, the law relating to harbours, ships, and seamen. An important branch of the commercial law of maritime nations; divided into a variety of departments, such as those about harbours, property of ships, duties and rights of masters and seamen, contracts of affreightment, average salvage, etc. No system or code of maritime law has ever been issued by authority in Great Britain. The laws and practices that now obtain amongst us have been founded on the practice of merchants, the principles of the Civil Law, the laws of Oleron and Wisby, the works of jurisconsults, the judicial decisions of our own and foreign countries, etc. Though still susceptible of amendment, our system corresponds more nearly than any other system of maritime law with those universally recognized principles of justice and general convenience on which merchants and navigators should act.

The decisions of Lord Mansfield did much to fix the principles and to improve and perfect the maritime law of England. It is also under great obligations to Lord Stowell. The decisions of the latter chiefly have reference to questions of neutrality, and of the conflicting pretensions of belligerents and neutrals; but the principles and doctrines which he unfolds throw a strong light on all branches of maritime law. It has, indeed, been alleged that his lordship favoured the claims of belligerents. But his judgments must be regarded, allowing for this bias, as among the noblest monuments of judicial wisdom.—*McCull Comm. Dict.*

Maritime Lien.—A maritime lien is a claim which attaches to the *res*, i.e., the ship, freight, or cargo. It may arise *ex delicto*, e.g., compensation for damage by collision, or *ex contractu*, for services rendered to the *res;* but it is strictly confined to services such as salvage, supply of necessaries to the ship, and seamen's wages, and the courts show no tendency to extend the privilege (see *The Ripon City*, 1897, P. 226). Thus for ordinary work done upon a ship, such as repairs, there will be no maritime lien, but there may be a *possessory* lien so long as possession is retained (*Ex parte Willoughby*, (1881) 16 Ch. D. 604). The privilege when once it attaches will not be affected by any change in the possession of the *res*. See, further, *The Henrich Björn*, (1886) 11 App. Cas. 270; *Foong Tai & Co.* v. *Buchheister & Co.*, 1908, A. C. 458.

Mark [fr. *marc*, Welsh; *mearc*, Sax.; *merche*, Dut.; *marque*, Fr.], a token; an impression; a proof; an evidence; licence of reprisals; also, formerly, a coin of the value of 13*s*. 4*d*.

In commerce, a certain character struck or impressed on various kinds of commodities, either to show the place where they were made, and the person who made them, or to witness that they have been viewed and examined by the officers charged with the inspection of manufactures; or to show that the duties imposed thereon have been paid. It is also used to indicate the price of a commodity. If one use the mark of another to do him damage, an action on the case will lie, and an injunction may be obtained. See TRADE MARKS.

Those who are unable to write, sign a cross, for their mark, when they execute any document. See MARKSMAN.

Market [anciently written *mercat*, fr. *mercatus*, Lat.], a public time and place of buying and selling; also purchase and sale. It differs from the *forum*, or market of antiquity, which was a public market-place on one side only, the other sides being occupied by temples, theatres, etc.

A market can only be set up by virtue of a royal grant, or by long and immemorial usage, which presupposes a grant.

See FAIRS; and Public Health Act, 1875, s. 167, the Public Health Act, 1908 (8 Edw. 7, c. 6), and the Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14); Markets and Fairs (Weighing of Cattle) Acts, 1886 to 1926.

As to disturbance of market, see *Goldsmid* v. *Great Eastern Railway Co.*, (1884) 9 App. Cas. 927; *A.-G.* v. *Horner* (*No.* 2), 1913, 2 Ch. 140. In *City of London Fruit Corporation* v. *Lyons, Sons & Co. Ltd.*, 1936, Ch. 78, it was held that any member of the public has a right of access to a franchise market on payment of tolls and observance of bye-laws for the purpose of conducting sales, and that a sale by auction in the vicinity was not a disturbance. Consult *Pease and Chitty on Markets and Fairs*, and see MARKETS AND FAIRS and COPYHOLDS.

Market Overt, an open or public market. Contracts of sale which transfer the property as against a real owner though not the seller are binding, if made according to the following rules:—(1) The sale must be in a place that is open, so that any one who passes may see it, and that is proper for the sale of

such goods; (2) it must be an actual sale for a valuable consideration; (3) the buyer must not know that the seller has a wrongful possession of the goods sold; (4) the sale must not be fraudulent between two to bar a third person of his right; (5) there must be a sale and a contract by persons able to contract; (6) the contract must be originally and wholly in the market overt; (7) toll ought to be paid where required by statute; (8) the sale ought not to be in the night, though, if the sale be made in the night, it may bind the parties.—*The Case of Market Overt*, 5 *Rep.* 83; and see *Hargreave* v. *Spink*, 1892, 1 Q. B. 25; and *Ardath Tobacco Co. Ltd.* v. *Ocker*, 1930, T. L. R. 177, distinguishing a sale to, from a sale by, the trader.

By s. 22 of the Sale of Goods Act, 1893, 'where goods are sold in market overt, according to the custom of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller,' but that section does not apply to the sale of horses (see that title), or to Scotland, and there is no corresponding law in Scotland.

By a special custom of the City of London, goods on sale to the public in shops to which the public have general access on the usual shopping days, between sunrise and sunset, are in market overt.

Although the true owner may lose his property by a sale in market overt, he still has his remedies, e.g., for conversion against the seller (*Peer* v. *Humphrey*, (1835) 2 Ad. & El. 495).

Market, Court of the Clerk of the. The court of the clerk of the market was incident to every fair and market in the kingdom, to punish misdemeanours therein; as a court of *piepoudre* was to determine all disputes relating to private or civil property. The object of this jurisdiction was principally the recognizance of weights and measures, to try whether they were according to the true standard thereof, which standard was anciently committed to the custody of the bishop, who appointed some clerk under him to inspect abuses; and hence this officer, though usually a layman, was called the *clerk* of the market.—4 *Bl. Com.* 275. His functions are now discharged by inspectors under the Weights and Measures Act. See WEIGHTS AND MEASURES.

Market Garden. A garden on which vegetables and fruit are grown for sale. The Agricultural Holdings Act, 1908, which repealed the Market Gardens Compensation Act, 1895, has itself been repealed and replaced by the Agricultural Holdings Act, 1923, which consolidated the law relating to Agricultural Holdings (see that title). Sect. 57 of this last Act defines a 'market garden' as meaning 'a holding cultivated wholly or mainly for the purpose of the trade or business of market gardening.' Market garden includes part of private premises so treated (*Saunders-Jacob* v. *Yates*, 1933, 2 K. B. 240). Schedule III. gives the special improvements for which a market gardener can claim compensation; and see special provisions in ss. 48 and 49. See HOLDING.

Market Geld, the toll of a market.

Market Price. See VALUE.

Market Towns, those towns which are entitled to hold markets.—1 *Steph. Com.*

Marketable, such things as may be sold; those for which a buyer may be found. See FAIRS.

Markets and Fairs. The right to hold a market or fair, i.e., to hold organized meetings of persons for the purpose of buying and selling, is derived from a royal grant either actual or to be presumed from long usage. Markets and fairs in large towns of modern growth are, however, frequently held under special Acts which incorporate the Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), or under the Public Health Act, 1875. The following Acts regulate markets and fairs:—Metropolitan Fairs Act, 1868; Fairs Acts, 1871 and 1873; Markets and Fairs (Weighing of Cattle) Acts, 1887 and 1891, and 1926. See *Newcastle* (*Duke of*) v. *Worksop U. D. C.*, 1902, 2 Ch. 145; and consult *Pease and Chitty on Markets and Fairs*. See FAIRS AND MANOR.

Marketzeld. See MARKET GELD.

Markpenny, a penny anciently paid at the town of Maldon by those who had gutters laid or made out of their houses into the streets.—*Jac. Law Dict.*

Marksman, a person who cannot write, and therefore makes his mark X only in executing instruments, which mark is sufficient 'signature' of a will (*In b. Clarke*, (1858) 1 Sw. & Tr. 22) or of a writing which the Statute of Frauds requires to be signed (*Baker* v. *Dening*, (1838) 8 A. & E. 94).

Marlborough. See BLENHEIM.

Marlebridge, Statute of, 52 Hen. 3, A.D. 1267, enacted at Marlebridge, now Marlborough, and principally directed against unlawful and excessive distresses, as to which it is still in force.

Marque [fr. *mearc*, Sax.; *signum*, Lat.], a

mark, a sign; reprisals. See LETTERS OF MARQUE.

Marquis, or **Marquess** [fr. *marquis*, Fr.; *marchio*, Lat.; *margrave*, Ger.], one of the second order of nobility, next in order to a duke. The first marquis was Robert de Vere, Earl of Oxford, whom Richard II. in the year 1386 made Marquis of Dublin.

A marquis is styled by the sovereign in Royal Commissions, etc., 'our right trusty and entirely beloved cousin.' His title is 'most honourable'; and his sons, by courtesy, are styled lords and his daughters ladies. The eldest son takes by courtesy the next lower title.

Marquisate, the seigniory of a marquis.

Marriage. Marriage as understood in Christendom is the voluntary union for life of one man and one woman, to the exclusion of all others (*Hyde* v. *Hyde*, (1866) L. R. 1 P. & D. 130). Where a marriage in a foreign country complies with these requirements it is immaterial that under the local law dissolution can be obtained by mutual consent or at the will of either party with merely formal conditions of official registration, and it constitutes a valid marriage according to English law (*Nachimson* v. *Nachimson*, 1930, P. 217). Previous to 1753 the validity of marriage was regulated by ecclesiastical law, not touched by any statutory nullity but modified by the Common Law Courts, which sometimes interfered with the Ecclesiastical Courts by prohibition, sometimes themselves decided on the validity of a marriage, presuming a marriage in fact as opposed to *lawful* marriage. A religious ceremony by an ordained clergyman was essential to a lawful marriage, at all events for dower and heirship; but if in an irregular marriage the Ecclesiastical Court could discern a valid promise to marry, it would order the parties to solemnize marriage '*in facie ecclesiæ*' (*Baxter* v. *Buckley*, (1752) 1 Lee, 42), and declare any subsequent intermediate marriage by either party invalid. But whether or not a mere contract '*per verba de præsenti*' ever constituted by itself a valid marriage in England as regards dower, heirship, and bigamy, is so doubtful that in 1843 the House of Lords and the Court appealed from were equally divided on the point in *Reg.* v. *Millis*, (1844) 10 Cl. & F. 534, so that the rule *semper præsumitur pro negante* applied, and 'judgment was given for the defendant in error.' In 1753 Lord Hardwicke's Act (26 Geo. 2, c. 33), passed to prevent clandestine marriages, required, under pain of nullity, that banns should be published according to the rubric, or a license obtained, and in either case that the marriage should be solemnized in church; and as to minors, that the father, mother, or guardian shall previously consent to the marriage if by license (see Banns). The Act further abolished the suits in the Ecclesiastical Court to compel marriage '*in facie ecclesiæ*,' which abolition made more common the action of breach of promise of marriage, which is of comparatively modern date. The strictness of Lord Hardwicke's Act led to marriages being annulled through misnomers in the banns by the fault of one party in putting them up. And the requiring of consent not infrequently worked great evil and injustice; e.g., a marriage was dissolved after twenty-two years' cohabitation and numerous issue by the husband proving that he was a minor at the time of his marriage, though he then swore he was 21. Afterwards 3 Geo. 4, c. 75, validated all such marriages by license without consent where the parties had subsequently lived together until the passing of the Act.

Present Law.—The general purport of the existing law is to require a public ceremony by a clergyman of the Church of England, or by a dissenting minister, or a Roman Catholic priest, in a building registered for marriages, and in the presence of the registrar, or by the registrar in his office, solemnized within the hours of 8 A.M. and 6 P.M. (Marriage (Extension of Hours) Act, 1934), and preceded by and within three months after banns, license, or certificate have been published or obtained.

Church of England marriages are regulated by the Marriage Act, 1823 (4 Geo. 4, c. 76), which requires publication of banns on three successive Sundays before marriage in the church of the parish wherein the parties dwell, or in the churches of the parishes wherein each of them dwells, if they dwell in different parishes, but by the Marriage Measure, 1930 (20 & 21 Geo. 5, No. 3), banns may also be published in a church which is the usual place of worship of either party. In case of license, the Act of 1823 requires fifteen days' residence (*Tuckniss* v. *Alexander*, 32 L. J. Ch. 794). It is only if both parties have concurred in falsifying the names in the banns that the marriage can be annulled. As to licenses, neither misnomer, even by concurrence of both parties, nor fraud or perjury in obtaining the license, will affect the validity of the subsequent marriage (*Bevan* v. *Macmahon*, (1861) 30 L. J. P. & M. 61). As to consent of parents

to the marriage of a minor, by license, one of the parties must swear before the surrogate that consent has been obtained. But if this is false, and one or both parties are minors, the marriage will still be good (*R.* v. *Birmingham*, (1828) 8 B. & C. 29), though the guilty party may be punished by being deprived of all property accruing through the marriage; but if the marriage of the minor is by banns the parents must openly dissent in church at time of publication, and if so publication will be void. The marriage must take place according to the rubric; if after banns, in one of the churches where the banns were published; if by license, then in the church specified in the license, in the presence of two witnesses. After the ceremony, the clergyman must enter the particulars of the marriage in the register according to the form laid down in the Births and Deaths Registration Act, 1836 (6 & 7 Wm. 4, c. 86), the entry to be signed by the clergyman, the parties, and the two witnesses. It may be noted that a clergyman cannot marry himself (*Beamish* v. *Beamish*, (1859–61) 9 H. L. C. 274).

Special licenses are granted by the Archbishop of Canterbury on special grounds, as a matter of discretion or to persons of high rank. No period of residence is necessary, and they may authorize marriage at any hour or in any place, whether consecrated or not (see *Doe dem. Egremont* v. *Grazebrook*, (1843) 4 Q. B. 406).

Marriage of Nonconformists.—The marriage of dissenters in general, according to their own rites, was first provided for by the Marriage Act, 1836 (6 & 7 Wm. 4, c. 85), amended by the Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119), all, whether Roman Catholics, Presbyterians, or others, being treated on the same footing, and is now mainly regulated by the Marriage Act, 1898 (61 & 62 Vict. c. 58). This Act dispenses with the presence of a registrar, formerly required in all cases except for Jews and Quakers, and allows the marriages to be solemnized in any building registered for religious worship, in the presence of an 'authorized person' certified as such by the trustees or other governing body of the building. Notice must be given by the parties to the superintendent registrar of particulars according to the form in Sched. A to 19 & 20 Vict. c. 119, after which, in either two or twenty-one days, the registrar will issue a license or a certificate to marry (see Scheds. B and C). The marriage can then, at any time within three months after, take place at the registered chapel specified in the license or certificate, without the presence of the registrar unless the parties require it, according to any ceremony. But in some part of it each of the parties must declare, 'I do solemnly declare, that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D.,' and each say to the other, 'I call upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife (or husband).' After the ceremony the marriage must be entered in the register according to the Births and Deaths Registration Act, 1836 (6 & 7 Wm. 4, c. 86), above referred to. Marriage can also be solemnized, if the parties so prefer, by the registrar alone, after notice and certificate of license, at the registrar's office, according to the form of words quoted.

Statutory nullities are imposed by s. 22 of the Marriage Act, 1823 (4 Geo. 4, c. 76), for church marriages, and s. 42 of the Marriage Act, 1836 (6 & 7 Wm. 4, c. 85), for dissenters' marriages, declaring the marriage null and void if the parties 'knowingly and wilfully intermarry in any other place than a church or chapel where banns may be lawfully published,' or 'in any other place than the church, chapel, registered building, or office specified in the notice and certificate,' or 'without due publication of banns or license from a person having authority to grant the same first obtained,' or 'without due notice to the superintendent registrar, or without certificate of notice duly issued, or without license . . . or without the presence of a registrar or superintendent registrar where the presence of the registrar or superintendent registrar is necessary under the Act, or knowingly and wilfully consent to or acquiesce in the solemnization of such marriage by any person not in holy orders.' As to marriage by a pretended clergyman, Sir William Scott, afterwards Lord Stowell, in *Hawke* v. *Corri*, (1820) 2 Hagg. Cons. at p. 288, says: 'It seems to be a generally accredited opinion that, if a marriage is had by the ministration of a person in the church, who is ostensibly in holy orders and is not known or suspected to be otherwise, such marriage shall be supported,' and the wording of the section quoted supports Lord Stowell's views; but see the Marriages Validation Act, 1888 (51 & 52 Vict. c. 28), validating marriages by G. F. W. Ellis, a sham parson who held a living. As to publication of banns or misnomers in surrogate's license, see above. In a notice to a registrar it would

appear that accuracy is not essential (*Holmes* v. *Simmons*, (1868) L. R. 1 P. & D. 523). As to the interpretation of the words 'knowingly and wilfully' in the sections quoted, see the report of the Marriage Laws Commission, 1868, where it is further laid down that a marriage would be void 'if it were solemnized (however ignorantly) without *any* publication of banns at all, or any common or special license, or registrar's certificate or license; or if it were solemnized in a church or other place where no banns had been published; or (if the marriage was not by banns) which was manifestly unauthorized by the terms of the license or certificate as actually granted.' But the Courts are wont to presume in favour of marriage that all was done rightly; e.g., that the chapel was registered for marriages, and that the registrar was present at the ceremony. 'By the law of England . . . where a man and woman have long lived together as man and wife, and have been so treated by their friends and neighbours, there is a *primâ facie* presumption that they really are and have been what they profess to be' (*The Bredalbane Case*, (1867) L. R. 1 H. L. Sc. p. 199, per Lord Cranworth). The presumption of marriage is indeed much stronger than the presumption in regard to other facts (*De Thoren* v. *A.-G.*, (1876) 1 App. Cas. 686, per Lord Cairns, L.C.). Further, it has become a constitutional practice of the legislature to pass from time to time, as required, special validating Acts to confirm, *ex abundanti cautelâ*, marriages where some general defect of form or a slip might throw doubt on them; e.g., where the church or chapel in which the marriage took place was not consecrated, or registered or licensed for marriages. See 44 Geo. 3, c. 77, and other Acts *in pari materiâ*, collected in Appendix VII. to the Chronological Table of Statutes; also the Marriages Legalization Act, 1901 (1 Edw. 7, c. 23), legalizing marriages theretofore performed in sixteen churches or places, one being 'the Parish Room of Cadney, in the parish of Cadney-cum-Howsham,' between 1st January, 1895, and 17th August, 1901, and the Provisional Order (Marriages) Act, 1905 (amended by the Marriage Validity (Provisional Orders) Act, 1924), by which a Secretary of State may make a Provisional Order, requiring confirmation by an Act, to remove invalidity or doubt 'in the case of marriages solemnized in England which appear to him to be invalid or of doubtful validity.'

Essentials of Contract.—The age for marriage had been fixed from the earliest times at 14 for males, 12 for females. But since the Age of Marriage Act, 1929 (19 & 20 Geo. 5, c. 36), if either of the parties to an intended marriage is under the age of 16, the marriage is void. Each party must go through the ceremony, consenting as a free agent without fraud or duress (see *Scott* v. *Sebright*, (1886) 12 P. D. 20). They must be unmarried. If a husband or wife is absent for seven years without being heard of, the other party marrying again cannot be prosecuted or convicted for bigamy. But proof that the absent husband or wife was alive at the time of the second marriage will invalidate it. Persons who are divorced may marry again after the decree is made absolute. As to this, and as to how far the English law recognizes foreign divorces, see DIVORCE.

Lunacy existing at the time of marriage avoids the marriage. See *Lord Durham's case*, (1885) 10 P. D. 80, and 51 Geo. 3, c. 37.

Prohibited Degrees.—Down to 1835, marriages within the prohibited degrees of consanguinity or affinity (see 32 Hen. 8, s. 38, printed 1 *Rev. Stat.* N. S. 370, as referring to 28 Hen. 8, c. 7, s. 7, and 28 Hen. 8, c. 16, s. 2), i.e., the degrees as set out in the Book of Common Prayer, were merely voidable by suit in the Ecclesiastical Court during the life of the parties. Children resulting from such marriages were not illegitimate unless and until the marriage had been declared void by the Ecclesiastical Courts, which declaration made the marriage void *ab initio*. But the Marriage Act, 1835 (5 & 6 Wm. 4, c. 54), while validating all previous marriages within the degrees of affinity, made all future marriages within the prohibited degrees of consanguinity or affinity null and void, thus invalidating marriage with a deceased wife's sister, although contracted in a country, e.g., Denmark, where such a marriage is valid.—*Brook* v. *Brook*, (1858) 3 Sm. & Gif. 481, aff. in 1861, 9 H. L. C. 193.

The law prohibiting marriage with a brother's widow or a deceased wife's sister remained long in force in England, in spite of many attempts to follow the example of every state in Europe, the U.S.A., and most, if not all, the British colonies, in abolishing the prohibition. In 1907 the Deceased Wife's Sister's Marriage Act (7 Edw. 7, c. 47) became law. Marriage with a deceased wife's sister is not to be deemed void as a civil contract, whether it took place before or after the passing of the Act, unless

annulled before 28th August, 1907, or unless either party to such a marriage shall have lawfully married another person before that date during the lifetime of the other party. In either of these cases the marriage is to be deemed to have become void on the day it was annulled or on the day that the subsequent marriage took place. As to the history of this Act, see the note thereto in *Chitty's Statutes*. The Deceased Brother's Widow's Marriage Act, 1921 (11 & 12 Geo. 5, c. 24), and the Marriage (Prohibited Degrees of Relationship) Act, 1931 (21 & 22 Geo. 5, c. 31), amended and extended the Act of 1907 to cover marriages with as well a deceased brother's widow as a niece on his deceased wife's side, the widow of his father's deceased brother, his deceased wife's father's sister, his deceased wife's mother's sister, and the widow of his own nephew. The Act of 1931 gives the short collective title of the Marriage (Prohibited Degrees of Relationship) Acts, 1907–1931 to the three Acts. The Acts include within their provisions sisters and brothers of the half blood.

Impotence.—Impotence, as a reason for annulling marriage, must exist at the time of marriage, and be incurable; it makes the marriage only voidable by a suit by one of the parties during their joint lives (*A.* v. *B.*, (1868) L. R. 1 P. & D. 559), and the suit cannot be brought by the impotent person.

Concealed Pregnancy by Another Man.—Concealment of pregnancy by another man was no ground of nullity (*Moss* v. *Moss*, 1897, P. 263). But the law is different in most other countries, e.g., in Cape Colony, by Roman Dutch law: see *Horak* v. *Horak*, (1861) 3 Searle, 389, and see now Matrimonial Causes Act, 1937, and DIVORCE.

Marriages Abroad.—A mixed Ecclesiastical and Common Law, is in force for parties, one at least of which is a British subject outside England, except as altered by special colonial or Indian legislation, not merely prohibitory and negative, but creating a nullity by express words (*Catterall* v. *Sweetman*, (1845) 4 N. C. 222, and (1847) 5 N. C. 466); and it has been decided that, in places where it is difficult or impossible to procure an ordained parson—e.g., up country in India—the Common Law will recognize a contract '*per verba de præsenti*' as a lawful marriage (*Maclean* v. *Cristall*, (1849) 7 N. C. Supp. XVII.). On this depended the validity of marriages solemnized in ambassadors' chapels, or before a British consul, or within British lines, or on board a man-of-war, or a merchant vessel, which are now regulated by the Foreign Marriages Act, 1892 (55 & 56 Vict. c. 23), and see also the Naval Marriages Act, 1908 (8 Edw. 7, c. 26), and generally, as to the Army and Navy, see 22 & 23 Geo. 5, c. 31.

As to marriages on board merchantmen, the master is, by s. 240 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), required to enter certain particulars in the official log-book. As to colonial marriages, the Colonial Marriages Act, 1865 (28 & 29 Vict. c. 64), gives the force of law, throughout the British dominions, to any Act for validating marriages contracted in any of his Majesty's possessions made by the legislatures of those possessions, provided both the parties are by the law of England competent to marry.

As to marriages between British subjects resident in the United Kingdom and British subjects resident in other parts of the King's dominions or in British Protectorates, see Marriage of British subjects (Facilities) Act, 1915 (5 & 6 Geo. 5, c. 40), and 1916 (6 & 7 Geo. 5, c. 21). Consult *Eversley and Craies, Marriage Laws of the British Empire.*

Foreign Marriages.—As to British subjects married in foreign Christian countries according to the forms and laws of those countries, the Common Law in ascertaining their validity is guided by the *lex loci contractus*, and if they are valid according to the *lex loci contractus*, is wont to recognize them as valid in England, provided the parties, being incompetent to marry in England, have not married abroad to evade those restrictions. As to children, legitimated '*per subsequens matrimonium*,' the English law did not, before the Legitimacy Act, 1926 (16 & 17 Geo. 5, c. 60), recognize them as legitimate so as to inherit realty upon an intestacy (*Birtwhistle* v. *Vardill*, (1840) 7 Cl. & Fin. 895). As to persons legitimated on or after 15th December, 1926, see that Act, s. 8, though it is otherwise as to personalty (*Re Goodman's Trusts*, (1881) 17 Ch. D. 266), and they could take under a specific devise of real estate to 'children' (*Gray* v. *Stamford*, 1892, 3 Ch. 88). The law of England will not recognize non-Christian, Mormon, or polygamous marriages; see *Re Bethell*, (1887) 38 Ch. D. 220. As to marriages of British subjects with foreigners abroad, see the Marriage with Foreigners Act, 1906 (6 Edw. 7, c. 40).

Marriages in Scotland.—These marriages are either 'regular,' i.e., celebrated by a minister of religion after due notice by the

publication of banns, or after posting in a conspicuous place on the outer wall of the registrar's office a notice under the Marriage Notices (Scotland) Act, 1878 (41 & 42 Vict. c. 43), or 'irregular' (see below). Any minister of any denomination may perform the marriage ceremony, which must take place before two witnesses after due proclamation of banns. One of the parties must have resided in Scotland for a minimum period of fifteen days.

Irregular Scots Marriages.—The capacity to contract valid irregular marriages in Scotland is recognized but restricted by Lord Brougham's Act (19 & 20 Vict. c. 96), for preventing Gretna Green marriages, by which, 'after 1856, no irregular marriage contracted in Scotland by declaration, etc., shall be valid, unless one of the parties had at the date thereof his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage.'

Irregular marriages can be contracted either *per verba de præsenti* or *per verba de futuro subsequente copula*. In the former case nothing more is necessary than a present interchange of consent, in whatever manner given, to become henceforth husband and wife. Consummation is not required; the consent may be exchanged most secretly, the parties may never have lived together, but still the mutual *intention*, when proved, constitutes marriage. The so-called marriage by habit and repute, or by declaring themselves husband and wife before witnesses, is merely evidence of such intention—evidence which may be rebutted if it be proved that the real intention of the parties was contrary to their outward acts. See, e.g., the remarkable case where, in spite of an express public declaration before the woman's family by the man, 'Maggie, you are my wife, before heaven, so help me, O God!' it was held by the House of Lords that no real marriage was then *intended* by either of the parties (*Steuart* v. *Robertson*, (1875) L. R. 2 H. L. Sc. 494).

The irregular marriage *per verba de futuro subsequente copula*—by promise, followed by cohabitation, to marry at a future time—differs from the irregular marriage *per verba de præsenti*, in the essential particular that it does not amount to a lawful marriage without having been declared so to be by special legal process or 'declarator,' whereas the marriage *per verba de præsenti*, if proved, amounts to a legal marriage without any such process. Moreover, the promise must either be proved by writing of the promisor, or by confession of it on oath. The result is that if the promise was not in writing the promise cannot be proved and the marriage declared after the death of the promisor. Such appears to be the better opinion (see per Lord Moncrieff in *Burns* v. *Burns*, cited in the Report of the Marriage Commission, 1868), but the question has not been judicially decided.

Irregular marriages require to be registered within twenty-one days by appearance before a sheriff and are not recognized unless this formality be complied with. Failure so to register a marriage may necessitate the raising of an Action of Declaration of Marriage in the Court of Session.

As to non-Christian marriage, see articles by Sir D. Fitzpatrick in *Journal of Society of Comparative Legislation*, August, 1900, and December, 1901.

See also HUSBAND AND WIFE; MARRIED WOMEN'S PROPERTY; DOMICILE; MARITAL RIGHTS; NECESSARIES; ROYAL MARRIAGES ACT; WILL.

Marriage Articles, the heads of an agreement for a marriage settlement. Generally speaking, expressions and limitations in these articles are allowed a more liberal meaning consistently with intention than formal conveyances and settlements, and as to words of limitation, see s. 130, Law of Property Act, 1925, and *Norton on Deeds*.

Marriage Brokage, a consideration paid for contriving a marriage, and illegal as contrary to public policy, so that money paid under it may be recovered back (*Herman* v. *Charlesworth*, 1905, 2 K. B. 123).

Marriage Officer, an officer who can celebrate marriage in foreign countries and British Possessions under the Foreign Marriages Act, 1892.

Marriage, Promise of, need not be in writing, although an 'agreement in consideration of marriage' must be, by s. 4 of the Statute of Frauds. So it was decided, overruling an earlier decision to the contrary, about 200 years ago, and the question does not appear to have been raised since 1717. In early times the spiritual courts enforced specific performance of the promise, and this jurisdiction was not formally abolished until the reign of George II., by 26 Geo. 2, c. 33. In an action for the breach of the promise, the parties were excepted (amongst others) from the general abolition of admissibility of parties as witnesses under the Evidence Act, 1851, but this

exception was removed by the Evidence Further Amendment Act, 1869, under which, however, the plaintiff may not 'recover a verdict' unless his or her testimony be corroborated by some other material evidence in support of such promise. The mere non-answering of a letter is not, however, sufficient corroboration (*Wiedman* v *Walpole*, 1891, 2 Q. B. 534).

As to damages for breach of promise to marry sustained in regard to the estate of a deceased promisee, see Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), s. 1 (2) (*b*).

A promise by an infant is voidable and cannot be enforced unless renewed by him after he attains his majority (*Ditcham* v. *Worrall*, (1880) 5 C. P. D. 410). A promise by a married man is not actionable, if the promisee knew he had a wife living at the time of the promise (*Wilson* v. *Carnley*, 1908, 1 K. B. 729). In the case of a promise made after a decree nisi for divorce and pending decree absolute, the House of Lords held that the promise was not void as against public policy (*Fender* v. *Mildmay*, (1937) 106 L. J. K. B. 641), and see ILLEGALITY. As to defence of illness, see *Jefferson* v. *Paskell*, 1916, 1 K. B. 57, and *Gamble* v. *Sales*, (1920) 36 T. L. R. 427.

Marriage Settlement, an arrangement made before marriage, and in consideration of it (the highest consideration known to the law), whereby real or personal property is settled for the benefit of the husband and wife and the issue of the marriage. There is an express saving for such a settlement in s. 19 of the Married Women's Property Act, 1882, and see the Married Women's Property Act, 1907 (7 Edw. 7, c. 1), invalidating a settlement made by a female infant unless confirmed after attaining 21, but without prejudice to settlements under the Infants Settlement Act, 1855 (see *post*, MARRIED WOMEN'S PROPERTY).

Although the policy of the land legislation of 1924 was to assimilate the law of real property to that of personalty as far as possible, marriage settlements of land (not being effected by way of trust for sale), and if providing for infant or for a succession of interests in land or charging land (but in this case subject to the Law of Property Amendment Act, 1926), are settlements within the meaning of s. 1 of the Settled Land Act, 1925, and must be effected by two instruments: (*a*) the vesting deed, and (*b*) the trust instrument; while settlements of land on trust for sale should also be effected by two deeds: (*a*) the conveyance on trust for sale, and (*b*) the trust instrument; see TRUST INSTRUMENT and VESTING DEED; SETTLED LAND.

Before 1926, marriage settlements were of different kinds, according as the property settled consisted of real or personal estate, and the distinction is still convenient. Speaking broadly, they still fall into three distinct classes, though of course with innumerable variations in details, the particular provisions to be inserted being a matter for discussion and arrangement between the parties and their legal advisers. (1) If it consists of real estate of considerable value which it is desired to preserve in the family, the property is frequently settled on the husband or the wife, according to the source of the property, for life, with remainder to the first and other sons in tail with remainder to the daughters in tail, the limitations formerly legal being now equitable, and the wife or husband and younger children being respectively provided for by a jointure or determinable life interest and portions charged on the estates. (2) If the property consists of real estate it is now more generally conveyed (see TRUST FOR SALE) to trustees upon trust to sell and hold the proceeds upon the trusts declared by a deed of even date, which declares the trusts of the proceeds in practically the same form as a settlement of personal estate. (3) If the property to be settled consists of personal estate, as stocks or shares, it is assigned to trustees upon trust for sale and to invest, pay the income to the husband and wife or *vice versâ*, according to the source of the fortune, successively for life, and on the death of the survivor hold the capital in trust for the issue of the marriage as the parents or the survivor may appoint, and in default of appointment for the children equally. It is a well-settled rule that the costs of the settlement are paid by the husband though the property settled may be that of the wife: see *Helps* v. *Clayton*, (1864) 17 C. B. N. S. 553.

By the Infant Settlements Act, 1855 (18 & 19 Vict. c. 43), a male of 20, or a female of 17, with the sanction of the Court may, subject to the provisions of the Settled Land Act, 1925, s. 27, make a binding settlement on marriage.

By the Judicature Act, 1925, s. 19 (1), the Divorce Court is empowered, in cases where a marriage has been dissolved, or a sentence of judicial separation has been pronounced, on the ground of the wife's adultery, to

order such settlement, as it shall think reasonable, to be made of any property to which the wife is entitled, for the benefit of the innocent party, and of the children of the marriage, or any of them; and any instrument executed by the order of the Court under this enactment shall be deemed valid, notwithstanding coverture at the time of execution. By Judicature Act, 1925, s. 192, the Court may, after a final decree of divorce or for nullity of marriage, inquire into any ante-nuptial or post-nuptial settlements, and make such orders as to the application of the property settled, for the benefit of the children of the marriage or of their parents, as seem fit, and the Court may exercise the powers conferred notwithstanding that there are no children of the marriage. See DIVORCE; *Browne and Watts on Divorce; Dixon on Divorce.*

In Scotland, the legal rights of spouses and children may be defeated by an ante-nuptial contract of marriage but not by a post-nuptial contract.

Married Woman. See HUSBAND AND WIFE.

Married Women's Property, At Common Law, a woman, by marrying, transferred the ownership of all her property, real and personal, present and future, to her husband absolutely, so that he might sell, pay his debts out of, give away, or dispose by will of it as he pleased, with these exceptions and modifications:—

(1) Her freehold estate became his to manage and take the profits of during the joint lives only. After his death, leaving her surviving, it passed to her absolutely; after her death, leaving him surviving, provided that it was an estate in possession and issue who could inherit had been born during the marriage, it passed to him as 'tenant by the curtesy (*q.v.*) of England,' during his life, and after his death to her heir-at-law.

(2) Her leasehold estate, her personal estate in expectancy, and the debts owing to her and other 'choses in action,' became his absolutely if he did some act to appropriate or reduce them into possession during the marriage, or if he survived her. If he did not do such act, they passed to her absolutely if she survived him.

(3) Her personal clothing and ornaments suitable to her condition in life and if given by the husband passed to her absolutely at her husband's death if he died solvent. See PARAPHERNALIA.

The almost complete control which the Common Law gave to the husband was much modified by the doctrines and practice of equity in allowing property to be given to a married woman 'for her separate use,' i.e., to the exclusion of her husband, and in recognizing and giving effect to settlements made on her marriage by which some control at least over her property was secured to her, and also in certain cases by compelling the husband to give the wife her 'equity to a settlement' by making a somewhat similar settlement of a proportion (usually one-half) of property coming to him in right of his wife during the marriage.

But these protections of the wife's property not being deemed sufficient by the Legislature, the Married Women's Property Act, 1870 (33 & 34 Vict. c. 93) (amended in 1874 by 37 & 38 Vict. c. 50), enacted (*inter alia*) that the earnings of a married woman, and also her deposits in a savings bank, should be deemed her separate property; that a married woman might procure investments in the funds or in shares or stock to be made to stand in her own name as her separate property; and that personalty to any amount coming to any woman married *after the passing of the Act* (9th August, 1870), as next of kin of an intestate, and personalty up to 200*l.* coming to her under any deed or will, should belong to her for her separate use.

A much greater step forward was taken by the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), which repealed and consolidated with important amendments, the Acts of 1870 and 1874. Sect 1 of this Act, as amended by the Married Women's Property Act, 1893 (56 & 57 Vict. c. 63), the Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), in relation to contracts, and the Law of Property Act, 1925, provided that a married woman, whether married before or after the Act, (1) should be capable of acquiring, holding, and disposing, by will or otherwise, of any real or personal property as her separate property, in the same manner as if she were a *feme sole* (including property which she may hold as a trustee or personal representative (Law of Property Act, 1925, s. 170)) without the intervention of a trustee; (2) should be capable of contracting, so as to bind her separate property as if she were a *feme sole*: (3) should bind her separate property by her contracts, whether she be possessed of or entitled to separate property at the date of the contract or not; (4) should so bind her after-acquired, as well as her existing, property; and (5) should, if trading, whether sepa-

rately from her husband or not, be subject to the laws of bankruptcy as if she were a *feme sole*.

Now a married woman shall be subject to the law relating to bankruptcy and to the enforcement of judgments and orders in all respects as if she were a *feme sole* (Law Reform (M. W. and Tortfeasors) Act, 1935, s. 1). except that she cannot be made bankrupt on any judgment or order upon a contract, debt or obligation incurred before the 2nd August, 1935, if she was not carrying on a trade or business before that date (s. 4 (1) (c), *ibid.*).

Sect. 2 applied only to women *who married after the commencement of the Act* (1st January, 1883), and enacted that every woman who married after that date should be entitled to have and to hold as her separate property, and to dispose of all real and personal property which should belong to her at the time of the marriage, or should be acquired by or devolve upon her after marriage, including any wages, earnings, money and property gained or acquired by her in any employment, trade, or occupation in which she was engaged, or which she carried on separately from her husband, or by the exercise of any literary, artistic, or scientific skill.

As to the postponement of the claims of a husband, and of a wife, in the event of bankruptcy, see Bankruptcy Act, 1914, s. 36; s. 3 of the M. W. P. Act, 1882, being repealed, so far as relates to England and Wales.

Sect. 5 provided that property acquired *after the commencement* of the Act (1st January, 1883) by a woman married *before the commencement* of the Act, was to be held and was disposable by her as a *feme sole*.

These sections (1 to 5) of the Act of 1882 have been repealed by the Law Reform (Married Women and Tortfeasors) Act, 1935 (25 & 26 Geo. 5, c. 30). By s. 1 of this Act, subject as there provided, a married woman can (1) acquire, hold or dispose of any property as if she were a *feme sole*; (2) render herself or be rendered liable for any tort contract, debt, or obligation; (3) sue, and be sued in contract, tort or otherwise; and (4) be subject to bankruptcy, judgments and orders in all respects as if she were a *feme sole*; but see the saving clauses in s. 4, *supra*; and by s. 2, all property which immediately before the 2nd August, 1935, was her separate property or held for her separate use in equity belongs to her now as a *feme sole*, so does all property which belongs to a woman at the time of any marriage after the 1st August, 1935, or after that date is acquired by or devolves upon her except property which has been restricted from anticipation or alienation by statute before the 2nd August, 1935, or by any instrument executed before the 1st January, 1936, and apparently for that purpose an instrument is to be deemed to be executed before 1936 if the restraint was imposed in pursuance of a pre-existing obligation, and the date of the exercise of a special power providing the restriction is that of the instrument exercising the power and not that of the instrument creating the power, and the will of a testator dying after 1945 shall, notwithstanding the actual date thereof, be deemed to have been executed after the 1st January, 1936. Subject to these provisions, any restriction upon anticipation or alienation which could not have been attached to the enjoyment of property by a man is void if imposed by any instrument executed after 1935.

By ss. 6–9, stock, etc., standing in the name of a married woman or of a married woman and another was exempted from control by her husband, whose concurrence in the transfer of any such stock was dispensed with.

By s. 10, any investments by a wife of the moneys of her husband without his consent might be transferred to him by order of Court.

Sect. 19 provided (with a qualification for ante-nuptial debts and rights of creditors) that 'nothing in this Act contained should affect any settlement made or to be made, whether before or after marriage, respecting the property of any married woman,' or render inoperative 'any restriction against anticipation' [see ANTICIPATION] 'at present attached, or to be hereafter attached, to the enjoyment of any property or income by a woman under any settlement, agreement for a settlement, will, or other instrument.' Moreover, by s. 3 of the Act of 1893, s. 24 of the Wills Act, 1837, by which a will speaks from death, applied to the will of a married woman made during coverture, whether she was or was not possessed of or entitled to separate property at the time of making it, and the will did not require re-execution or republication after the death of her husband. Further amendment was made by the Married Women's Property Act, 1907 (7 Edw. 7, c. 18), by which (s. 1) a married woman could without her husband dispose

of trust estates, and (s. 3) could alone be protector of a settlement. Also, by the Poor Law Amendment Act, 1930 (20 Geo. 5, c. 17), s. 14, a married woman having separate property is liable to maintain her parents, thus altering the law as laid down in *Pontypool Guardians* v. *Buck*, 1906, 2 K. B. 896.

A married woman cannot sue her husband for tort unless the action is for the protection and security of her separate property (*Ralston* v. *Ralston*, 193[illegible], 2 K. B. 238).

A restraint or anticipation on her property if land brings it within the categories of 'settled land' (see Settled Land Act, 1925, s. 1), and by the Law of Property, s. 127, acknowledgments by woman married before 1883, of disposition of land or money to be laid out in land, are no longer required if the husband concurs in the deed. In regard to the torts by a married woman and the husband's liability, see HUSBAND AND WIFE. Consult *Lush on Husband and Wife*.

Marrow, author of a famous book, written in the reign of Henry VII., and said to be still in manuscript, on the office of a justice of the peace—a work which has been quoted by later writers, such as Fitzherbert and Lambard, with great commendation, and seems to have been followed by them on the subject. 4 *Reeves*, c. xxvii. p. 186.

Marshal, or **Mareschal,** primarily denotes an officer who has the care or command of horses.

An officer called a marshal attends each judge on the assizes (being paid by the Treasury two guineas a day during the continuance of the circuit). The office is now practically a sinecure, but formerly the marshal made abstracts of indictments, and received records for trials, etc. The judge appoints his marshal and pays his travelling and other expenses during the time he resides with him. See Jud. Act, 1873, s. 77; see now Jud. Act, 1925, s. 226 (4).

Marshal (Earl). See CHIVALRY, COURT OF.

Marshal of the Queen's Bench, an officer who had the custody of the Queen's Bench Prison. The 5 & 6 Vict. c. 22 abolished this office, and substituted an officer called Keeper of the Queen's Prison.

Marshalling, the act of arranging or of putting into proper order.

The doctrine of marshalling assets and securities depends upon the principle that a person, having two funds out of which to satisfy his demands, shall not, by his election, prejudice a person who has only one such fund. If, therefore, one who has a claim upon two funds resorts to the only fund upon which another has a claim, the latter stands in his place for so much against the fund to which otherwise he could not have access: the object being that every claimant shall be satisfied as far as, by any arrangement consistent with the nature of the several claims, the property which they seek to affect can be applied in satisfaction of such claims.

In the administration of the estates of deceased persons, marshalling consists of arranging the assets so as to give effect to the priority of debts, as to legal assets on the one hand, and to the order of assets on the other. Now that all the assets are liable to be applied for the payment of any debt, marshalling assets in favour of creditors is no longer necessary, but it may sometimes be required between legatees when some of the legacies are charged on the realty and some are not; and when legacies charged and one not charged are given to the same person. These doctrines have not been affected by the vesting of real property in personal representatives (Administration of Estates Act, 1925, s. 2), except that by s. 34, *ibid.*, some alteration in the order of administration of solvent estates is provided for. See ADMINISTRATION; *Seton on Judgments*; *Aldrich* v. *Cooper*, (1802) 8 Ves. 308; 1 *W. & T. L. C.*, p. 36; 2 *ibid.*, pp. 109 *et seq.*

The doctrine of marshalling in relation to mortgages results in the general rule that where an owner of several properties has mortgaged them to the same person and afterwards deals separately with the equity of redemption in one or more of the properties either by way of mortgage of otherwise, the person or persons interested in the equities so dealt with are entitled, as against the mortgagor, to require that the first mortgage shall be paid off in the first place out of the property not so dealt with, or if that mortgage is paid off out of the property in which they are so interested, to stand *pro tanto* in the place of the first mortgagee in regard to the property which has not been resorted to for satisfying his security: *Coote on Mortgages*.

Marshalsea, Court of the, originally held before the steward and marshal of the royal house, to administer justice between the sovereign's domestic servants, that they might not be drawn into other courts, and their service become lost. It held pleas of all trespasses committed within the verge

of the court (twelve miles round the sovereign's residence), where only one of the parties was in the royal service (in which case the inquest was taken by a jury of the country); and of all debts, contracts, and covenants where both of the contracting parties belonged to the royal household, and then the inquest was composed of men of the household only. But this court being ambulatory, Charles I. erected a new court of record, called the *curia palatii*, or Palace Court, to be held before the steward of the household and knight marshal, and the steward of the court or his deputy, with jurisdiction to hold plea of all manner of personal actions whatsoever which should arise between any parties within twelve miles of the royal palace at Whitehall, not including the city of London.

The court was held once a week for causes under 20*l.*, together with the ancient Court of Marshalsea, in the borough of Southwark, and a writ of error lay thence to the Court of King's Bench. Abolished by 12 & 13 Vict. c. 101, s. 13.

Marshalsea Prison. By 5 & 6 Vict. c. 22, amended by 11 & 12 Vict. c. 7, this prison is consolidated with others, and denominated the Queen's Prison, which see. As to the Four Courts Marshalsea (Dublin) Prison, see 37 & 38 Vict. c. 21, discontinuing the same.

Mart [contracted fr. market], a place of public traffic or sale.

Martial, Courts. See COURT-MARTIAL, and *Simmonds* or *Finlason* or *Thring on Courts Martial.*

Martial Law, in the proper sense of the term, means the suspension of ordinary law and the government of a country or parts of it by military tribunals. It must be clearly distinguished (1) from 'military law' (see that title), and (2) from that 'martial law' which forms part of the laws and usages of war. The term 'martial law' is also sometimes used as meaning the common law right of the Crown to repel force by force in the case of insurrection, invasion or riot, and to take such exceptional measures as may be necessary for the purpose of restoring peace and order: *Manual of Military Law,* pp. 3, 4. Martial law was prohibited by the Petition of Right Act of Charles the First, 3 Car. 1, c. 1, s. 7, but was specially authorized by the temporary 43 Geo. 3, c. 117, 3 & 4 Wm. 4, c. 4, and the Restoration of Order in Ireland Act, 1920 (10 & 11 Geo. 5, c. 31), in Ireland. It was proclaimed in Jamaica without authority by Governor Eyre in 1865, but followed by a Jamaica Act of Indemnity, which was held good in *Phillips* v. *Eyre,* (1870) L. R. 6 Q. B. 1—Ex. Ch.; and see the Indemnity Act, 1920 (10 & 11 Geo. 5, c. 48), relating to acts done in the War, commencing 4th August, 1914. Consult *Dicey's Law of the Constitution.*

Martinmas, the feast of St. Martin of Tours, on the 11th November; sometimes corrupted into *martilmas* or *martlemas.* It is the third of the four cross quarter-days of the year.

Martyria, a figure of rhetoric, by which the speaker brings his own experience in proof of what he advances.

Masagium, a messuage.

Masculine. Statutes passed prior to 1850 frequently declared that words in them which import the masculine gender shall be deemed to include females, unless there is something in the Act inconsistent therewith. In 1850, by 13 & 14 Vict. c. 21, s. 4, this provision was made general so as to dispense with its repetition with each particular case in future, and in 1889 the Interpretation Act, 1889 (see that title), repealed and re-enacted the provision.

Massamore, or **Massy More,** *massamora,* an ancient name for a dungeon, derived from the Moorish language, perhaps as far back as the time of the Crusades.

Master [fr. *meester,* Dut.; *maistre,* Fr.; *magister,* Lat.], a director; a governor; a teacher; one who has servants; the head of a college; the captain of a ship; an officer of the Supreme Court; and see MASTERS.

Master and Servant, a relation whereby a person calls in the assistance of others, where his own skill and labour are not sufficient to carry out his own business or purpose. See LABOURERS.

Servants are of several descriptions:—1st. Servants in husbandry. These are very generally hired by the year, as from Michaelmas to Michaelmas, and this is an entire hiring for a year; and, unless otherwise stipulated, no wages are payable until the end of the year. Consult *Burn's Justice,* tit. '*Servants.*'

2nd. Servants in particular trades. These (who are now more frequently termed 'workmen,' their masters being termed 'employers') are subject to the control of the magistrates under the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), and by the Truck Acts (see that title) their wages must be paid in coin.

3rd. Apprentices. These are placed with

the master to learn his trade, with a view hereafter of following it themselves. See APPRENTICE.

4th. Menial or domestic servants. If no terms be stipulated, it is considered a hiring with reference to the general understanding on the subject, that is, a continuing service until the expiration of a month's warning given by either party.

It is not compulsory in England for a master or mistress to give a discharged servant any character, and no action is sustainable for the refusal (*Carroll* v. *Bird*, (1800) 3 Esp. 201). But if a character be given, it must accord with the truth; for if a false good character be given, and the servant afterwards rob his new master, the person who gave such false character is liable to an action, and to compensate for the entire loss; and he is liable to punishment in certain cases of false character under the Servants' Characters Act, 1792 (32 Geo. 3, c. 56). And if a bad character be untruly and maliciously given, the party giving it will be liable to an action for defamation, though, until the untruth of the character given and express malice have been proved, the communication is presumed to have been privileged, and no action is sustainable.

A stranger who deprives a master of the services of his servant by enticing him away in breach of his contract of service, or by some other wrongful act, is liable for the damage thus occasioned to the master.

A master is liable civilly for torts committed by his servant in the course of or under colour of his employ, but not for any wilful misfeasance of the servant. To this general liability the Common Law, as laid down in *Priestly* v. *Fowler*, (1837) 3 M. & W. 1, made the important exception that the master was not liable to a servant for the tort of a 'fellow-servant,' a term to which a very comprehensive meaning has been given by the cases. This defence is termed the defence of 'common employment' (see that title). But the Employers' Liability Act, 1880, has much modified this exception, by depriving the master of the defence of common employment in the case of negligence by a fellow-servant who occupied a position of superintendence. The doctrine of common employment applies to claims based on the negligence of a fellow-servant in the provision or maintenance of plant and property used in the master's business (see *Fanton* v. *Denville*, 1932, 2 K. B. 309).

The Workmen's Compensation Acts provide a statutory compensation for workmen who meet with accidents in their employment. See WORKMEN'S COMPENSATION ACT.

As to settlement of disputes between employers and workmen, see CONCILIATION.

Consult *Manley Smith*, or *Macdonell*, and *Chitty's Statutes*, tit. '*Master and Servant*,' on the law of master and servant generally.

Masters of the Bench. See BENCHERS.

Master of the Crown Office, the Crown coroner and attorney in the criminal department of the Court of King's Bench, who prosecuted at the relation of some private person or common informer, the Crown being the nominal prosecutor.—6 & 7 Vict. c. 20. He is now an officer of the Supreme Court. See CROWN OFFICE.

Master of the Faculties, an officer under the archbishop, who grants licences and dispensations, etc. The judge of the provincial Courts of Canterbury and York appointed under s. 7 of the Public Worship Regulation Act, 1874, became *ex officio* Master of the Faculties on the first vacancy occurring after the passing of that Act.

Master of the Horse, the third great officer of the royal household, being next to the Lord Steward and Lord Chamberlain. He has the privilege of making use of any horses, footmen, or pages belonging to the royal stables.

Master in Lunacy, an officer of the Lord Chancellor who executes commissions and conducts inquiries connected with persons of unsound mind and their estates, and carries out such other duties as are prescribed by the rules in lunacy and directions of the judge in lunacy (Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 111), and Lunacy Act, 1891, s. 27, conferring on the master the jurisdiction of a judge in lunacy as regards administration and management of estates subject to review by the judge. There were originally two masters, but now there is only one and an assistant master: Lunacy Act, 1922, and Administration of Justice (Misc. Prov.) Act, 1933, s. 8. The office of the master is now known as the Management and Administration Department (Patients' Estates Rules, 1934, r. 8). See also Lunacy Act, 1908, s. 1; Mental Deficiency Act, 1930, s. 5; The Mental Treatment Rules, 1930 (S. R. & O. 1930, No. 1083); and Patients' Estates Rules, 1934 (S. R. & O. 1934, No. 269/L2). Consult *Mills and Poyser* '*Lunacy Practice*.'

Master of the Mint, an officer who receives bullion for coinage, and pays for it and superintends everything belonging to the Mint. He is usually called the Warden of the Mint.

It is provided by the Coinage Act, 1870 (33 Vict. c. 10), s. 14, that the Chancellor of the Exchequer for the time being shall be the Master of the Mint.

Master of the Ordnance, a great officer, to whose care all the royal ordnance and artillery were committed.—39 Eliz. c. 7. But see 18 & 19 Vict. c. 117.

Master of Reports and Entries. This Chancery official was not to be continued after the next vacancy occurring after the Act 18 & 19 Vict. c. 134.

Master of the Rolls [*magister rotulorum*, Lat.], originally the chief of a body of officers called the Masters in Chancery, of whom there were eleven others, including the Accountant-General. The Master of the Rolls subsequently became a judge of the Court of Chancery, who ranked next to the Lord Chancellor, and had the keeping of the rolls and grants which passed the Great Seal, and the records of the Chancery. All orders and decrees by him made, except such as by the course of the Court, were appropriated to the Great Seal alone, were deemed to be valid, subject, nevertheless, to be discharged or altered by the Lord Chancellor, and were not enrolled till they were signed by the Lord Chancellor.—3 Geo. 2, c. 30.

This judge, by the Jud. Act, 1881, s. 2 (see now Jud. Act, 1925, s. 6 (2)), now sits in the Court of Appeal only. Before that Act he was the second judge of the Chancery Division of the High Court of Justice (Jud. Act, 1873, s. 31 (1)), and also an *ex-officio* judge of the Court of Appeal (Jud. Act, 1875, s. 4) (see now Jud. Act, 1925, s. 6 (2)). Before the Jud. Acts he was (alone among the judges) allowed to sit in the House of Commons. As to appointment, qualification, salary, pension, etc., see Jud. Act, 1925, ss. 6, 9, 11, 99 (4). He is a member of Rule Committee.

The Master of the Rolls enjoys other jurisdictions, e.g., over the admission of solicitors (Solicitors Act, 1933 (22 & 23 Geo. 5, c. 37), s. 15); the superintendence of public records under 1 & 2 Vict. c. 94; and Judic. Act, 1925, ss. 19 and 34; and manorial documents. See MANOR.

Master of the Temple, the chief ecclesiastical functionary of the Temple Church. The appointment is in the gift of the Crown.

Masters Extraordinary in Chancery, officers of the High Court of Chancery who performed duties similar to those now performed by commissioners for oaths. Now abolished.

Masters in Chancery, or Masters in Ordinary in Chancery (so called to distinguish them from Masters Extraordinary (*supra*)), were officers of the High Court in Chancery whose duties varied at different periods, being both judicial and ministerial. Abolished by 15 & 16 Vict. c. 80. See MASTER OF THE ROLLS.

Masters of the Common Law Courts. There were five Masters on the plea side of each of the Courts of King's Bench and Exchequer, and also in the Common Pleas. They were appointed by 7 Wm. 4 & 1 Vict. c. 30, and their duties were to tax costs, compute damages, attend the judges in court, etc. These officers became, under the Judicature Act, officers of the Supreme Court, and were attached to the Division of the High Court representing the Court to which they formerly belonged (Jud. Act, 1873, s. 77; Jud. Act, 1875, Ord. LX., r. 1). Under 30 & 31 Vict. c. 68, and the General Rules of Michaelmas Term, 1867, the Masters transacted a considerable portion of the business at Judges' Chambers; and they now have similar powers (R. S. C., Ord. LIV., r. 12).

Masters of the Supreme Court, in the King's Bench Division, officials, seven in number, deriving their title from the Jud. (Officers) Act, 1879 (see now Jud. Act, 1925, ss. 106, 122, Sched. III., Part I.), and filling the places of the Masters of the Common Law Courts, the King's Coroner and Attorney, the Master of the Crown Office, the two Record and Writ Clerks, and the three Associates. Their jurisdiction is mainly to hear summonses for directions (see DIRECTIONS, SUMMONS FOR), to supervise pleadings, and decide as to discovery. There are also Masters in the Chancery Division who have succeeded to the position and powers of the Chief Clerks of the Chancery judges, the title of 'Master of the Supreme Court' having been substituted for that of 'Chief Clerk' in 1897. Under the present system there are three sets of Chancery Chambers, each with four Masters and attached to two judges. The duties of the Masters are to hear summonses for directions, take accounts and answer inquiries pursuant to directions in judgments and orders, etc.; see Ord. LV., rr. 15 *et seq.* There is a third class of Masters who carry out the taxation of costs.

Masura, a decayed house; a wall; the ruins of a building; a certain quantity of lands, about four oxgangs.—*Old Records.*

Matches. See WHITE PHOSPHORUS.

Mate, the deputy of the master in a mer-

chant ship. There are sometimes one, sometimes two, three, or four.

Matelotage [fr. *matelot*, Fr.], the hire of a ship or boat.—*Cole.*

Materfamilias, the mother or mistress of a family.—*Civ. Law.*

Maternity Benefit. See NATIONAL INSURANCE.

Matertera, a maternal aunt; the sister of one's mother.

Matertera Magna, a great maternal aunt.

Math, a mowing.

Matricide. 1. Slaughter of a mother. 2. One who has slain his mother.

Matriculate, to enter a university.

Matrimonial Causes, suits for the redress of injuries respecting the rights of marriage. They were formerly a branch of the ecclesiastical jurisdiction, but were transferred to the jurisdiction of the Court for Divorce and Matrimonial Causes (now a branch of the High Court of Justice) by 20 & 21 Vict. c. 85.

'Matrimonial cause' now means any action for divorce, nullity of marriage, judicial separation, jactitation of marriage or restitution of conjugal rights (Judicature Act, 1925, s. 225).

See CONJUGAL RIGHTS; DIVORCE; NULLITY; ADULTERY; MARRIAGE; JUDICIAL SEPARATION; HUSBAND AND WIFE; and ASSIZES; and consult *Browne and Latey on Divorce.*

Matrimonial Causes Acts, 1857–1923; 1925 and 1937. See Short Titles Act, 1896, and Matrimonial Causes Act, 1937, for these collective titles; see the Acts, and consult *Browne and Watts* or *Dixon on Divorce.*

Matrimonium, the inheritance descending to a man *ex parte matris* (from his mother).

Matrimony, marriage; the nuptial state; the contract of man and wife. See titles MARRIAGE and HUSBAND AND WIFE.

Matrina, a godmother.

Matrix Ecclesias, the mother church, i.e., the cathedral, so called in relation to the parochial churches within the same diocese, or a parochial church in relation to chapels depending on it.—*Leg. Hen. I.* c. 19.

Matron, a married woman; a mother of a family; a female superintendent, as the matron of a school, hospital or a prison.

Matrons, Jury of. See JURY-WOMEN.

Maturity, the time when a bill of exchange or promissory note becomes due.

Maundy Thursday [fr. *maund*, Sax., an alms-basket, or *dies mandati*, Lat., the day of the command], the day preceding Good Friday, on which princes give alms.

Maxim [fr. *maximum*, Lat.], an axiom; a general principle; a leading truth so called, says Coke, *quia maxima est ejus dignitas et certissima auctoritas, atque quod maxime omnibus probetur.*—1 *Inst.* 11.

Modern opinion, however, does not rate maxims so highly, and Lord Esher, M.R., in *Yarmouth* v. *France,* (1887) 19 Q. B. D. at p. 653, in connection with *Volenti non fit injuria,* went so far as to say that they are almost invariably misleading, and for the most part so large and general in their language that they always include something which really is not intended to be included in them. Similarly, the late Mr. Justice Stephen (*Hist. Crim. Law,* 94) wrote:—'They are rather minims than maxims, for they give not a particularly great, but a particularly small, amount of information. As often as not the exceptions and qualifications are more important than the so-called rules'—which, while they mostly serve as good indexes to the law, are mostly bad abstracts of it. A contrary view, however, is given in a lecture by Mr. H. F. Manisty, K.C., on 'The Use of Legal Maxims,' delivered in Gray's Inn Hall to the Solicitors' Managing Clerks' Association in January, 1905: see *Law Times Newsp.* for January 14, 1905. Consult *Broom's Legal Maxims; Mews's Digest,* tit. '*Maxims,*' and see full collections in *Encyclopædia of the Laws of England,* and in *Bouvier's Law Dictionary,* tit. '*Maxim*' (where about 1500 are collected, including duplicates). Bacon collected 800, but published 25 only. His Introduction to them begins with the celebrated 'I hold every man to be a debtor to his own profession.'

Mayhem, the deprivation of a member proper for defence in fight, as an arm, leg, finger, eye, or a fore-tooth; yet not a jaw-tooth, or an ear, or a nose, because they have been supposed to be of no use in fighting. One circumstance peculiar to an action for mayhem was that the Court might, on view of the wound, increase the damages awarded by the jury.—3 *Salk.* 115. See Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 18, 29.

Mayhemavit (he has maimed).

Mayor [according to some, anciently written *meyr,* fr. the British *miret,* to keep, or fr. the Old English *maier,* power, not from the Latin *major,* although *maire* is the more probable derivation through the lingual corruption of '*major*'] the annual chief magistrate of a municipal borough, elected by the councillors under s. 15 of the Municipal Corporations Act, 1882 (45 &

46 Vict. c. 50), 'from among the aldermen or councillors, or persons qualified to be such,' on the 9th November of every year (*ibid.*, s. 61). Sects. 15 and 61 of the Municipal Corporations Act, 1882, have been repealed (except as to London) by the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), see ss. 18–20 of that Act. He receives little salary, if any. His principal duties are to act as returning officer at municipal elections, and in certain cases at parliamentary elections, as chairman of the meetings of the council, and as a justice of the peace for the borough.

Mayor, Aldermen, and Burgesses, the name of a municipal corporation of a borough to which the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), applies; see s. 8 of that Act (replaced, except as to London) by the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 17 (by which 'citizens' is substituted for 'burgesses' in the case of a city), re-enacting part of s. 6 of the Municipal Corporations Act, 1835.

Mayor's Court, London. See LORD MAYOR'S COURT.

Mayoralty, the office of a mayor.

Maypole, custom to erect and dance round.

Mead, or **Meadow** [fr. *mæde*, Sax.], ground somewhat watery, not ploughed, but covered with grass and flowers.

Meals. As to the provisions of meals for children attending elementary schools, see Education Act, 1921, ss. 82–85. In factories, etc., see FACTORIES.

Meal-rent, a rent formerly paid in meal.—*Jac. Law Dict.*

Mean, or **Mesne** [fr. *medius*, Lat.], a middle between two extremes, whether applied to persons, things, or time. See MESNE.

Mease [fr. *messuagium*, Lat.], a messuage or dwelling-house.—*Fitz. N. B.* 2; also half of a thousand.

Meason-due [corruption of *maison de Dieu*, Fr.], a house of God; a monastery; religious house, almshouse or hospital. See 39 Eliz. c. 5.

Measure [fr. *mensura*, Lat.], that by which anything is measured; the rule by which anything is adjusted or proportioned. See WEIGHTS AND MEASURES and DISTANCE. Section 13 (1) of the Weights and Measures Act, 1904 (4 Edw. 7, c. 28), enacts that the denomination of a length measure must be stamped upon it, s. 28 of the Act of 1878 having already prescribed the stamping upon a measure of capacity. The 25th chapter of Magna Charta prescribes one measure of wine, ale, and corn 'through our realm.'

Also an enactment of the National Assembly of the Church of England (*q.v.*).

Measure of damage, the test which determines the amount of damages to be given. The general rule in English law is that in contract the measure of damage is the *actual* loss to the plaintiff, and in tort the compensation to the plaintiff for the loss or damage which it may be supposed he has suffered directly as a natural consequence of the act complained of. The exception is those cases where vindictive or exemplary damages can be given, e.g., libel, slander, violence, malice, cruelty, or breach of promise of marriage. The actual loss cannot always be recovered, as the whole or a portion of the loss may be too remote to be the natural and probable consequence of that which constitutes the cause of action, and this will most frequently occur in actions of tort. Though unable to prove actual loss, a plaintiff may sometimes be entitled to nominal damages, e.g., breach of an agreement to lend money. In actions of contract, the market-price of the subject-matter at the date the contract is broken will as a rule give the measure of damage. The leading case upon the subject is *Hadley* v. *Baxendale*, (1854) 9 Exch. 341. Profits upon an expected re-sale cannot, in English law, be recovered, though this would appear to be at variance with the law in Scotland as laid down in *Dunlop* v. *Higgins*, (1848) 1 H. L. C. 381, *unless* such re-sale, or sub-contract, was in the contemplation of the parties at the time of making the first contract.

Damages for breach of contract for sale of land are regulated as a rule on the following principles. In an open contract or in the absence of the usual conditions, upon breach by the purchaser the vendor cannot recover the price by way of damages but he may recover his loss, if any, upon a re-sale and his expenses, giving credit for the deposit, if any. Upon breaches by the vendor, if the breach complained of is that he has failed to show title on an open contract, the purchaser cannot recover his loss upon the contract, but only his expenses. If, however, the breach has been caused by failure to make good a title which he has expressly undertaken to sell or if he has not perfected his title where he could have done so reasonably, or has committed a breach of trust by selling or where he has been prevented from completing by his own default, the purchaser may recover the amount of his loss and any other damages which he may have suffered by the breach.

For the measure and limitation of damages under the Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), s. 1, see *Rose* v. *Ford*, 1936, 1 K. B. 90; DAMAGES; ACTIO PERSONALIS and LAW REFORM; DEATH. See *Smith's L. C.*, notes to *Hadley* v. *Baxendale*, and *Maine on Damages*.

Measurer, or **Meter,** an officer in the City of London who measured woollen cloths, coals, etc. See ALNAGER.

Measuring Money, a duty which some persons exacted, by letters-patent, for every piece of cloth made, besides alnage. It is abolished.

Meat, retail dealers in: see Retail Meat Dealers' Shops (Sunday Closing) Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 30), which provides for the compulsory closing of retail meat traders' shops and stalls on Sunday, with exemption in respect to Jewish retail dealers in meat, who may keep open on Sunday under license, on giving notice to the local authority and displaying notices as provided by the Act, but he must not keep open on Saturday. As to inspection and destruction of unsound meat, see Public Health (London) Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 50), s. 180, and see UNSOUND FOOD.

Mederia, a house or place where metheglin or mead was made.—*Old Records.*

Medfee, a reward; a bribe; that which is given to boot.—*Scots term.*

Mediæ et infimæ manus homines, men of a middle and base condition.—*Blount.*

Medianus homo, a man of middle fortune.

Mediate testimony, secondary evidence, which see.

Mediators of Questions, six persons authorized by statute, who, upon any question arising among merchants, relating to unmerchantable wool, or undue packing, etc., might, before the mayor and officers of the staple, upon their oath, certify and settle the same; to whose determination therein the parties concerned were to submit.—27 Edw. 3, st. 2, c. 24.

Medical Benefit, See NATIONAL INSURANCE.

Medical Council. See GENERAL COUNCIL.

Medical Jurisprudence. See FORENSIC MEDICINE.

Medical Practitioners. The term is applied to physicians and surgeons. By s. 32 of the Medical Act, 1858, only a registered medical practitioner can sue for his charges, and by s. 6 of the Medical Act, 1886, a fellow of a College of Physicians may be prohibited by bye-law of the College from suing; and such bye-law has been passed. It is an offence for any person falsely to pretend that he holds a medical or surgical qualification (s. 40, Act of 1858), but it is not an offence merely to practise surgery or medicine: see *Whitwell* v. *Shakerly*, (1932) 147 L. T. 157 (bone-setter, osteopathic physician and surgeon). The registration of medical men is controlled by the Medical Council. See GENERAL COUNCIL, and Medical Acts of 1858, 1859, 1860, 1876, 1886, and 1905. The College of Physicians, with other bodies, was empowered to grant qualifications of registration to women by the Medical Act, 1876 ('Russell Gurney's Act'). See also APOTHECARIES.

Medical Officer of Health. Under the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), ss. 106—112 each urban authority and each rural authority must appoint such an officer, and may make regulations as to his duties; and by s. 103, every county council may appoint such an officer; and see Public Health Act, 1936, s. 3, and 1st Sched. as to Port Health Districts; and HOUSING.

Medical Referee. Section 38 of the Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), provides for the appointment and remuneration of medical referees. See ASSESSORS.

Medical Treatment. Section 80 of the Education Act, 1921, imposes a duty on the local education authority of medical inspection of children attending a public elementary school and of attending to their health and physical condition. The cost of medical treatment may be recovered from the parent (s. 81).

Medical Witnesses may be ordered to attend at an inquest by the coroner under the Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 21.

For some valuable hints as to the conduct of medical witnesses, consult *Taylor's* or *Beck's Med. Jur.*, tit. '*Medical Evidence.*'

Medicine, adulteration of. See ADULTERATION.

Medico-legal [*medico-legalis*, Lat.], relating to the law concerning medical questions.

Medietas linguæ. See DE MEDIETATE LINGUÆ.

Medio acquietando, a judicial writ to distrain a lord for the acquitting of a mesne lord from a rent, which he had acknowledged in court not to belong to him.—*Reg. Jur.* 129.

Meditatio fugæ. A debtor *in meditatione fugæ* (meditating flight) may, by the law of Scotland, be arrested by warrant obtained

for that purpose. *Scots Law.* See ARREST ON MESNE PROCESS.

Medlefe, Medleta, Medletum [fr. *mêler*, Fr., to meddle], a sudden scolding at and beating one another.—*Bract.* 1, 3, c. xxxv.

Med-sceat, a bribe; hush-money.—*Anc. Inst. Eng.*

Medsypp, a harvest supper or entertainment given to labourers at harvest-home.

Meeting, an assembly of persons whose consent is required for anything to decide, by a proper majority of votes, whether or not that thing shall be done; e.g., the meeting of the town council under s. 22 of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), or Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 75.

By Common Law in the absence of other provisions a corporation is bound by the majority present at a regular corporate meeting and not only by an absolute majority of the corporation (this does not apply to companies): *Perrott and Perrott Ltd.* v. *Stephenson*, 1934, 1 Ch. 171; and see *Kyd on Corporations*, Vol. 1, p. 400; or of the parish or parish council: see PARISH COUNCIL; PARISH MEETING. Also a meeting of the shareholders of a company under ss. 66–80 of the Companies Clauses Act, 1845 (8 & 9 Vict. c. 16). As to meetings of creditors, see Bankruptcy Act, 1914, ss. 13, 79 and 95. A company formed under the Companies Act, 1929, and limited by shares must hold a general meeting ('statutory meeting') not earlier than one nor later than three months after the date upon which it may begin business (s. 112), and an 'annual general meeting' each year (s. 113). 'Extraordinary meetings' are meetings called upon requisition of holders of one-tenth of the capital-carrying votes (s. 114), to transact special business, which is previously notified to those concerned; an ordinary meeting may also be convened by members or by the Court (s. 115).

As to meetings by creditors and contributories, see WINDING-UP. A resolution at an adjourned meeting is dated by the date of passing.

Meetings of seditious societies are restrained by the Seditious Meetings Act, 1817 (57 Geo. 3, c. 19). In *Thomas* v. *Sawkins*, 1935, 2 K. B. 249, the right was upheld to enter private premises to attend a meeting to which the public were invited, in reasonable anticipation of misdemeanours or breach of the peace. And see also PUBLIC MEETING. Consult *Crewe, Procedure at Pub. and Co. Meetings.*

Megbote, a recompense for the murder of a relation.—*Saxon word.*

Meigne, or **Maisnader,** a family.

Meiny, Meine, or **Meinie,** the royal household; a retinue.

Meldfeoh, the recompense due and given to him who made discovery of any breach of penal laws committed by another person, called the promoter's (i.e., informer's) fee.

Melieur serra prize pour le roy. *Jenk. Cent.* 192.—(The best shall be taken for the king.)

Melior est conditio defendentis.—(The condition of the party in possession is the better one, i.e., where the right of the parties is equal.) See *Broom's Leg. Max.*

Melior est conditio possidentis, et rei quam actoris. 4 *Inst.* 180.—(The condition of the possessor is the better, and the condition of the defendant than that of the plaintiff.

Melior est conditio possidentis ubi neuter jus habet. *Jenk. Cent.* 118.—(The condition of the possessor is the better where neither of the two has a right.) See POSSESSION IS NINE POINTS OF THE LAW.

Melior est justitia vere prævenienș quam severè puniens. 3 *Inst. Epil.*—(Justice truly preventing is better than severely punishing.)

Meliorations, improvements.—*Scots term.* And see BETTERMENT.

Meliorem conditionem suam facere potest minor deteriorem nequaquam. *Co. Litt.* 337.—(A minor can make his own condition better, but by no means worse.) See INFANT.

Melius est omnia mala pati quam malo consentire. 3 *Inst.* 23.—(It is better to suffer every ill than to consent to ill.)

Melius [or **satius**] **est petere fontes quam sectari rivulos.**—(It is better to go to the fountain head than to follow streamlets.) See COMPENDIA.

Melius inquirendum, ad, a writ for a second inquiry, where partial dealing was suspected; and particularly of what lands or tenements a man died seised, on finding an office for the king.—*Fitz. N. B.* 255. For instance of a second inquiry before a coroner, see *Reg.* v. *Carter* (1876) 45 L. J. Q. B. 711; and for express legalization of such inquiry, see Coroners Act, 1887 (50 & 51 Vict. c. 71), s. 6.

Member of Parliament, abbreviated **M.P.** See HOUSE OF COMMONS. Lords spiritual and temporal are also a constituent part of Parliament. See HOUSE OF LORDS.

Members, places where anciently a custom house was kept, with officers or deputies in attendance. They were lawful places of exportation or importation.—*Beawes. Lex Mer.*, 6th ed., vol. i. p. 246

Membrum, a slip or small piece of land.

Memorandum of Association. See ASSOCIATION, MEMORANDUM OF.

Memorandum in Error, was a document alleging error in fact, accompanied by an affidavit of such matter of fact.—Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), s. 158. See ERROR.

Memorial, that which contains the particulars of a deed, etc., and is the instrument registered, as in the case of an annuity, which must be registered.

Memory, Time of Legal. By Statute Westminster the First, 3 Edw. 1, A.D. 1276, the time of memory was limited to the beginning of the reign of Richard I., July 6, 1189 : 2 *Inst.* 238, 239. But see the Prescription Act, 2 & 3 Wm. 4, c. 71.

Menace, a threat. By the Larceny Act, 1916, s. 30, it is made felony to demand with menaces property, money, etc. ; and see *Termes de la Ley.* But see MEIGNE ; and MEINY.

Menagium, a family.—*Wals.*, p. 66.

Mendlefe. See MEDLEFE.

Menials [fr. *mœnia,* Lat., walls], those servants who live within their master's walls.—*Termes de la Ley.*

Mens Rea, a guilty mind. See ACTUS NON FACIT REUM, NISI MENS SIT REA. Although *primâ facie* and as a general rule there must be a mind at fault before there can be a crime, it is not an inflexible rule, and a statute may relate to such a subject-matter and may be so framed as to make an act criminal, whether there has been any intention to break the law or otherwise to do wrong or not. There is a large body of municipal law at the present day which is so conceived. Bye-laws are constantly made regulating the width of thoroughfares, the height of buildings, the thickness of walls and a variety of other matters necessary for the general welfare, health or commerce, and such bye-laws are enforced by the sanctions of penalties ; the breach of them constitutes an offence and is a criminal matter, . . . and in such a case the substance of the enactment is that a man shall take care that the statutory direction is obeyed and that if he fails to do so he does so at his peril—WILLS, J. : *R.* v. *Tolson,* (1889) 23 Q. B. D. 173. See also BRETT, J. : *R.* v. *Prince,* (1875) L. R. 2 C. C. R. 163 ; *Monsell Bros. Ltd.* v. *L. & N. W. Ry.,* 1917, 2 K. B., and *R.* v. *Wheate,* 1921, 2 K. B. 119 ; *Siviour* v. *Napolitano,* 1931, 1 K. B. 636 ; *Dobell* v. *Barber,* 1931, 1 K. B. 219. As to what must be considered in deciding whether *mens rea* need be pursued, see *Cambridge Law Journal,* Vol. VI., No. 1, 1936, p. 1.

Mensa, patrimony, or goods, and necessary things for livelihood.—*Jac. Law Dict.*

Mensâ et thoro, Divorce à. Superseded by a judicial separation. See À MENSA ET THORO, and MARRIAGE.

Mensalia, parsonages or spiritual livings united to the tables of religious houses, and called *mensal benefices* amongst the canonists. —*Blount.*

Mensura domini regis, or **Mensura regalis,** the royal standard measure, which was kept in the Exchequer, according to which all measures were to be made. But see MEASURE.

Mental Deficiency Act. See IDIOT.

Mental Reservation, a silent exception to the general words of a promise or agreement not expressed, on account of a general understanding on the subject. But the word has been applied to an exception existing in the mind of the one party only, and has been degraded to signify a dishonest excuse for evading or infringing a promise.

Mental Treatment Act, 1930. See PERSON OF UNSOUND MIND.

Mepris, neglect ; contempt.

Mer, or **Mere,** a fenny place, or piece of water.

Mera noctis, midnight.

Merannum, timbers ; wood for building.—*Old Records.*

Mereable [fr. *mercor,* Lat.], to be sold or bought.

Mercantile Agent. The Factors Act, 1839 (52 & 53 Vict. c. 45), s. 1, defines a mercantile agent as ' a mercantile agent having in the customary course of his business as such agent authority either to sell goods or to consign goods for the purpose of sale, or to buy goods or to raise money on the security of goods.' A mercantile agent has implied authority to pledge the goods entrusted to him (*Weiner* v. *Harris,* 1910, 1 K. B. 285). See also *Weiner* v. *Gill,* 1906, 2 K. B. 574 ; and *Kempler* v. *Bravingtons Ltd.,* (1925) 133 L. T. 680.

Mercantile Law Amendment Act, 1856 (19 & 20 Vict. c. 97). Its principal enactments are : (1) that a writ of execution shall not effect a title *bonâ fide* acquired before seizure ; (2) that in an action for breach of contract to deliver goods sold, a writ for the delivery of the goods may be obtained (these two sections are repealed by the Sale of Goods Act, 1893, and reproduced by ss. 26 and 52 of that Act) ; (3) that the consideration for a guarantee need not appear

in writing; (4) that a guarantee to or for a firm ceases upon a change in the firm (this section is repealed by the Partnership Act, 1890, and reproduced by s. 18 of that Act); (5) that a surety who discharges a liability is to be entitled to an assignment of all securities held by the creditor; (6 and 7) that an acceptance of a bill of exchange must be in writing, and that 'inland bill of exchange' bears a certain definition—these two sections are repealed by the Bills of Exchange Act, 1882, and reproduced by ss. 7 and 17 of that Act; (8) that as to repairs of ships, every port in the United Kingdom is to be deemed a home port; (9) that actions for merchants' accounts must be brought within six years; (10) that absence beyond seas is no disability availing the plaintiff within the Statute of Limitations; and (11) that part payment by one co-contractor is not to prevent the bar by the Statute of Limitations in favour of another co-contractor. See LIMITATIONS.

Mercantile Marine Fund, a fund consisting, under ss. 676–679 of the Merchant Shipping Act, 1894, of the fees paid on survey and measurement of ships, money arising from unclaimed property of deceased seamen, fees received by receivers of wreck, light dues, etc., etc., and applicable to the payment of salaries of mercantile marine officers, etc., under the Act. The 'General Lighthouse Fund' is substituted for the Mercantile Marine Fund by the Merchant Shipping (Mercantile Marine Fund) Act, 1898 (61 & 62 Vict. c. 44).

Mercat [fr.. *mercatus*, Lat.], market; trade.

Mercative, belonging to trade.

Mercature, the practice of buying and selling.

Mercedary [fr. *mercedula*, Lat., a small fee], one that hires.

Mercenarius, a hireling or servant.

Mercen-Lage, the Mercian Laws, which were observed in many of the Midland counties, and those bordering on the Principality of Wales, the retreat of the ancient Britons—one of the three principal systems of law prevailing in different districts about the beginning of the eleventh century.—1 *Bl. Com.* 65.

Merchandise Marks Act, 1887 (50 & 51 Vict. c. 28). See TRADE DESCRIPTION.

Merchant [fr. *marchand*, Fr.], one who traffics to remote countries; also, any one dealing in the purchase and sale of goods. See *Josselyn* v. *Parson*, (1872) L. R. 7 Exch. 127.

Merchantable, marketable. 'Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed' (Sale of Goods Act, s. 14 (2); and see also s. 15, and *Sumner, Permain & Co.* v. *Webb & Co.*, (C. A.) 1922, 1 K. B. 55).

Merchant Shipping. The Acts relating to Merchant Shipping have been twice consolidated: first, in 1854, by 17 & 18 Vict. c. 104; and, secondly, in 1894, by the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), which contains 748 sections and 22 schedules, the 22nd Schedule containing 48 repealed enactments.

By s. 713 of the Act the Board of Trade exercises a general control over merchant shipping. Additions and amendments have been made to the Act of 1894 by various Acts, the most important of which are: the Merchant Shipping Acts, 1906, 1907, 1911, 1920, and 1921; the Merchant Shipping (Stevedores and Trimmers) Act, 1911; the Merchant Shipping (Seamen's Allotment) Act, 1911; the Marine Conventions Act, 1911; Merchant Shipping (Certificates) Act, 1914; Merchant Shipping (Salvage) Act, 1916; Merchant Shipping (Wireless Telegraphy) Act, 1919; Merchant Shipping Acts (Amendment) Act, 1923; Fees (Increase) Act, 1923; Merchant Shipping (International Labour Conventions) Act, 1925; Merchant Shipping (Line Throwing Appliance) Act, 1928; Merchant Shipping (Safety and Load Line Conventions) Act, 1932. The law of pilotage is now contained in the Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31). See *Chitty's Statutes*, tit. '*Shipping*,' and consult *Temperley* or *Maclachlan on M. S. Acts.*

Merchants' Accounts. The period of limitation of action for the recovery of these is six years. See MERCANTILE LAW AMENDMENT ACT, 1856.

Merchants, Statute of, 13 Edw. 1, st. 3, repealed by 26 & 27 Vict. c. 125. See ACTON-BURNEL.

Merchet, a fine or composition paid by inferior tenants to the lord for liberty to dispose of their daughters in marriage. See *Kennet's Gloss.*, '*Maritagium.*'

Merciament, an amerciament, penalty, or fine.

Mercimoniatus Angliæ, the impost of England upon merchandise.

Mercy, Recommendation to. It has for many years been common for a jury in finding a prisoner guilty, especially where the crime is murder, to accompany their verdict by a recommendation of the prisoner to the mercy of the Crown on certain named grounds. Such a recommendation has no legal effect whatever, but is usually attended to. Convicts, however, have been hanged in spite of it.

Merger [fr. *mergo*, Lat., to sink], an annihilation, by act of law, of a particular in an expectant estate consequent upon their union in the same person without an intervening estate in another person—thus accelerating into possession the expectant which swallows up the particular estate. It is the drowning of one estate in another, and differs from suspension, which is but a partial extinguishment for a time; while extinguishment, properly so termed, is the destruction of a collateral thing in the subject itself out of which it is derived. 'In order that there may be a merger, the two estates which are supposed to coalesce must be vested in the same person at the same time and in the same right' (*Re Radcliffe*, 1892, 1 Ch. p. 231, per Lindley, L.J.). An estate tail, however, is an exception to the rule; for a man may have in his own right both an estate tail and a reversion in fee; and the estate tail, though a less estate, will not merge in the fee.—2 *Bl. Com.* 177.

The doctrine of merger probably results from the maxim, *Nemo potest esse dominus et tenens;* or perhaps from the inconsistency, but for it, of one person owning two estates in fact, whilst one of them, in law, includes the time or duration of both. 'Perhaps,' remarks Preston (3 *Conv.* 22), 'the rule that *nemo potest esse dominus et tenens* does not clearly, and beyond all controversy, furnish a principle to which the learning can be exclusively referred; yet of all other rules none affords principles to which the cases on merger bear a nearer affinity.'

When the same person has a legal estate in the fee, and is also entitled to the trust or beneficial ownership of that estate, the trust will merge in the legal ownership, but, on the other hand, the legal estate can never be extinguished in the equitable ownership.

Merger is either absolute or qualified, for an estate as against one person may be extinguished, whilst as against another it may still have existence.

Before the passing of the Real Property Act, 1845 (8 & 9 Vict. c. 106) (repealed and reproduced by the Law of Property Act, 1925, s. 139), the doctrine worked great hardship in cases where the immediate reversion on a lease was a leasehold term; leaseholds, however long their term, being considered an inferior or less estate than a freehold, e.g., if the leasehold reversion became merged in an estate for life or other freehold estate, any sub-lease was terminated, the rent of the sub-lease and all remedies for it were lost. The Act of 1845, s. 9, declared that when the reversion on a lease became merged, the next estate was to be deemed the reversion, if the surrender or merger took place after the 1st October, 1845. See also SEVERANCE and APPORTIONMENT.

In order to effect a merger, the following circumstances must concur:—

(1) There must of necessity be two estates at least in the same property, or in the same part of the same property, which must vest in the same person.

Merger, however, will operate between three or more estates, as well as between two.

(2) The several estates must be immediately expectant upon each other; the more remote estate must be without any intervening vested estate or contingent remainder created in the same instant of time and by the same means which originated the other estate; and the determination or acquisition of an intermediate estate may be the cause of merger, as between estates kept distinct by means of such intermediate estate.

(3) The estate in reversion or remainder must be larger than the preceding estate, for there cannot be a merger as between equal estate of freehold.

Under s. 88 of the Law of Property Act, 1925, a foreclosure by a mortgagee will merge the mortgage term into and vest the fee simple in the mortgagee subject to any prior mortgage term, and a similar consequence, *mutatis mutandis*, follows upon foreclosure of a leasehold term (*ibid.*, s. 89).

By the Law of Property Act, 1925, s. 185, reproducing the Judicature Act, 1873, s. 25 (4), it is provided that there shall not, after the commencement of that Act, be any merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity. In equity merger is, and always has been, a question of the intention of the parties: *Capital, etc., Bank* v. *Rhodes*, 1903, 1 Ch. p. 652.

As to the merger of charges on property,

the general rule is that if the benefit of the charge and the property subject to it vest in the same person, equity will treat the charge as kept alive or merged according to whether it be of advantage or of no advantage to the person in whom the two interests have vested that the charge should be kept alive (*Manks* v. *Whiteley*, 1911, 2 Ch. p. 458, sub-title, *Whiteley* v. *Delaney*, 1914, A. C. 132; and see Law of Property Act, 1925, s. 185, reproducing Judic. Act, 1873, s. 25 (4); and also s. 116 of the Law of Property Act, 1925, which enacts that, subject to the above rule in equity, a mortgage term when discharged by payment shall become a satisfied term and shall cease; and consult *Coote on Mortgages*, 8th ed. pp. 1455 *et seq.*

When an engagement has been made by simple contract, and then the same engagement is made by deed, the simple contract is merged and extinguished in the deed. If an action is brought and judgment recovered, the right of action is said to be merged in the judgment: see *Aman* v. *Southern Railway Co.*, 1926, 1 K. B. 59.

The merger of a misdemeanour in a felony is abolished by the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 12, by which a prisoner tried for misdemeanour is not entitled to be acquitted of it if the facts proved amount in law to a felony.

Meritorious Consideration, one founded upon some moral obligation.

Merits, Affidavit of. This instrument is necessary when a defendant seeks to set aside, for irregularity, a judgment signed or other proceeding. The term 'merits,' in an affidavit of this nature, is to be read in a technical sense, and is not to be understood to be confined to strictly moral and conscientious defences; and defences of the Statute of Frauds or Limitations, and of Bankruptcy and Infancy, are defences on the merits.—2 *Chit. Arch. Prac.*

Mero Motu. See Ex mero motu.

Mers Eum, a lake; also a marsh or fenland.

Merse-ware, the ancient name for the inhabitants of Romney Marsh, Kent.

Mersey. As to collisions in the sea channels leading to the Mersey, see the Mersey Channels Act, 1897 (60 & 61 Vict. c. 21). The Mersey Docks and Harbour Board is the harbour authority for Liverpool and Birkenhead: see the Mersey Docks Consolidation Act, 1858 (21 & 22 Vict. c. xcii.); and Mersey Docks Act, 1881 (44 & 45 Vict. c. xlix.); Local Acts. The Minister of Transport is Commissioner of the Conservancy (9 & 10 Geo. 5, c. 50), s. 2.

Mertlage, a church calendar or rubric.

Merton, Statute of (20 Hen. 3, c. 4, A.D. 1235), the first Act of Parliament passed, so called because it was enacted at the Priory of Merton, in Surrey, about nine miles from London. Its principal unrepealed provisions (1) allow the inclosure or 'approvement' of commons by lords of manors, provided that the freeholders have sufficient pasture (subject to the consent of the Board of Agriculture and Fisheries (56 & 57 Vict. c. 57); (2) declare the illegitimacy of children born before marriage (see Legitimacy). It was in connection with provision (2) that the barons declared against any alteration, notwithstanding the request of the bishops that the law should be altered. '*Omnes Comites et Barones*,' runs the statute, '*unâ voce responderunt quod nolunt leges Angliæ mutare quæ usitatæ sunt et approbatæ*.' See Bastard; Inclosure.

Mescroyants, unbelievers.

Mese, a house and its appurtenances.

Mesnality, a manor held under a superior lord.

Mesnalty, the right of the mesne.

Mesne [fr. *medius*, Lat.], middle, intermediate.

Mesne Lord, a lord who holds of a superior lord, and of whom an inferior (tenant paravail) holds.

Mesne Process, all those writs which intervene in the progress of a suit or action between its beginning and end, as contradistinguished from primary and final process. Thus, the capias or mesne process was issued after a writ of summons, which was the primary process, and before a *capias ad satisfaciendum*, which was the final process, or process of execution. See Imprisonment.

By the Judgments Act, 1838 (1 & 2 Vict. c. 110), s. 1, the power of arrest upon mesne process was relaxed, and confined to the case of a debtor about to quit England, and where the amount of the debt was 20*l.* or upwards; and by the Debtors Act, 1869 (32 & 33 Vict. c. 62), s. 6, it is enacted, that 'after the commencement of the Act a person shall not be arrested upon mesne process in any action.' Nevertheless, where a plaintiff has good cause of action against the defendant to the amount of 50*l.* or upwards, and the defendant is about to quit England, and the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, a

judge may order the defendant to be arrested unless or until security be found.

Mesne Profits, Action of, an action of trespass brought to recover profits derived from land, whilst the possession of it has been improperly withheld: that is, the yearly value of the premises. 'Mesne profits are the rents and profits which a trespasser has, or might have, received or made during his occupation of the premises, and which therefore he must pay over to the true owner as compensation for the tort which he has committed. A claim for rent is therefore liquidated, while a claim for mesne profits is always unliquidated' (*Odgers on Pleading*).

The action should be brought in the name of the plaintiff, who has recovered judgment in the ejectment, and lies against any person found in possession of the premises after a recovery in ejectment.

The jury are not bound by the amount of the rent, but may give extra damages. But ground-rent paid by the defendant should be deducted from the damages. A plaintiff may recover in this action the costs of the action of ejectment.

As to the date from which mesne profits are assessable, see *Elliott* v. *Boynton*, 1924, 1 Ch. 236.

A claim for mesne profits in respect of the premises claimed may be joined with an action for the recovery of land (R. S. C. Ord. XVIII., r. 2). See EJECTMENT.

Mesne, Writ of, an ancient and abolished writ, which lay when the lord paramount distrained on the tenant paravail; the latter had a writ of mesne against the mesne lord.

Messarius [fr. *messis*, Lat.], a chief servant in husbandry; a bailiff.—*Dugd. Mon.*, tom. ii. p. 832.

Messenger, one who carries an errand; a forerunner.

Messengers are certain officers employed under the direction of the Secretaries of State, and always ready to be sent with dispatches, foreign and domestic (now called King's Messengers). They were employed with the secretaries' warrants to arrest persons for treason, or other offences against the State, which did not so properly fall under the cognizance of the Common Law, and, perhaps, were not properly to be divulged in the ordinary course of justice.—2 *Hawk. P. C.*, c. xvi., s. 9.

There are other officers distinguished by this appellation, as the messengers of the Lord Chancellor, Privy Council, and Exchequer, etc. Also, in bankruptcy, persons officially appointed who seize a bankrupt's property. The office of messenger of the Great Seal was abolished by 37 & 38 Vict. c. 81.

Messengers-at-Arms are the king's officers who execute all writs passing from the Court of Session. In actions emanating from the Supreme Court in Scotland personal service on a defender can only be effected by a messenger-at-arms.

Messe Thane, one who said Mass; a priest.

Messina, harvest.

Messis sementem sequitur.—(Harvest follows the sower.) But see EMBLEMENTS.

Messuage [fr. *messuagium*, Low Lat., formed perhaps fr. *mesnage*, by mistake of the *n*, in court hand, for *u*, they being written alike; or fr. *maison*, Fr.], a dwelling-house with its outbuildings and curtilage and some adjacent land assigned to the use thereof. See *Co. Litt.* 5 *b*, and Mr. Hargrave's note, as to what passes under the word 'messuage.' In *Monks* v. *Dykes*, (1839) 4 M. & W. 567, Parke, B., said that 'a messuage and a dwelling-house are substantially the same thing, and therefore if rooms be so occupied as to be in fact a dwelling-house, they may be described as a messuage.'

In Scotland the principal dwelling-house without a barony.—*Bell's Dict.*

Metachronism [fr. μετά, Gk., and χρονος, time], an error in computation of time.

Metage, measuring. The Corporation of London had formerly the right to dues for measuring merchandise, etc., especially grain.

Metals, Dealers in Old, defined as any person dealing in, buying, and selling old metal, scrap metal, broken metal, or partly manufactured metal goods, or defaced or old metal goods, and whether such person deals in such articles only, or together with second-hand goods or marine stores, and the term 'old metals' means the said articles. See Old Metal Dealers Act, 1861 (24 & 25 Vict. c. 110), relating to their trade requiring registration, and giving powers of visitation and search to the police; s. 13 of the Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112), by which any dealer in old metals who purchases any lead, copper, brass, tin, pewter, or German-silver in any quantity at one time less than 112 lb. in the case of lead, or than 56 lb. in the case of the other metals above mentioned, is guilty of an offence against the Act, and liable to a penalty not exceeding 5*l*. See also Public Stores Act, 1875, ss. 9, 10, and 11, and Public Health

Amendment Act, 1907 (7 Edw. 7, c. 53), s. 86, as to registration and keeping of books.

The Children and Young Persons Act, 1933 (23 Geo. 5, c. 12), s. 9, defines 'old metal' as including 'scrap metal, broken metal, or partly manufactured metal goods, and old or defaced metal goods,' and (on summary conviction not exceeding 5*l.*) imposes a fine upon a dealer in old metal, as defined by the Prevention of Crimes Act, 1871 (*supra*), who purchases 'old metal' from a person under 16 years of age.

Metayer System. Under this, the land is divided in small farms, among single families, the landlord generally supplying the stock which the agricultural system of the country is considered to require, and receiving, in lieu of rent and profit, a fixed proportion of the produce. This proportion, which is generally paid in kind, is usually (as is implied in the words *métayer*, *mezzajuólo*, and *medietarius*) one-half.—1 *Mill's Pol. Econ.* 296 and 363; and *Smith's Wealth of Nat.*, bk. iii. c. ii.

Metecorn, a measure or portion of corn given by a lord to customary tenants as a reward and encouragement for labour.

Metegavel [*meat-tax*, Sax.], a tribute or rent paid in victuals.

Meter [fr. *mete*, Sax.], an instrument of measurement, as a coal-meter, a land-meter.

Metewand or **Meteyard,** a staff of a certain length wherewith measures are taken.

Methel, speech, discourse; *mathlian*, to speak, to harangue.—*Anc. Inst. Eng.*

Metric System, a system (adopted in every European country except our own and Russia) in numbering of coinage, weights, measures, etc., wherein the *integer* is divided into fractions of a tenth, hundredth, etc., and no others. Contracts are not invalid on the ground that the weights or measures expressed therein are of the metric system. See s. 21 of the Weights and Measures Act, 1878, which has taken the place of the repealed Metric Weights and Measures Act, 1864 (27 & 28 Vict. c. 117), which recited that 'for the promotion and extension of our internal as well as our foreign trade, it was expedient to legalize the use of the metric system of weights and measures.' The Act of 1878, however, not authorizing the physical use of metric weights and measures, such physical use is expressly authorized by the Weights and Measures (Metric System) Act, 1897 (60 & 61 Vict. c. 46).

Metropolis. The principal city, being the seat of government, in any kingdom; the Cities of London and Westminster and the parishes adjacent thereto; the County of London. See LONDON.

Metropolis Management Act, 1855 (18 & 19 Vict. c. 120), amended by subsequent Acts, of which the most important is that of 1862 (25 & 26 Vict. c. 102), and to a great extent repealed by the Public Health (London) Act, 1891 (now repealed), the Local Government Act, 1894, the London Government Act, 1899, and the Public Health (London) Act, 1936 (26 Geo. 5, and 1 Edw. 8, c. 50). See LONDON, and *Chitty's Statutes*, tit. '*Metropolis*.'

Metropolitan. An archbishop, PRIMATE AND METROPOLITAN OF ALL ENGLAND, the Archbishop of Canterbury.—*Halsb. L. E.*, tit. '*Eccl. Law*.'

Metropolitan Board of Works, a board constituted in 1855 by 18 & 19 Vict. c. 120, and elected by vestries and district boards, who in their turn were elected by the ratepayers. The powers, duties, and liabilities of the board were transferred to the London County Council by s. 40, sub-s. 8, of the Local Government Act, 1888.

Metropolitan District. Places subject to the jurisdiction of the Metropolitan Board of Works (succeeded under the Local Government Act, 1888, by the London County Council), enumerated in Schedules A, B, C, to the Metropolis Management Act, 1855.

Metropolitan Police. The area which is under the control of the Metropolitan Police is the County of London (but not the City), the County of Middlesex, Croydon, West Ham, and such places within 15 miles of Charing Cross as the King by Order in Council has included (Metropolitan Police Act, 1829, ss. 2 and 34 and Schedule, and Metropolitan Police Act, 1839, ss. 2 and 5).

The Metropolitan Police Act, 1933 (23 & 24 Geo. 5, c. 33), gives power to appoint an additional assistant commissioner (s. 1), amends the age for compulsory retirement for senior officers (s. 2), makes amendments as to the constitution of the Police Federation (s. 3), gives power to appoint constables for a fixed period (s. 4)).

The numerous Acts dealing with the Metropolitan Police are collected in *Chitty's Statutes*, tits. '*Police* (*Metropolis*)' and '*Police* (*London*),' and also in an official *Metropolitan Police Guide*. See also the Police Regulations of 20th August, 1920, as amended by the Police Regulations of 24th March, 1922, 23rd March, 1923, and 19th March, 1924. As to the power of a Metropolitan Police Constable to make

arrests, see *Archbold's Crim. Pleading and Practice* and *Stone's Justices' Manual*.

Metropolitan Police Magistrates. There are 25 salaried Metropolitan Police Magistrates (maximum 27) appointed by the Crown to execute the duties of justices of the peace within the Metropolitan Police District. The qualification for this office is having practised as a barrister for at least seven years. Any such magistrate can do alone any act which may be legally done by more than one justice of the peace. There is also special jurisdiction to settle disputes about wages for labour on the Thames, to deal with cases of oppressive distraint for small rents, to order delivery to the owner of goods unlawfully detained up to 15*l.* value, and to give possession of deserted premises to landlords (see *Stone's Justices' Manual*). The senior Metropolitan Magistrate is *ex-officio* a justice for Berkshire (Indictable Offences Act, 1848). The Metropolitan Police Courts are: Bow Street, Clerkenwell, Marylebone, Marlborough Street, Westminster, Old Street, Thames, Tower Bridge, Lambeth, Greenwich, Woolwich, North London, West London, South Western, West Ham, Willesden. See Metropolitan Police Act, 1829; Metropolitan Police Courts Acts, 1839 and 1840; Stipendiary Magistrates Act, 1858, and numerous other Acts; see *Chitty's Statutes*. Any person aggrieved by the conviction of a court of summary jurisdiction in respect of any offence who did not plead guilty or admit the truth of the information may appeal to quarter sessions (Criminal Justice Administration Act, 1914), s. 37; and Criminal Justice Act, 1925, s. 25. This does not affect the alternative appeal to the High Court by way of case stated on a point of law given by the Summary Jurisdiction Act, 1857.

Metteshep or **Mettenschep,** an acknowledgment paid in a certain measure of corn; or a fine or penalty imposed on tenants for default in not doing their customary service in cutting the lord's corn.—*Old Records.*

Meubles meublant [Fr.], household furniture.

Mewar. See JODHPUR. An Indian State in Rajputana.

Meya, a mow or heap of corn.—*Blount, Ten.* 130.

Micel-gemote. See MICHEL-GEMOTE.

Michael Angelo Taylor's Act (57 Geo. 3, c. xxix.) (see *Chitty's Statutes*, tit. '*Metropolis*'), for better paving and regulating the streets of the Metropolis, partly superseded by the Metropolis Management Acts, and the Public Health (London) Acts, which repeal 'as from the coming into operation of any bye-law made for the like object,' s. 73 and other sections of M. A. Taylor's Act, but leaves unrepealed s. 73 of the Metropolis Management Act, 1862, which incorporates M. A. Taylor's Act, so far as in force and not inconsistent with the Act of 1862 and the Acts recited therein.

Michaelmas, the feast of the Archangel Michael, celebrated on the 29th of September, and one of the usual quarter-days.

Michaelmas Head Court, a meeting of the heritors of Scotland, at which the roll of freeholders used to be revised.—20 Geo. 2, c. 50. See *Bell's Scots Law Dict.*

Michaelmas Sittings of the Supreme Court commence on the 12th October, and terminate on the 21st of December. By Order in Council (The Long Vacation) (1935) Order, 1935, the sittings were ordered to commence on October 7th. The day of commencement is that which is appointed by Order in Council (see R. S. C. Ord. LXIII., r. 1).

Michaelmas Term began on the 2nd and ended on the 25th of November in every year. The division of the legal year into terms is abolished so far as relates to the administration of justice (Jud. Act, 1873, s. 26).

Michel-gemote, the great meeting or ancient Parliament of the kingdom.—1 *Bl. Com.* 147.

Michel-synoth, the great council of the Saxons.—1 *Bl. Com.* 147.

Michery, theft, cheating.

Middle-man, an intermediary between wholesale merchants and retail dealers; a distributor from producer to consumer.

Middlesex, Bill of, a writ anciently resorted to by the Court of King's Bench, in order to enlarge its jurisdiction in civil causes, which was formerly confined to actions of trespass, or other injury alleged to have been committed *vi et armis*. But it might always hold pleas of any civil action other than actions real, provided the defendant was an officer of the Court, or in the custody of the marshal, or prison-keeper of the Court. In proceedings against prisoners or officers of the Court, the actions were said to be commenced by bill, in all other cases by original writ. See 3 *Bl. Com.* 285; App. xviii. Both are abolished by 2 Wm. 4, c. 39.

Middlesex Quarter Sessions. The area over which the Quarter Sessions for the County of Middlesex has jurisdiction is now much

smaller than formerly, owing to the extension of the County of London, which has its own sessions (London Sessions). As a result, the Middlesex Sessions are no longer presided over by a paid judge and his assistant, but by an unpaid chairman and vice-chairman, as in other counties. Middlesex Sessions are held at the Guildhall, Westminster, and are not to be confused with London Sessions, which are presided over by a paid chairman and deputy-chairman, now held at the Sessions House.

Middlesex Registration of Deeds (7 Anne, c. 20, and 25 Geo. 2, c. 4); and see the Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), s. 8, as to non-registration of wills affecting realty in Middlesex; also the Land Registry (Middlesex Deeds) Act, 1891 (54 & 55 Vict. c. 64), by which the Middlesex Registry was transferred to the Land Registry. The Middlesex Deeds Register is defined in the Land Registration Act, 1936 (26 Geo. 5, and 1 Edw. 8, c. 26), s. 2. This Act provides for the closing of the register as from the appointed day (1st January, 1937), on which registration under the L. R. Act, 1925, became compulsory on sale of land throughout the administrative county of Middlesex. See REGISTRATION.

Midsummer Day, the summer solstice, which is on the 24th day of June, and the feast of St. John the Baptist, a festival first mentioned by Maximus Tauricensis, A.D. 400. It is one of the four usual quarter-days for the paying of rent.

Midwife. A person following the profession of delivering women of children. The Medical Act, 1886, by s. 3 requires as a qualification for registration as a medical practitioner, and for the recovery of professional charges, the having passed a qualifying examination in 'medicine, surgery, and midwifery.' The Midwives Act, 1902, as amended by the Midwives Acts, 1918 to 1937, penalizes any woman, not certified under the Act, who styles herself a midwife, or who habitually attends women in childbirth for gain; constitutes a Central Midwives Board to regulate the issue of certificates; establishes a 'Midwives Roll'; provides for the local supervision of midwives by county or county borough councils, and otherwise aims at securing the better training of midwives and the regulation of their practice. For the Acts and the Rules of the Central Midwives Board under it, see *Chitty's Statutes*. The Ministry of Health Act, 1919, provides that the Ministry shall exercise all the powers under these Acts which were previously exercised by the Privy Council. The 1936 Act imposes on local authorities the duty of the provision, either through welfare councils, voluntary organizations or by itself, of domiciling service of midwives (s. 1); ss. 2 and 3 deal with terms of employment and fees payable to midwives; s. 5 deals with compensation payable when midwives cease or are required to cease practice; s. 6 prohibits an unqualified person acting as maternity nurse for gain. As to Scotland, see Midwives (Scotland) Act, 1915.

Mile, a measure of length containing 8 furlongs, or 1760 yards, or 5280 feet.

Mileage, travelling expenses which are allowed to witnesses, sheriffs, and bailiffs, according to certain scales of fees observed by the officers of the several courts. Formerly, borough coroners received 9*d.* a mile for every mile beyond two, by s. 171 and Sched. IV. of the Municipal Corporations Act, 1882.

Miles [Lat.], generally, a soldier; particularly, a knight.

Milestone. The trustees of turnpike roads were, very early in the history of such roads (see 3 Geo. 4, c. 26, s. 119), under an obligation to set up and maintain milestones, but no such legal obligation is expressly imposed upon the managers of public highways, although the Highway Rate, etc., Act, 1882 (45 & 46 Vict. c. 27), repealed, except as to London and Scilly, by the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90); by s. 6 constituted 'the expenses incurred by a highway authority in maintaining, replacing, or setting up milestones on any highway' a 'lawful charge upon the highway rate.' Milestones are included among road improvements for purposes of the Development and Roads Improvement Funds Act, 1909, by the Roads Improvement Act, 1925, s. 2.

Militare, to be knighted.

Military Asylum of Chelsea, for the reception of children of soldiers, now called the Duke of York's Royal Military School.—17 & 18 Vict. c. 61; 10 Edw. 7 & 1 Geo. 5, c. 16.

Military Courts, the Court of Chivalry and Courts martial. See CHIVALRY, COURT OF, and COURTS MARTIAL.

Military Feuds, the genuine or original feuds which were in the hands of military men, who performed military duty for their tenures. See TENURE.

Military Forces. See ARMY; MILITIA; and RESERVE FORCES.

Military Law, as distinguished from civil

law, is the law relating to and administered by military courts, and is concerned with the trial and punishment of offences committed by officers, soldiers and other persons (e.g., sutlers and camp followers) who are from circumstances subjected for the time being to the same law as soldiers. But the term 'military law' is frequently used in a wider sense and as including not only the disciplinary but also the administrative law of the Army, as, for instance, the law of enlistment and billeting.—*Manual of Military Law*, p. 6. Consult *Clode's Military Forces of the Crown*.

Military Manœuvres may be executed within limits and during a period not exceeding three months by Order in Council authorized by the Military Manœuvres Acts, 1897 (60 & 61 Vict. c. 60) and 1911 (1 & 2 Geo. 5, c. 44).

Military Offences, those offences which are cognizable by the Courts military—as insubordination, sleeping on guard, desertion, etc, as well as any civil crime with special provisions in the case of manslaughter, treason, felony or rape. *Hals. L. E.*, tit. '*Royal Forces*.'

Military Service Acts of 1916 (5 & 6 Geo. 5, c. 104, and 6 & 7 Geo. 5, c. 15), introducing compulsory military service during the late war for men of 18 and under 41, were amended from time to time during the war, e.g., the age was extended to 51 in 1918, and are now repealed (S. L. R., 1927). See *Chitty's Statutes*, tit. '*Army*.'

Military Tenure, tenure in chivalry or knight service.

Military Testament. By s. 11 of the Wills Act, 1837, a soldier or sailor on active service may dispose of his personal estate as he might have done before that Act. The Wills (Soldiers and Sailors) Act, 1918 (7 & 8 Geo. 5, c. 58), extends this right to make wills without formalities to realty in the case of the above persons. As to seamen and marines, see also the Navy and Marines (Wills) Acts, 1865 (28 & 29 Vict. c. 72) and 1914. See NUNCUPATIVE WILL.

Militia, the national soldiery, as distinguished from the regular forces or standing army, being the inhabitants, or, as they have been sometimes called, the *trained bands* of a town or county, who are armed on a short notice for their own defence. As to its origin see *Hall, Cons. Hist.* iii. p. 259. The statutes on this subject make service compulsory upon all men between eighteen and thirty, who are to be selected by ballot (23 & 24 Vict. c. 120, s. 7), with exceptions for peers, clergymen, articled clerks, officers on half-pay, apprentices, poor men having more than one child born in wedlock, and other persons (42 Geo. 3, c. 90, s. 43); but by Acts dating from 10 Geo. 4, c. 10, the making of lists and the ballots and enrolments for the Militia were from time to time suspended.

Finally in 1865, by the Militia (Ballot Suspension) Act, 1865—a temporary Act, continued annually from time to time by successive Expiring Laws Continuance Acts—these statutes were suspended, subject to a power in the Crown to revive them by Order in Council.

Voluntary enlistment in the Militia, which was the practice long before the Suspension Act was passed, was regulated by the Militia Act, 1882, replacing the Militia (Voluntary Enlistment) Act, 1875, the schedule of which contains a long list of repealed Militia Acts. The Act of 1882, s. 12, and the Reserve Forces and Militia Act, 1898, reserve the Militia for service in the United Kingdom except as regards volunteers for service elsewhere.

The term Militia is now applied to that part of the Army Reserve which was formerly called the 'Special Reserve' (Territorial Army and Militia Act, 1921, s. 2; Reserve Forces Act, 1882, s. 12). This reserve force can be used in times of emergency and danger where required, but any member of this force can volunteer for service at other times than these. See also Territorial and Reserve Forces Act, 1907, s. 30.

Milk. As to the sale of unwholesome milk, see Public Health Act, 1875, ss. 116–119; and see, generally, Food and Drugs (Adulteration) Act, 1928, under which sampling powers are given and power to analyse samples, etc. (ss. 13 *et seq.*); and Public Health Amendment Act, 1907, ss. 53 and 54. See, further, the Milk and Dairies (Consolidation) Act, 1915 (5 & 6 Geo. 5, c. 66), as amended by the Milk and Dairies (Amendment) Act, 1922, making provision for the sale of milk and the regulation of dairies. If the premises are unsuitable for the sale of milk, the sanitary authority may refuse to register or may remove from the register the names of dairymen (Public Health (London) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 50), s. 185). See also the Milk (Special Designations) Order, 1923, No. 601; Public Health (Dried Milk) Regulations, 1923, No. 1323; Public Health (Condensed Milk) Regulations, 1925, No. 509; Milk and Dairies Order, 1926, No. 821; Milk (Special

Designations) Order, 1934, No. 1317. The Scotch Act is 4 & 5 Geo. 5, c. 46.

Milk for Meat, i.e., that the agister of cows should take their milk in exchange for their pasturage. See *London and Yorkshire Bank* v. *Belton,* (1885) 15 Q. B. D. 457, where it was held that under such an agreement the farmer is taking a ' fair price ' for the grass within s. 45 of the Agricultural Holdings Act, 1883 (s. 35 of the Act of 1923), by which live stock taken in to be fed ' at a fair price ' are exempted from distress for rent.

Milk Marketing Board. A milk marketing scheme has been made under the powers given in the Agricultural Marketing Act, 1931 (21 & 22 Geo. 5, c. 42), s. 1, and was approved on 28th July, 1933, by the Milk Marketing Scheme (Approval) Order, S. R. & O. 1933, No. 789. See the Milk Act, 1934 (24 Geo. 5, c. 51), and the Milk (Extension of Temporary Provisions) Act, 1936 (26 Geo. 5, and 1 Edw. 8, c. 9). See as to Milk Marketing Schemes and contracts by registered producers, *Milk Marketing Board* v. *Williams,* 1935, W. N. 82. As to *ultra vires* contributions towards the cost of operating the scheme, see *Ferrier* v. *Scottish Milk Marketing Board,* 1937, A. C. 126 (H. L. Sc.); and the Milk (Extension of Provisions) Act, 1936 (26 Geo. 5, and 1 Edw. 8, c. 9).

Milleate or **Mill-leat,** a trench to convey water to or from a mill.—7 Jac. 1, c. 19.

Milled Money, money with regular marking on edge of coin ; coined money.

Mill-holms, low meadows and other fields in the vicinity of mills, or watery places about mill-dams.

Minage, a toll or duty paid for selling corn by a measure called a mina.—*Jac. Law Dict.*

Minare, to dig mines.

Minator, a miner.—*Old Records.*

Minator carucæ, a ploughman.

Minatur innocentibus, qui parcit nocentibus. 4 *Co.* 45.—(He threatens the innocent who spares the guilty.)

Mine [fr. *mwyn* or *mwy,* Wel., fr. *maen,* a stone], an excavation or cavern in the earth ; an excavation made for the purpose of getting coal or other minerals.

The inspection and regulation of mines other than coal mines is provided for by the Metalliferous Mines Regulation Acts, 1872 and 1875. As to the corresponding provisions in the case of coal mines, see COAL MINES.

Coal mines only were rateable under 43 Eliz. c. 2, but the Rating Act, 1874 (37 & 38 Vict. c. 54), has made all mines rateable.

Neither mines under railways (see Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), ss. 77–85), nor under waterworks (see Waterworks Clauses Act, 1847 (10 Vict. c. 17), ss. 18–27), pass to the respective companies, unless expressly purchased. See also Mines (Working Facilities and Support) Acts, 1923, 1925, and 1934 ; the Coal Mines Act, 1926 (c. 17), and the Mining Industry Act (c. 28). By the Coal Mines Regulation Act, 1908, as amended by 9 & 10 Geo. 5, c. 48, s. 1, work below ground in a mine is restricted to seven hours during any consecutive twenty-four hours. But see Coal Mines Act, 1930 (c. 34), s. 14 ; Coal Mines Act, 1931 (c. 27), s. 1 ; Coal Mines Act, 1932 (c. 29), s. 1. Consult *MacSwinney on Mines* and *Chitty's Statutes,* tit. ' *Mines.*'

Mineral Rights Duty. The Finance (1909-10) Act, 1910 (10 Edw. 7, c. 8), ss. 20 and 21, imposes a duty of 1*s.* in the £ on the rental value of minerals (see that title). This tax falls upon the proprietor or lessor and is for practical purposes an additional ' landlord's property tax ' imposed upon minerals. These sections have been amended by 2 & 3 Geo. 5, c. 8, s. 11 ; 5 & 6 Geo. 5, c. 89, s. 43 ; 10 & 11 Geo. 5, c. 18, s. 64, and Sched. IV.

Minerals. This term may include all substances of commercial value which can be got from beneath the earth, either by mining or quarrying, except common clay (*Glasgow* v. *Farie,* (1888) 13 App. Cas. 657), or sandstone (*N. B. Ry.* v. *Budhill Coal and Sandstone Co.,* 1910, A. C. 116) ; but china clay is a mineral (*G. W. Ry.* v. *Carpalla China Clay Co.,* 1910, A. C. 83). See also *Waring* v. *Foden,* 1932, 1 Ch. 276.

By the Law of Property Act, 1925, s. 205 (1) (ix.), mines and minerals include any strata or seam of minerals or substances in or under any land and the powers of working and getting the same, but not an undivided share thereof.

Minime mutanda sunt quæ certam habent interpretationem. *Co. Litt.* 365.—(Things which have a certain interpretation are to be altered as little as possible.)

Miniment or **Muniment,** the evidences or writings whereby a man is enabled to defend the title of his estate. It includes all manner of evidences.

Minimum Subscription is the minimum cash to be raised by the issue of shares offered to the public for subscription. This must be stated in the prospectus and application sums therefor received before allotment of shares. The amount includes the minimum required, in the opinion of directors, for property to be bought by the proceeds of issue, preliminary expenses, if any, repay-

ment of loans for those purposes and working capital; see Companies Act, 1929, s. 39 and 4th Sched.

Minimum Wage. The Trade Boards Act, 1909, established for the first time a minimum wage in certain trades. The Coal Mines (Minimum Wage) Act, 1912, made provision for the settlement of minimum rates of wages for workmen employed underground in coal mines. The principle has been extended to many industries during the war and after, and to agriculture by the Corn Production Act, 1917 (repealed). See TRADE BOARDS.

Mining Lease means for the purposes of the Law of Property Act, 1925, a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes (s. 205 (1) (xiv.), *ibid.*).

Minister, an agent; one who acts not by an inherent authority, but under another.

In politics, one to whom a sovereign entrusts the administration of government. In Great Britain, the word *ministry* is used as a collective noun for the heads of departments in the State forming the Government and responsible to Parliament.

In religion, a pastor of a church, chapel, or meeting-house, etc.

Minor, a person under twenty-one years of age. There is no legal distinction between a minor in this sense and an infant. See INFANT. Strictly speaking, in Scotland a minor is a person between the ages of pupilarity and majority—in males from fourteen to twenty-one years and females from twelve to twenty-one years. Minors must act *with* a curator if they have one, whereas pupils (under the age of pupilarity) act *through* their tutor. These are summary disabilities imposed by Common Law and Statute on minors.

Minority [fr. *minor*, Lat.], the state of being under age—i.e., twenty-one years. Also, the smaller number.

Mint [fr. *moneta*, Lat.; *mynet*, Sax., money, from *mynetian*, to coin], the place where money is coined. The Mint of Great Britain is situated near the Tower of London. By the Coinage Act, 1870 (33 & 34 Vict. c. 10) (repealing various Acts), the laws relating to the coinage and Mint are consolidated and amended. See COIN.

Also, a place of privilege in Southwark, near the king's prison, where persons formerly sheltered themselves from justice under the pretext that it was an ancient palace of the Crown. The privilege has long been abolished.

Mintage, that which is coined or stamped.

Mint-mark. The masters and workers of the Mint, in the indentures made with them, agree 'to make a privy mark in the money they make, of gold and silver, so that they may know which moneys were of their own making'; after every trial of the pyx, having proved their moneys to be lawful, they are entitled to their *quietus* under the Great Seal, and to be thereupon discharged from all suits or actions; they then change the privy mark, so that the moneys from which they are not yet discharged may be distinguished from those for which they are; they use the new mark until another trial of the pyx. See Coinage Act, 1870 (33 & 34 Vict. c. 10), s. 12. See PYX.

Mint-master, one who manages the coinage. See MASTER OF THE MINT.

Minute, sixty seconds, or the sixtieth part of a degree or hour.

Also, a memorandum, as of proceedings of a borough council, directed to be drawn up, entered, and signed, by the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), Schedule III., Part V., r. 3.

Minutes of a Company must be kept of all general meetings and meetings of the directors or managers in a book which is open to inspection by the members (Companies Act, 1929, ss. 120 and 121). The minutes are evidence, but neither conclusive nor exclusive (*Re Fireproof Doors Ltd.*, 1916, 2 Ch. 142).

Mirror des Justices. This singular work has raised much doubt and difference of opinion concerning its antiquity. Some have pronounced it older than the Conquest, others have ascribed it to the time of Edward II.

This book, which bears the name of Andrew Horne, and is written with very little precision, treats of all branches of the law, whether civil or criminal. Besides this, it gives a cursory retrospect of some changes ordained by former kings; enumerates a list of abuses, as the author terms them, of the Common Law, proposing, at the same time, what he considers to be desirable corrections. He does the same with Magna Charta, the Statutes of Merton and Marlbridge, and some principal Acts in the reign of Edward I.—2 *Reeves*, c. xii. 358.

Misa, a compact, a firm peace.

Misadventure, Excusable Homicide by, also termed homicide *per infortunium*; it arises where a man, doing a lawful act, without any intention of hurt, unfortunately

kills another, as where a person is at work with a hatchet, and the head of it flies off and kills a bystander, or is shooting at a mark and undesignedly kills a man, for the act is lawful, and the effect is merely accidental. So where a parent is moderately correcting a child, a master his apprentice or scholar, or an officer punishing a criminal, and happens to occasion his death, it is only misadventure, for the act of correction was lawful; but if he exceeds the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and death ensue, it is manslaughter at least, and in some cases, according to the circumstances, murder: immoderate correction being unlawful.—*Fost.* 275.

Misallege, to cite falsely as a proof or argument.

Misappropriation by Servants Act, 1836 (26 & 27 Vict. c. 103), provides that servants taking their masters' corn, etc., without authority, for giving the same to their masters' horses, etc., shall not be guilty of felony, but be liable to imprisonment.

Miscarriage, a failure of justice. See 29 Car. 2, c. 3, s. 4. See also ABORTION.

Mischief. This word is often used as signifying the object or purpose of a statute.

Mischievous Animals. As to the liability of their owners the law recognizes two classes of animals (*q.v.*): (1) Animals naturally dangerous to man, such as a lion, tiger, or elephant, as to which the law is that the owner keeps it at his peril; he must prevent it from doing injury, and it is immaterial whether he knows the particular animal in question to be dangerous or not; (2) Animals generally of a harmless description either by nature or cultivation, as dogs, horses or oxen, as to which the rule is that the owner is not liable unless he knows that the particular animal was likely to do mischief; see *Filburn* v. *People's Palace, etc., Co.*, (1890) 25 Q. B. D. 258; *Manton* v. *Brocklebank*, 1923, 2 K. B. 212. As to dangerous dogs, see DOG.

Miscognizant, ignorant of, unacquainted with.

Miscontinuance, cessation, intermission.

Misdemeanour, a crime less than felony, as perjury, obtaining money by false pretences, endeavouring to conceal a birth, and fraudulently obtaining property on credit and not having paid for it within four months of bankruptcy, which are misdemeanours by statute; and any attempt to commit a felony or misdemeanour, whether the crime attempted be so by statute or Common Law (*Arch. Cr. Pl.*, 2); any disobedience of a statute (*Reg.* v. *Hall*, 1891, 1 Q. B. 747); any incitement of another to commit a felony where no such felony is actually committed (*Reg.* v. *Gregory*, (1867) L. R. 1 C. C. R. 77); sale of provisions unfit for food (*R.* v. *Dixon*, (1814) 3 M. & S. 11); public nuisances (see NUISANCE); and very many other offences, which are misdemeanours at Common Law. 'In the present state of our law we can only define a misdemeanour by saying that every indictable offence which is neither treason nor felony is a misdemeanour' (*Odgers on the Common Law*, p. 130).

Similarly to statutory misdemeanours, to which no express punishment is attached, Common Law misdemeanours are punishable by fine or imprisonment, or both with or without hard labour.

Any greater felony includes a less felony, so that, e.g., on an indictment for murder there may be a conviction of manslaughter; but no felony includes a misdemeanour, so that at Common Law no person on an indictment for felony could be convicted of a misdemeanour; but various statutory enactments—e.g., the Criminal Procedure Act, 1851 (14 & 15 Vict. c. 100), s. 9, by which a person indicted for any felony may be found not guilty of the felony, but guilty of the attempt to commit it—have abrogated the Common Law rule. Consult *Archbold's Crim. Plead.*

Misdescription of Fabrics. The Fabrics (Misdescription) Act, 1913 (3 & 4 Geo. 5, c. 17), prohibits the sale of any textile fabric with a misleading description as to its inflammability. The Act applies to Scotland.

Misdirection, an error in law made by a judge in charging a jury. See R. S. C. Ord. XXXIX., and NEW TRIAL.

Mise [Fr., *mise, mise en gage, stake-money*], disbursement, costs; also a tax or tallage, etc.; also, the issue in a writ of right. It is sometimes corruptly used for *mease* or *mees*—i.e., a messuage.

Miselli, leprous persons.

Mise-money, money paid by way of contract or composition to purchase any liberty, etc.—*Blount.*

Miserabile depositum, an involuntary deposit under pressing necessity.—*Civ. Law.*

Miserere (have mercy). The name and first word of one of the penitential psalms, being that which was commonly used to be given by the ordinary to such condemned malefactors as were allowed the benefit of

clergy, whence it is also called the Psalm of Mercy.—*Jac. Law Dict.*

Misericordia, an arbitrary amerciament or punishment imposed on any person for an offence. It is thus called, according to Fitzherbert, because it ought to be but small and less than that required by Magna Charta.—*Anc. Inst. Eng.*

Also, a discharge of all manner of amerciaments, which a person might incur in the forest. See CAPIAS PRO FINE. See 1 *Chit. Arch. Prac.*, 12th ed. 527.

Misericordia communis, a fine set on a whole county or hundred.

Misericordia domini regis est, quâ quis per juramentum legalium hominum de vicineto eatenus amerciandus est, ne aliquid de suo honorabili contenemento amittat. *Co. Litt.*—(The mercy of our lord the king is that by which every one is to be amerced by a jury of good men from his immediate neighbourhood, lest he should lose any part of his own honourable tenement.)

Misevenire, to fail or succeed ill.

Misfeasance, a misdeed or trespass; also, the improper performance of some lawful act. As to the distinction between misfeasance and nonfeasance, see *McClelland* v. *Manchester Corporation*, 1912, 1 K. B. 118, and cases there referred to; *Guilfoyle* v. *Port of London Authority*, 1932, 1 K. B. 336; and *Coleshill* v. *Manchester Corporation*, 1928, 1 K. B. 776. As to misfeasance proceedings in the course of a winding-up against directors, promoters, managers or others, see Companies Act, 1929, s. 276.

Misfortune. See CHANCE.

Misjoinder of Parties. See PARTIES.

Misnomer, a wrong name. *Nil facit error nominis cum de corpore vel personâ constat.* 11 Rep. 21.—(A mistake in the name does not matter when there is no mistake in the body or person.)

Misnomers in civil proceedings are curable under R. S. C. 1883, Ord. XXVIII., and misnomers in criminal pleadings by 7 Geo. 4, c. 64, s. 19.

As to misnomer of a juror, see *Reg.* v. *Mellor*, (1858) Dears. & B. 468.

Mispleading. See JEOFAILS.

Misprision [fr. *mépris*, Fr.], neglect, negligence, or oversight.

All such high offences as are under the degree of capital, but nearly bordering thereon, are misprisions; and it is said that a misprision is contained in every treason and felony whatsoever, and that, if the Crown so please, the offender may be proceeded against for the misprision only. And upon the same principle, while the Court of Star Chamber existed, it was held that the sovereign might remit a prosecution for treason, and cause the delinquent to be censured in that Court, merely for a high misdemeanour; as in the case of Roger, Earl of Rutland, in 43 Eliz., concerned in Essex's rebellion. Every great misdemeanour, according to Coke, which has no certain term appointed by the law, is sometimes called a misprision.

Misprisions are divided in the text-books into two kinds:—

(1) *Negative*, the concealment of what ought to be revealed; such is *misprision of treason*, the bare knowledge and concealment of treason without any degree of assent, for any assent makes the party a principal; as the concealment, construed to be aiding and abetting, did at the Common Law; but it was enacted by st. 1 & 2 Ph. & M. c. 10, that a bare concealment of treason shall be only held a misprision. There must be two witnesses to support the case.—7 & 8 Wm. 3, c. 3; 1 *Hale, P. C.* 374; 4 *Steph. Com.*

Besides the last-described offence, the mere concealment of a felony is criminal, and is called *misprision of felony;* but if there be an assent, this makes the person assenting either a principal or accessory. *Theftbote*, and *concealing treasure-trove*, are each of them species of negative misprision.—4 *Steph. Com.*

(2) *Positive*, otherwise denominated contempts of high misdemeanours, such as the maladministration of such high officers as are in public trust and employment, usually punishable by parliamentary impeachment; also, embezzlement of the public money, punishable by fine and imprisonment; also, such contempts of the executive magistrate as demonstrate themselves by some arrogant and undutiful behaviour towards the sovereign and government. And to endeavour to dissuade a witness from giving evidence, to disclose an examination before the Privy Council, or to advise a prisoner to stand mute (all of which are impediments to justice), are high misprisions and contempts, punishable by fine and imprisonment. See 4 *Bl. Com.* 119 *et seq.*

Misprisions of clerks are mistakes made by clerks, etc., in writing or keeping records.

Misrecital, a wrong recital. If it be in the beginning of a deed, which goes not to the end of a deed, it shall not hurt, but if it go to the end of a sentence, so that the deed is limited by it, it is vicious.—*Cart.* 149.

Misrepresentation, i.e., *suggestio falsi*, in a

matter of substance essentially material to the subject, whether by acts or by words, by manœuvres, or by positive assertions or material concealment (*suppressio veri*) whereby a person is misled and damnified.

In equity it is immaterial whether the misrepresentor knew the matter to be false, or asserted it, without knowing if it were true or false; for the affirmance of that which is not known to be true is as unjustifiable as the assertion of that which is known to be false, since it is equally a means of deception. But equity would not relieve, if the misrepresentation were of a trifling or immaterial thing, or if the other party did not trust to it, or was not misled by it, or if it were vague and inconclusive in its own nature, or if it were upon a matter of opinion or fact equally open to the inquiries of both parties, and in regard to which neither could be presumed to have confided in the other, for *vigilantibus non dormientibus æquitas subvenit*. Equity cannot indemnify a person from the consequence of indolence and folly, or of careless indifference and neglect of easily accessible means of information. At Common Law, see more fully under the title DECEIT.

If the representation amounts to a warranty (*q.v.*), its untruth is actionable because the person making it has entered into a contract or warranty and not on the ground merely of mis-statement. Such representations may be collateral or not part of the principal contract and upon letting premises may not be required to be put into writing under the L. P. Act, 1925, s. 40, reproducing s. 4 of the Statute of Frauds (see *De Lassalle* v. *Guilford*, 1901, 2 K. B. 215). See also *Smith's L. C., notes to Chandelor* v. *Lopus*.

Innocent misrepresentation is where a person makes a representation which he reasonably and honestly believes to be true, but which is in fact false. Innocent misrepresentation, if it induced a contract, provides a defence to an action on the ground of breach of contract, and will enable the deceived party to get the contract rescinded by the Court if the parties can be put back again in their original position; but see *Jones & Co.* v. *Waring & Gillow Ltd.*, 1926, A. C. 670. See *Leake on Contracts*.

Misrepresentation of Solvency, etc. By s. 6 of the Statute of Frauds Amendment Act, 1828 (9 Geo. 4, c. 14) (Lord Tenterden's Act), no action lies in respect of any representation of the credit, trade, dealings, etc., of another, to obtain credit for that other, unless it be in writing, signed by the party to be charged therewith. See *Hirst* v. *West Riding Banking Co.*, 1901, 2 K. B. 560.

As to misrepresentation in a prospectus by non-disclosure and the Larceny Act, 1861, s. 84, see *R.* v. *Bishirgian*, 52 T. L. R. 361. See REPRESENTATION.

Missa, the mass.

Missæ presbyter, a priest in orders.

Missal, the mass-book.

Misstaicus, a messenger.—*Old Records.*

Missura, the ceremonies used in the Romish Church to recommend and dismiss a dying person.

Mistake, misconception, error.

Money paid under a mistake of a material *fact*, as where a person discounts a forged bill, is recoverable (though a banker paying the forged cheque of a customer cannot charge the customer with the loss), and see *Jones & Co.* v. *Waring & Gillow Ltd.*, 1926, A. C. 670; but money paid under a mistake of *law* is ordinarily not recoverable (*Holt* v. *Markham*, 1923, 1 K. B. 504), though there is an exception in the case where an officer of a court or a trustee in bankruptcy has received the money (*Ex p. Simmonds*, (1885) 16 Q. B. D. 308).

It is a common condition of the sale of land that any error or misdescription shall not vitiate the sale, and may or may not be made the subject of compensation, and this condition applies whether an error complained of was discovered before or after completion of the purchase (*Palmer* v. *Johnson*, (1884) 13 Q. B. D. 351); but where the misdescription is so serious as to go to the root of the contract, the condition will not assist the vendor (*Flight* v. *Booth*, 1 Bing. N. C. 370).

Contracts may be rectified so as to carry out the intentions of the contracting parties where they have been drawn up, by reason of a mutual mistake, to an effect militating against the intentions of both (*Beale* v. *Kyte*, 1907, 1 Ch. 564); and in some cases a contract may be cancelled on the ground of one of the parties having entered into it by mistake. The rectification, or setting aside, or cancellation of written instruments is part of the business assigned to the Chancery Division of the High Court (Jud. Act, 1925, s. 56, replacing Jud. Act, 1873, s. 34).

In criminal cases a mistake of *fact* may be an excuse, as when a man, intending to do a lawful act, does that which is unlawful (cf. proviso, s. 28 (1), Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43)), and acting upon an honest and reasonable belief in the existence

of facts, which, if true, would make his act lawful.

Under the Workmen's Compensation Act, 1925, s. 14 (1) (*b*), failure to make a claim within the period specified is not a bar to proceedings if occasioned by mistake. The mistake contemplated is a mistake of fact which ' arises from the belief that facts exist' when they do not. An expectation which is not fulfilled is not a mistake ' (*Griffiths* v. *Atkinson*, 5 B. W. C. C. 345, 348).

Mistery, or **Mystery** [fr. *métier*, Fr.], a trade or calling.

Mistress, the proper style of the wife of an esquire or a gentleman.

Mistrial, an erroneous trial.

Misuser, abuse of any liberty or benefit which works a forfeiture of it.

Mitigation, abatement of anything penal, harsh, or painful. An address in mitigation is a speech made by the defendant or his counsel to the judge, after verdict or plea of guilty, and which may be followed by a speech in aggravation from the prosecuting counsel.

By 27 & 28 Vict. c. 110, justices were prohibited from mitigating minimum penalties in pursuance of any power of mitigating penalties conferred on such justices by any local or private Act of Parliament ; but this Act is repealed, as to England, by the Summary Jurisdiction Act, 1879, which gives an almost unlimited power of mitigating such penalties as may be imposed by justices. See also the Probation of Offenders Act, 1907 (7 Edw. 7, c. 17).

Mittendo manuscriptum pedis finis, an abolished judicial writ addressed to the treasurer and chamberlain of the Exchequer to search for and transmit the foot of a fine acknowledged before justices in eyre, into the Common Pleas.—*Reg. Brev.* 14.

Mitter le droit (to pass a right).—*Co. Litt.* 273 *a*. See RELEASE.

Mitter l'estate (to pass an estate). See RELEASE.

Mittimus (we send), a writ for removing and transferring records from one court to another. Also a precept or command in writing, directed to the gaoler or keeper of some prison for the receiving and safe keeping of an offender charged with any crime, until he be delivered by due course of law.

Mittre à large (to set or put at liberty).

Mixed Actions. Suits at Common Law partaking of the nature of real and personal actions, by which some real property was demanded, and also personal damages for a wrong sustained, were so called. They substantially partook, however, of the character of real actions, and were often so called, but they are now abolished, except the action of ejectment.—3 & 4 Wm. 4, c. 27. Correctly speaking, however, ejectment is in its form a species of the personal action of trespass. *Steph. Plead.* app. vii. See now ACTION.

Those in Roman Law, in which some specific thing was demanded, and where also some personal obligations were claimed to be performed.—*Hallifax on Roman Law*, 85.

Mixed Arbitral Tribunal. Tribunals which may be established under treaties of peace with various countries, e.g., Versailles (Germany), see S. R. & O., 1920 (No. 264) ; Austria, S. R. & O., 1920 (No. 1347) ; Hungary, S. R. & O., 1921 (No. 1285). A tribunal sat in London to adjudicate on certain losses and debts in respect of which claims were made under the Treaty of Versailles on the governments of ex-enemy countries.

Mixed Contract, one in which one of the parties confers a benefit on the other, and requires of the latter something of less value than what he has given ; as a legacy charged with something of less value than the legacy itself.—*Civ. Law.*

Mixed Government, a form of government, combining monarchy, aristocracy, and democracy, like that of the British Empire.

Mixed Larceny, otherwise called compound or complicated larceny, that which is combined with circumstances of aggravation, as violence to the person, or taking from a house. See LARCENY.

Mixed Laws, those which concern both persons and property.

Mixed Property, a compound of realty and personalty.

Mixed Questions [*questions mixtes*, Fr.], those which arise from the conflict of foreign and domestic laws.

Mixed Questions of Law and Fact, cases in which a jury are to find the particular facts, and the Court is to decide upon the legal quality of those facts by the aid of established rules of law, independently of any general inference or conclusion to be drawn by a jury. All technical expressions, such as asportation, conversion, acceptance, etc., are, in their application, partly matters of law, partly matters of fact. See 6 *East*, 3 ; 1 *T. R.* 167 ; and *Taylor's Evid.*, s. 24.

Mixed Subjects of Property, such as fall within the definition of things real, but which are attended nevertheless with some of the legal qualities of things personal, as emblements, fixtures, and shares in public undertakings connected with land. Besides

these, there are others which, though things personal in point of definition, are, in respect of some of their legal qualities, of the nature of things real; such are animals *feræ naturæ*, charters and deeds, court rolls and other evidences of the title to land, together with the chests in which they are contained, ancient family pictures, ornaments, tombstones, coats of armour, with pennons and other ensigns, and especially heirlooms.

Mixed Tithes, tithes of wool, milk, pigs, etc., consisting of natural products, but nurtured and preserved in part by the care of man. See *Com. Dig.*, tit. '*Dismes*' (F. 2), and *post*, TITHES.

Mobilia sequuntur personam. (Movables follow the person.) See CONFLICT OF LAWS.

Mobles [fr. *meubles*, Fr. and *mobilia*, Lat.], movable goods; furniture. Obsolete word.

Mockadoes, a kind of cloth made in England, mentioned in 23 Eliz. c. 9.

Mocurrery, lands to let on a lease.—*Indian.*

Model, a representation or copy of a thing. In the Copyright Act, 1911, 'work of sculpture' includes casts and models; see s. 35 of the Act. See COPYRIGHT.

Moderata miscericordia, a writ founded on Magna Charta, which lay for him who is amerced in a court, not of record, for any transgression beyond the quality or quantity of the offence; it was addressed to the lord of the court, or his bailiff, commanding him to take a moderate amerciament of the parties.—*New Nat. B.* 167; *Fitz. N. B.* 76.

Moderator, a president or chairman.

Modiatio, a certain duty paid for every tierce of wine.—*Dugd. Mon.* t. ii. p. 194.

Modification, the term usually applied to the decree of the Teind Court, awarding a suitable stipend to the minister of a parish.—*Bell's Scots Law Dict.*

Modius, a measure, usually a bushel.

Modius terræ vel agri, a quantity of ground containing in length and breadth 100 feet.—*Dugd. Mon.* t. iii. p. 200.

Modo et formâ (in manner and form), a phrase formerly used in pleading. It was the nature of a traverse to deny the matter of fact in the adverse pleading in the *manner and form* in which it was alleged, and, therefore, to put the opposite party to prove it to be true in *manner and form* as well as in general effect. The plea of *non est factum*, and the replication *de injuriâ* (now abolished), were the only negative traverses not pleaded *modo et formâ*. These words were in no case strictly essential, so as to render their omission a cause of demurrer. See now PLEADING.

Modus et conventio vincunt legem.—(Persons may contract themselves out of their legal obligations.)

Modus decimandi, a particular manner of tithing arising from immemorial usage, differing from the payment of one-tenth of the annual increase; being sometimes a pecuniary compensation, as twopence per acre for the tithe of land; sometimes a compensation in work and labour, as that the parson should only have the twelfth cock of hay, and not the tenth, in consideration of the owner's making it for him; sometimes in lieu of a large quantity of crude or imperfect tithe a less quantity when arrived to greater maturity, as a couple of fowls in lieu of tithe eggs and the like. Any means, in short, whereby the general law of tithing was altered and a new method of taking tithes was introduced, was called a *modus decimandi*, or special manner of tithing.—2 *Bl. Com.* 29. A too large modus was called a 'rank' modus, and the Tithe Act, 1832 (2 & 3 Wm. 4, c. 100), required evidence of usage for thirty years.

Modus de non decimando non valet.—(An agreement not to take tithes avails not.)

Modus levandi fines. See FINES.

Moerda, the secret killing of another; murder.—*Teutonic word.* 4 *Bl. Com.* 194.

Mofussil, separated, particularized; the subordinate divisions of a district, in contradistinction to *Sadder* or *Sudder*, which implies the chief seat of government.—*Indian.*

Mofussil dewanny adawlut, provincial court of justice.—*Ibid.*

Mohatra, a fraudulent contract to screen usury.

Moidore, a gold coin of Portugal.

Moiety [fr. *medietas*, Lat. through *moitié*, Fr.], half.

Molendinum, a mill.—*Old Records.*

Molendum, grist; a certain quantity of corn sent to a mill to be ground.

Molestation. In questions arising out of trade disputes, molestation may be described as an act of intimidation, violence, shouting, hooting, etc., in contrast to peaceful persuasion; see *R.* v. *Shepherd*, (1869) 11 Cox. C. C. 325. In matrimonial law, an act of serious annoyance.

Also in Scots law, the name of an action (now in disuse, being superseded by declarator and interdict) competent to the proprietor of a landed estate against those who disturb his possession—*Bell's Scots Law Dict.*

Molitura, or **Molta,** the toll or multure paid for grinding corn at a mill.

Molitura libera, a free grinding or liberty of a mill without paying toll. *Paroch. Antiq.* 236.

Mollah, a doctor of laws.—*Arabic.*

Molliter manus imposuit. An officer may lay hands upon another to turn him out of church (for instance), and prevent his disturbing the congregation; and if sued for this and the like battery, he may set forth the whole case and state that he laid hands upon him gently (*molliter manus imposuit*) for this purpose.—3 *Steph. Com.*

Molman, a man subject to do service.

Molmutian, or **Molmutin Laws,** the laws of Dunvallo Molmutius, sixteenth King of the Britons, who reigned above four hundred years before the birth of Christ. These were the first published laws in Britain, and, together with those of Queen Mercia, were translated by Gildas into Latin.—*Usher's Primord.* 126.

Molneda, Mulneda, a mill-pond or pond.—*Paroch. Antiq.* 135.

Molta. Moltura. See MOLITURA.

Mona, the Isle of Anglesea; also the Isle of Man.

Monachus, a monk. As to liability of Roman Catholic monks to banishment, see JESUIT.

Monarchy [fr. μόναρχος, Gk.], a government in which the supreme power is vested in a single person. Where a monarch is invested with absolute power, the monarchy is termed despotic; where the supreme power is virtually in the laws, though the majesty of government and the administration are vested in a single person, it is a limited monarchy. It is hereditary, where the regal power descends immediately from the possessor to the next heir by blood, as in our country; or elective, as was formerly the case in Poland.

Monasteries Dissolution Acts (27 Hen. 8, c. 28; 31 Hen. 8, c. 13; 32 Hen. 8, cc. 7, 24); and consult *Br. & Had. Com.* i. 466, and ii. 68. As to existing law of banishment of members of Roman Catholic religious orders (not being nunneries), see ROMAN CATHOLICS.

Monasticon Anglicanum. A monumental work by Sir Wm. Dugdale, Kt., Garter Principal King-at-Arms, originally published in Latin. It contains a history of the abbeys and other monasteries, hospitals, friaries and cathedral and collegiate churches with their dependencies in England and Wales, and also of all such Scotch, Irish and French monasteries as were connected with religious houses in England. The best modern edition is that published in 1817–1830, under the editorship of Messrs. Caley, Ellis and Bandinel.

Monetagium, Monya, or **Moneyage,** called also *focagium*, a certain tribute formerly paid by tenants to their lord every third year, that he should not change the money which he had coined, when it was lawful for certain great men to coin money, but not of silver and gold, in their territories. Abrogated by 1 Hen. 1, c. 2.—*Hale's Hist.* 217.

Also a mintage, and the right of coining or minting money.

Monetandi jus comprehenditur in regalibus quæ nunquam à regio sceptro abdicantur. *Dav.* 18.—(The right of coining money is included in those rights of royalty which are never separated from the kingly sceptre.)

Money. 'Money as currency, and not as medals, seems to me to have been well defined by Mr. Walker in *Money, Trade and Industry*, as "that which passes freely from hand to hand throughout the community in final discharge of debts and full payment for commodities, being accepted equally without reference to the character or credit of the person who offers it and without the intention of the person who receives it to consume it or apply it to any other use than in turn to tender it to others in discharge of debts on payment for commodities."' This was adopted by Darling, J., as a definition in *Moss* v. *Hancock*, 1899, 2 Q. B. 111 at p. 116.

In bequests: '"Money in the strict sense" means, as I understand, "money actually in hand as cash or at a bank on drawing account . . ."' (Warrington, L.J., in *In re Taylor*, 1923, 1 Ch. 99 at p. 108). '"Money" is to be treated in the strict sense unless there be a context which shows something to the contrary' (*ibid.*). In *In re Emerson*, 1929, 1 Ch. 128, a gift of 'the residue of money at the time of my death' was held to include the residuary personal estate. In *In re Mellor*, 1929, 1 Ch. 446, a gift of 'the remainder of any moneys' following an express direction to pay debts was held to carry both real and personal property. In *In re Collings*, 1933, Ch. 920, it was held that 'money' in its strict legal sense included money on deposit account at a bank. For an extreme case, see *Re Hodgson*, (1935) 52 T. L. R. 88, and notes thereon in *Law Quarterly Review*, January, 1936, vol. 52. p. 3.

Money-bill. 'A money-bill means a public

bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration or regulation of taxation ; the imposition, for the payment of debt or other financial purposes, of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges ; supply ; the appropriation, receipt, custody, issue or audit of accounts of public money ; the raising or guarantee of any loan or the repayment thereof ; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions " taxation," " public money " and " loan " respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.' (Parliament Act, 1911, s. 1 (2).)

With respect to these bills, the House of Commons are so reasonably jealous of their privilege of imposing new taxes upon the subject, that they will not suffer the House of Lords to exert any other power but that of rejection : they will not pass a money-bill introduced in the House of Lords, nor permit the least alteration or amendment to be made by the House of Lords in the mode of taxing the people by bills of this nature. See 1 *Bl. Com.* 170, 184. This question was much discussed at the time the Finance Bill of 1909 was before Parliament. The House of Lords did not acquiesce in the above-mentioned limitation of their powers, and having rejected the Bill a General Election ensued, but when the House of Commons so elected presented the Bill without alteration, it was passed by the House of Lords and became the Finance (1909–10) Act, 1910. As to money-bills under the Parliament Act, 1911, see ACT OF PARLIAMENT. And as to the temporary collection of duties of customs and excise and income tax under the Provisional Collection of Taxes Act, 1913, see CUSTOMS.

Money-broker, a money changer ; a scrivener or jobber ; one who lends or raises money to or for others.

Money Counts. Simple contracts, express or implied, resulting in mere debts, are of so frequent occurrence as causes of action, that certain concise forms of counts were devised for suing upon them. These were, before the Judicature Acts, called the *indebitatus*, or common money counts, or money counts.

Money had and received. When a person receives money which in justice and equity belongs to another, as a rule a debt is created and the money can be recovered by an action for ' money had and received to the use of the plaintiff.' See *Moses* v. *Macferlan*, (1760) 2 Burr. 1005 ; *Marriott* v. *Hampton*, (1797) 7 T. R. 269 ; 2 *Sm. L. C.* (11th ed.) 421. But the action cannot now be extended beyond the principles illustrated in the decided cases ; see *Sinclair* v. *Brougham*, 1914, A. C. p. 453, per Lord Sumner, where the true nature of the action is discussed. The cause of action arises when the money is received and not earlier (see *Bowling* v. *Cox*, 1926, A. C. 751, at p. 754).

Money Land. In equity, land articled or devised to be sold, and turned into money, is considered as money, and money articled or bequeathed to be invested in land, has, in equity, many of the qualities of real estate, and is descendible and devisable as such according to the rules of inheritance in other cases, and this upon the ground that equity regards substance and not form, and will further the intention of parties.

By s. 75 (5), Settled Land Act, 1925, replacing Settled Land Act, 1882, s. 26 (5), capital money arising under that Act while remaining uninvested or unapplied and investments hereof are for all purposes of disposition, transmission and devolution to be treated as land and shall be held for and go to the same persons successively in the same manner and for and on the same estates, interests and trusts as the land wherefrom the money arises would, if not disposed of, have been held and have gone under the settlement, and see s. 78 (*ibid.*), as to personal estate settled by reference to capital money or on trusts corresponding with the settlement of the land. These provisions do not relate to or affect money arising on a trust for sale.

Before 1926, money agreed or directed to be laid out in land, so fully became land as, 1stly, not to be personal assets ; 2ndly, to be subject to the curtesy of the husband, and (under the Dower Act) the dower of the wife ; 3rdly, to pass as land by will, if subject to the real use at the time the will was made ; 4thly, not to pass as money by a general bequest to a legatee, but it would by a particular description, as so much money to be laid out in land, or by a bequest of all the testator's estate in law and equity. But equity would not consider money as land, unless the covenant or direction to lay it out in land be imperative. For the order of administration since 1925, see the Adminis-

tration of Estates Act, 1925, putting real and personal estate on the same footing.

The Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), enacts (s. 71 not repealed except in regard to copyholds) that lands to be sold of any tenure where the money arising from the sale is subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate-tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate-tail therein, shall, for the purposes of the Act, be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would have been actually subject to; and now, by s. 130, Law of Property Act, 1925, an equitable interest may be created in personalty as well as in real property.

Money-lender. The Money-lenders Act, 1900 (63 & 64 Vict. c. 51), by s. 6 defines the expression 'money-lender' therein as including

> every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying on that business.

but not including a pawnbroker (see that title), a Friendly, Building, or Loan Society (see those titles) or a corporation empowered by statute to lend money, or

> any person *bonâ fide* carrying on the business of banking or insurance or *bonâ fide* carrying on any business not having for its primary object the lending of money, in the course of which and for the purposes whereof he lends money; or any body corporate for the time being exempted from registration under this Act by order of the Board of Trade made and published pursuant to regulations of the Board of Trade.

The Act, as amended by s. 10 of the Money-lenders Act, 1927 (17 & 18 Geo. 5, c. 21), subjects money-lenders as above defined to the liability of having their contracts judicially varied.

Under s. 1, if a borrower is sued by a money-lender for the money lent, and there is evidence satisfying the Court in which the action is brought either that the interest or the sum charged for expenses is excessive, and that the transaction is harsh and unconscionable, or is 'otherwise such that a Court of Equity would give relief,' the Court may re-open the transaction and relieve the borrower, who may himself institute proceedings and obtain the same relief as if he had been defendant in an action for the loan. As to the grounds on which a Court of Equity would give relief, see *Nevill* v. *Snelling*, (1880) 15 Ch. D. 679. As to the jurisdiction of the county court, see *Crossingham* v. *Park*, 1928, 1 K. B. 330. By the Money-lenders Act, 1927, s. 17, protection is given to the rights of *bonâ fide* holders for value without notice under contracts with money-lenders.

Under the Act of 1927 a person in order to carry on a money-lending business must obtain a certificate from the petty sessional court (s. 2), and must take out annually a money-lender's excise licence (s. 1) in respect of any address at which he carries on business. This licence must be taken out in his true name but shall also show his authorized name and authorized address. He must not carry on his business in any other name or at any other address. Sect. 3 deals with the suspension and forfeiture of money-lenders' certificates for certain offences, including offences under this and other Acts. Sect. 5 restricts money-lenders' advertisements. Sub-s. (3) of this section which prohibits any person from acting as agent or canvasser for a money-lender has reference to canvassers acting with the money-lender's authority (see *Verner-Jeffreys* v. *Pinto*, 1929, 1 Ch. 401). Under s. 6 there must be a note or memorandum in writing of a money-lending contract and a copy must be sent to the borrower (see *Eldridge and Morris* v. *Taylor*, 1931, 2 K. B. 416 at p. 418). By s. 2 (3) of the Act, a money-lender must not carry on business under any name which implies that he carries on banking business, and s. 4 (3) prescribes penalties for a money-lender who issues a document implying that he carries on banking business.

Money-lending companies are required to comply with s. 145 of the Companies Act, 1929, relating to the publication of names and other particulars of and concerning the directors. See the Acts of 1900 and 1927 and their history, together with the Inland Revenue and Board of Trade Regulations, and notes, in *Chitty's Statutes*, tit. '*Money-Lenders*.' Consult *Stone and Meston on Moneylenders*.

Monger [fr. *mangian*, Sax., to trade], a dealer or seller. It is seldom or never used alone, or otherwise than after the name of any commodity, to express a seller of such commodity. Also, a little fishing vessel.—13 Eliz. c. 11.

Moniers, or **Moneyers,** ministers of the Mint; also bankers.

Moniment, a memorial, superscription, or record.

Monition, a summons or citation ; a direction by an ecclesiastical judge to a defendant to abstain from practices contrary to ecclesiastical law ; see *Dale's case*, (1881) 6 Q. B. D. 376 ; 7 App. Cas. 240.

Monitory Letters, communications of warning and admonition sent from an ecclesiastical judge, upon information of scandal and abuses within the cognizance of his court.

Monmouth, county of, made one of the counties of England by 27 Hen. 8, c. 26. Many Acts provided that it is to be considered as part of Wales for the purposes of the Act, e.g., National Insurance Act, 1911, s. 79 ; Welsh Church Act, 1914 ; Ministry of Agriculture and Fisheries Act, 1919.

In the appointment, in Wales and Monmouthshire, of inspectors of coal mines, by the Coal Mines Act, 1911, s. 97 ; of factories, by s. 23 of the Factory and Workshop Act, 1891 ; and of quarries, by s. 2 (3) of the Quarries Act, 1894, persons having a knowledge of the Welsh language are to be preferred.

Monocracy, a government by one person.

Monogamy [fr. *μόνος*, Gk., single, and *γάμος*, marriage], marriage of one husband to one wife.

Monomachy [fr. *μόνος*, Gk., and *μάχη*, a fight], a duel ; a single combat.

It was anciently allowed by law, for the trial or proof of crimes. It was even permitted in pecuniary causes, but it is now forbidden both by the civil and canon laws.

Monomania, insanity upon a particular subject.

Monopoly [fr. *μόνος*, Gk., single, and *πωλέω*, to sell], the exclusive privilege of selling any commodity. A licence or privilege allowed by the Crown, for the sole buying, selling, making, working, and using of anything whatsoever, whereby the subject is restrained from that liberty of manufacturing or trading which he had before.

Such grants were common before the Stuarts, and were very oppressive and injurious during the reign of Elizabeth. The grievance became so insupportable that, notwithstanding the power of granting monopolies was a valuable part of the prerogative, they were abolished in 1623 by the Statute of Monopolies, 21 Jac. 1, c. 3, which declared all monopolies void, with an exception for 'letters-patent' for fourteen years for the sole working or making of any new manufactures within the realm, to the true and first inventors thereof, provided they be not contrary to law nor mischievous to the State. See LETTERS-PATENT.

Monster. An animal which has not the shape of mankind, but, in any part, evidently bears the resemblance of the brute creation, has no inheritable blood, and cannot be heir to any land, although it be brought forth in marriage ; but, though it have deformity in any part of its body, yet, if it have human shape, it may be an heir.—*Co. Litt.* 7 *b* ; 2 *Bl. Com.* 246.

Monstrans de droit (manifestation or plea of right), one of the two Common Law methods of obtaining possession or restitution from the Crown of either real or personal property.—3 *Bl. Com.* 256. It was preferred either on the Common Law side of the Court of Chancery, or in the Exchequer, and will now come before any division of the High Court.

Where the Crown is in possession under a title, the facts of which are already set forth upon record, a party aggrieved may proceed in *monstrans de droit*, i.e., may make, in opposition to such recorded title, a claim of right, grounded upon certain facts relied upon by him, without denying those relied upon by the Crown, and the praying judgment of the Crown whether, upon those facts, the Crown or the subject has the right. If the right be determined against the Crown, the judgment is that of *ouster le main* or *amoveas manus*, by which judgment the Crown is instantly out of possession, and it therefore needs no actual execution. *Chit. Prerog. of the Crown*, 345.

Monstrans de faits ou records (showing of deeds or records).

Upon an action brought upon an obligation, after the plaintiff had declared he ought to have shown his obligation, and so also of records. *Monstrans de faits* differed from *oyer de faits* in that he who pleaded the deed or record, or declared upon it, ought to have shown it, and the defendant might demand *oyer* of the same.

Monstraverunt, a writ which lay for tenants in ancient demesne who held lands by free charter, when they were distrained to do unto their lords other services and customs than they or their ancestors used to do. Abolished.

Monstrum, a box in which relics are kept ; also, a muster of soldiers.

Month [fr. *monath*, Sax., moon, which was formerly written *mone*, as month was written *moneth*]. The period in which that planet *moneth*, i.e., completeth its orbit.

It is either—(1) *Lunar*, the time between the change and change, or the time in which the moon returns to the same point, being twenty-eight days.

(2) *Solar*, that period in which the sun passes through one of the twelve signs of the zodiac.

(3) *Calendar*, by which we reckon time, consisting unequally of thirty or thirty-one days, except February, which consists of twenty-eight, and in leap year of twenty nine days. The calendar month is also called usual, natural, civil, political.

In an Act of Parliament, passed after 1850, the word ' month,' which was formerly taken to mean a lunar month, unless calendar month was specified, means calendar month ; unless words be added pointing to lunar months (Interpretation Act, 1889 (s. 3), repealing and re-enacting 13 Vict. c. 21). By the Common Law and in equity it is but twenty-eight days ; see 2 *Bl. Com.* 141. In ecclesiastical matters it means a calendar month. By R. S. C. 1883, Ord. LXIV., r. 1, where the time for doing any act or taking any proceeding is limited by months, not expressed to be lunar months, such time is to be computed by calendar months.

By the rule of the commercial world a month is deemed to be a calendar month ; and this rule is applied to bills of exchange and promissory notes by s. 14, sub-s. 4, of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61) ; but in legal documents which came into operation before 1926, the primary meaning of month is lunar month, and there is no *general* exception making it mean calendar month in commercial documents ; it can only bear that meaning where, according to the ordinary rules of construction of documents, a secondary meaning can be admitted ; see *Bruner* v. *Moore*, 1904, 1 Ch. 305, and *P. Phipps & Co.* v. *Rogers*, 1925, 1 K. B. 14.

Sect. 61 of the Law of Property Act, 1925, enacts that in all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after 1925, ' month ' means calendar month unless the context otherwise requires.

As to how a calendar month is to be computed, see *Radcliffe* v. *Bartholomew*, 1892, 1 Q. B. 161.

Monuments. See ANCIENT MONUMENTS.

Monya. See MONETAGIUM.

Mooktar, an agent or attorney.—*Indian.*

Mooktarnama, a written authority constituting an agent ; a power of attorney.—*Ibid.*

Moor, an officer in the Isle of Man, who summons the Courts for the several sheadings. The officer is similar to our bailiff of a hundred.

Moot [fr. *gmot*, *emot*, Sax., meeting together], to plead a mock cause ; to state and argue a point of law by way of exercise, as was commonly done in the Inns of Court at appointed times, and has of late years been revived in Gray's Inn.

Moot-case, or **Moot-point,** a point or case unsettled and disputable, such as properly affords a topic of disputation.

Moot-hall, or **Moot-house,** council-chamber, hall of judgment, town-hall.

Moot-hills, hills of meeting, on which our British ancestors held their great courts.

Moot-man, one of those who used to argue the reader's cases in the Inns of Court. See MOOT-CASE.

Mop. See STATUTE-FAIR.

Mora. Delay. Mere delay has no legal result where express or implied promptness could not have been exacted, but the onus of proof increases on those responsible as the delay itself increases.

Mora, a moor, marsh land, a heath, fen land, barren and unprofitable ground.—*Co. Litt.* 5 *a.*

Mora mussa, a watery or boggy moor ; a morass.—*Dugd. Mon.*, tom. i. p. 306.

Mora reprobatur in lege. *Jenk. Cent.* 51.—(Delay is disapproved in law.)

Moral Actions, defined by Rutherforth to be those only in which men have knowledge to guide them and a will to choose for themselves.—*Inst. Nat. Law*, lib. 1, c. i.

Moral Consideration. A mere moral consideration will not support a promise by parol. See CONSIDERATION.

Moral Imbeciles, ' persons who from an early age display some permanent mental defect coupled with strong vicious or criminal propensities on which punishment has had little or no deterrent effect ' ; see Mental Deficiency Act, 1913 (3 & 4 Geo. 5, c. 28), s. 1 (*d*). They constitute one of the four classes of ' defectives ' dealt with by the Act.

Moratur in lege, he demurs ; because the party does not proceed in pleading, but rests or abides upon the judgment of the Court on a certain point, as to the legal sufficiency of his opponent's pleading. The Court deliberates and determines thereupon. See DEMURRER.

Moravians, otherwise called Herrnhutters or United Brethren. A sect of Christians exempted from military service in America

by 22 Geo. 2, c. 30, and allowed by that Act and by 3 & 4 Wm. 4, c. 49, and 1 & 2 Vict. c. 77 (since superseded by the more general Oaths Act, 1888), to give evidence on affirmation instead of oath.

More or less (*sive plus sive minus*). These words in a contract, which rests *in fieri*, will only excuse a very small deficiency in the quantity of an estate; for if there be a considerable deficiency, the purchaser will be entitled to an abatement; see *Cross* v. *Eglin*, (1831) 2 B. & Ad. 106. The words are in constant use in describing the parcels in a conveyance, but the cases do not seem to define their precise effect.

Morganatic Marriage. The lawful and inseparable conjunction of a man of noble or illustrious birth with a woman of inferior station, upon condition that neither the wife nor her children shall partake of the titles, arms, or dignity of the husband, or succeed to his inheritance, but be contented with a certain allowed rank assigned to them by the morganatic contract. But since these restrictions relate only to the rank of the parties and succession to property, without affecting the nature of a matrimonial engagement, it must be considered as a just marriage. The marriage ceremony was regularly performed; the union was indissoluble; the children legitimate. This connection was very usual in Europe; but there is not proof that the concubines of Charlemagne and the early kings of France were wives of this description, nor is there occasion to resort to that supposition in defence of their conduct, since the state of concubinage itself was little inferior to this in the public estimation; See *Croke's Introd. to Horner* v. *Liddiard*, pp. 115–117, A.D. 1800.

Morgangani, or **Morgangiva** [fr. *morgen*, Sax., the morning, and *gifan*, gift], a gift on the morning after the wedding; dowry; the husband's gifts to his wife on the day after the wedding.—*Du Cange.*

Morina, murrain; also the wool of sick sheep, and those dead with the murrain.—*Fleta*, lib. 2, c. 79, par. 6.

Morling, or **Mortling,** wool from the skin of dead sheep.—3 Jac. 1, c. 18.

Mormonism, a social system prevailing in Utah, a territory of North America, within the dominion of the United States, whereby plurality of wives is recognized. These marriages are not recognized by English law; see *Hyde* v. *Hyde*, (1866) L. R. 1 P. & D. 130. Nor are they legal according to the law of the United States.

Morosus, marshy. See MORA.

Morsellum, or **Morsellus terræ,** a small parcel or bit of land.—*Dugd. Mon.* 282.

Mort d'Ancestor. See ASSISE OF MORT D'ANCESTOR.

Mortality. See BILLS OF MORTALITY.

Mortgage [fr. *mort*, Fr., dead, and *gage*, pledge], a dead pledge; a thing put into the hands of a creditor.

A mortgage is the creation of an interest in property, defeasible (i.e., annullable) upon performing the condition of paying a given sum of money, with interest thereon, at a certain time. This conditional assurance is resorted to when a debt has been incurred, or a loan of money or credit effected, in order to secure either the repayment of the one or the liquidation of the other. The debtor, or borrower, is then the mortgagor, who has charged or transferred his property in favour of or to the creditor or lender, who thus becomes the mortgagee. If the mortgagor pay the debt or loan and interest within the time mentioned in a clause technically called the proviso for redemption, he will be entitled to have his property again free from the mortgagee's claim; but should he not comply with such proviso, the legal estate becomes perfected in the mortgagee, i.e, indefeasible, and so lost at the Common Law to the mortgagor. Until the mortgage has been foreclosed, or unless the property has been sold under powers to satisfy the debt, it is redeemable in a Court of Equity upon payment of the debt or loan, with interest and expenses, at any period within twelve (formerly twenty) years after the last recognition of the mortgage security by the mortgagee; and this because equity deems the non-compliance with the proviso for redemption a penalty, against which it always relieves when practicable.

Seeing that in by far the greater number of loan transactions the mortgagor never performs the condition in the proviso for redemption, they have been denominated mortgages, as the pledge is then dead or lost (*mortuum vadium*) to the mortgagor at law. A mortgage differs from a vifgage (*vivium vadium*), so called because neither loan nor property is lost, for the creditor enters into possession of the estate, and receives its proceeds in satisfaction of his debt, with interest, upon which the debtor becomes entitled to his own again. A Welsh mortgage is one in which the creditor receives the proceeds of his security in satisfaction of the interest of his debt, the principal remaining due and the estate never becoming forfeited, but redeemable at any time; and

the creditor not being entitled to sue at law in the absence of a covenant or bond, or to foreclose in equity. When property is conveyed to a mortgagee and his heirs until out of its rents the loan and interest shall have been received, this is in the nature of a Welsh mortgage, and has been compared to a tenancy by *elegit*.

In order to protect a necessitous mortgagor from the exacting grasp of an inexorable mortgagee, equity will not suffer any compact whatever to infringe the right of redeeming a mortgage in its courts. The right or equity of redemption, then, is the chief and inseparable incident of a mortgage —an incident unextinguishable, save by a foreclosure decree, a sale by the mortgagee under a power, express or implied, in that behalf, a legislative provision, or unreasonable delay. See CLOG ON EQUITY OF REDEMPTION. A provision rendering a mortgage irredeemable for a short term, such as five or seven years, is, however, allowed (*Biggs* v. *Hoddinott*, 1898, 2 Ch. p. 311), and see *Davis* v. *Symons*, 1934, Ch. 442 (covenant not to redeem for twenty years not allowed; redemption allowed in six months).

Every kind of property may be mortgaged except the salaries and emoluments of public functionaries; full pay and half-pay of naval and military men; retiring allowance of a person liable to serve again, or of a servant of the East Indian Company; commissions in the Army; and church livings with cure of souls, and other statutory prohibitions.

While an increase in the rate of interest upon default of regular payment is a penalty, and is not admissible, the reservation of a higher rate, with an abatement for punctual payment, may be made.

The Real Estate Charges Acts, 1854 and 1877 (17 & 18 Vict. c. 113, and 40 & 41 Vict. c. 34), together with the Act of 1867 (see *infra*), commonly called Locke King's Acts, provided that the heir or devisee of real estate should not claim payment of mortgages out of personal assets; and the Real Estate Charges Act, 1867 (30 & 31 Vict. c. 69), provides that in construing wills a general direction to pay debts out of personalty shall not include mortgage debts, unless an intention to that effect be expressed or implied. These Acts were repealed and reproduced in an amended form, to give effect to the assimilation of real and personal property by the Administration of Estates Act, 1925, s. 35. This provision now relates to any property, whether real or personal, including estates-tails.

A mortgagor in possession or receipt of the rents and profits of any land, as to which the mortgagee has given no notice of intention to enter into possession or receipt of the rents and profits, may sue for such possession, or such rents and profits, or to prevent or recover damage for any wrong thereto, in his own name only.—Jud. Act, 1873, s. 25 (5) (now Jud. Act, 1925, s. 4, and repeated by the Law of Property Act, 1925, s. 98); but see *Turner* v. *Walsh*, 1909, 2 K. B. 484.

The Conveyancing Act, 1881 (44 & 45 Vict. c. 41), by ss. 15–17, reproduced with the amendments of the Conveyancing Act, 1882, s. 12, by the Law of Property Act, 1925, ss. 95, 96, gives a mortgagor power to require the mortgagee to transfer the mortgage debt instead of reconveying; power to inspect title deeds, and power to pay off one mortgage, where there are mortgages to the same person of different properties, without paying off the others, unless the power is excluded by the terms of the mortgage (s. 93, *ibid.*). See CONSOLIDATION.

The Law of Property Act, 1925, s. 99, reproduces and extends the Conveyancing Act, 1881, s. 18, and the Conveyancing Act, 1911, s. 3, which conferred on mortgagors and mortgagees in possession extensive powers of leasing, but powers of leasing were commonly provided for before the Act by express terms in the mortgage deed. These sections are not retrospective. Before this Act, in the absence of a power of leasing, a valid lease could only be granted with the concurrence of both mortgagor and mortgagee; see *Keech* v. *Hall*, (1745) 1 Doug. 21; 2 *Sm. L. C.* In *West Bromwich Building Society* v. *Bullock*, 80 S. J. 654, it was held that the mortgagor remains liable on his covenant (unless discharged) after transfer of the mortgage.

Sects. 19–24 of the Conveyancing Act, 1881, and the C. A., 1911, ss. 4 and 5, now reproduced with slight amendments by ss. 101, 103 to 109 of the Law of Property Act, 1925, conferred on mortgagees powers of sale, insurance, and to appoint a receiver.

Sect. 102 enables a mortgagee of an undivided share in land to exercise such powers of sale, etc., as a mortgagee of a share in the land possessed before 1925, and for the effect of the powers of a mortgagee upon sale or foreclosure, over the fee simple or term remaining in the mortgagor and against subsequent incumbrancers, see ss. 88 and 89.

A mortgagee, however, cannot sell the

mortgagor's beneficial interest apart from the legal title (*Hunter* v. *Hunter*, 1936, A. C. 202).

The Law of Property Act, 1925, ss. 117, 118, 119 and 120, and 4th Sched., repeating with modifications the Act of 1881 (ss. 26–29), amended by the Conveyancing Act, 1911, s. 15, provides forms of *Charge by Way of Legal Mortgage* (see s. 87), and *Statutory Charge by Way of Legal Mortgage* (see ss. 87 and 117 and 119 as to implied covenants) and respective transfers and other forms, including respective forms of *Receipt* on discharge of any mortgage. This receipt by s. 115 of the Law of Property Act, 1925, operates as a surrender, reconveyance or transfer of the mortgaged property subject to prior incumbrances (if any). The provisions of s. 115 should be strictly attended to, especially sub-ss. (1) and (2), *ibid.* The vesting effect of a receipt in this form (without other reconveyance) applies to any class of property. The receipt need not be by deed and should be endorsed or attached to the mortgage.

The Law of Property Act, 1925, s. 97, together with the Land Charges Act, 1925, s. 10, has also introduced very considerable alterations in the substantive law of mortgage. By ss. 85 and 86 of the L. P. Act, 1925, all mortgages of a fee simple existing on the 1st January, 1925, were converted into terms of 3,000 years from that day, the reversion in fee remaining in the mortgagor. Mortgages of a legal term were converted into mortgages less a few days, leaving the leasehold reversion in the mortgagor, the term of each subsequent then existing mortgage in either case being for a day longer than the term of the prior incumbrance. In the same manner mortgages after 1925 can only be effected by the creation of a term of years, leaving the freehold or leasehold reversion, as the case may be, in the mortgagor. Such mortgages carry the right to possess the documents of title subject to claims of prior mortgages, and may be effected by a charge by way of legal mortgage (see s. 87 and the 5th Schedule of the Act). Mortgages made after 1925 have one peculiarity: though creating a legal estate, the title is not perfected until the mortgage has been registered under s. 10, Class C, of the Land Charges Act, 1925, in the Land Registry or in the Yorkshire Registry, unless the mortgage is accompanied by a deposit of the documents of title. The absence of documents affects any purchaser (including a registered mortgagee) with notice of a prior title. Mortgages without the deeds obtain priority not necessarily by order of the date of creation but according to date of registration (s. 97, Law of Property Act, 1925). First and any subsequent mortgages which are not accompanied by the title deeds and not registered are void as against a purchaser for value if registration is not effected before completion of the purchase. Legal mortgages made before 1925 do not lose priority and bind the purchaser if he is affected with notice. Such mortgages may and should be registered unless the mortgagee holds the deeds, and in that case the precaution may be useful. Mortgages and charges registered under s. 79 of the Companies Act, 1929, are not affected by these provisions; but in regard to registered land, see REGISTRATION.

For restrictions upon powers to call in or enforce mortgages created before 2nd July, 1919, see Rent etc. Restriction Acts, 1920, ss. 7 and 12, and 1933, s. 9; and for permitted increase of interest, s. 4 of the 1920 Act.

All causes for redemption or foreclosure of mortgages are assigned to the Chancery Division of the High Court: Jud. Act, 1873, s. 34.

As to the power of trustees to invest in mortgages of land, see Trustee Act, 1925, ss. 1, 8, 9 and 10. Upon appointment of new trustees, the land mortgaged must be expressly conveyed or transferred to them. See s. 40 (4), *ibid.*, and EQUITABLE MORTGAGE; NOTICE; LAND CHARGES.

Mortgagee, he that takes a mortgage as security for a loan. See preceding title.

Mortgagor, he that gives a mortgage as security for a loan.

Morth [Sax.], murder, answering exactly to the French *assassinat* or *meurtre de guetapens.*

Morthlaga, a murderer.

Morthlage, murder.

Mortification, a term of Scottish law, synonymous with the English 'mortmain.'

Mortis causâ donatio. See DONATIO MORTIS CAUSÂ.

Mortmain [fr. *mort*, Fr., dead, and *main*, hand], such a state of possession of land as makes it inalienable; whence it is said to be in a *dead hand*—in a hand that cannot shift away the property. It takes place upon alienation to any corporation, sole or aggregate, ecclesiastical or temporal.—2 *Bl. Com.* 268.

By several old statutes, alienation of lands and tenements in mortmain, i.e., to religious

and other corporations, which were supposed to hold them in a dead or unserviceable hand, were prohibited under pain of forfeiture to the lord, the fruits of whose feudal seigniory (the great hinge of government in those days) were thus impaired. But either with or without the consent of the immediate lords (for this is doubtful), this forfeiture might be dispensed with by a *licence in mortmain* from the Crown, which licence was made sufficient without any such consent by 7 & 8 Wm. 3, c. 37, repealed and re-enacted by the consolidating Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), which provides that 'land'—which term, by s. 10, includes tenements and hereditaments corporeal and incorporeal of whatsoever tenure, and any estate and interest in land (e.g., a *mortgage*)—shall not be assured to or for the benefit of, or acquired by or on behalf of, any corporation in mortmain otherwise than under licence from the Crown, or of a statute for the time being in force.

The licence of the sovereign, therefore, is necessary by law in all cases, except in the very numerous cases where, as by the Companies Act, 1929, s. 14, the necessity is dispensed with by the statute, or charter constituting the corporation. In some cases a new restriction is imposed, e.g., Trade Unions may, by the Trade Union Act, 1871, s. 7, hold only one acre of land, and Societies to promote Art, Science, Religion or like purposes not involving the acquisition of gain registered under the Companies Act, 1929, may not, by s. 14 of that Act, hold more than two acres without the licence of the Board of Trade.

The so-called 'Mortmain Act' is 9 Geo. 2, c. 36. It provided that no land, or money to be laid out in land, might be given for any charitable use except by deed executed twelve months before the death of the donor, and enrolled within six months after execution. This Act, as amended, is repealed and re-enacted with amendment by the Mortmain and Charitable Uses Act, 1888 (51 & 52 Vict. c. 42), but that Act has been extensively amended by the Mortmain and Charitable Uses Act, 1891 (54 & 55 Vict. c. 73), in the manner pointed out under the title CHARITABLE USES AND TRUSTS. In regard to assurances of land or personalty or enactments declaring a charitable use executed after 1925, alterations and enrolment under s. 4, sub-ss. (6) and (9) of the Charitable Uses Act, 1888, are no longer required, and the assurance or instrument must be sent to the offices of the Charity Commissioners within six months after execution or permitted extension to be recorded. This does not apply to registered land, or to assurances or instruments which are to be sent to the Board of Education (s. 29, Settled Land Act, 1925); the same section provides that all land vested in trustees for charitable, ecclesiastical or public trusts or purposes is settled land for the purposes of the Act.

The 'Statute of Mortmain,' or '*De Viris Religiosis*,' is 7 Edw. 1. Its object was to aid in enforcing the provisions of the great charter on the subject of alienation to religious societies, and to carry that restriction somewhat further.—2 *Reeves*, 154. This Act also is repealed by the Act of 1888. See, further, CHARITABLE USES AND TRUSTS.

Mortuary, a burial place. Also, a kind of ecclesiastical heriot, being a customary gift claimed by and due to the minister in very many parishes on the death of his parishioners. Like lay heriots, they were originally only voluntary bequests to the church, being intended as a kind of expiation and amends to the clergy for personal tithes and other duties not paid by the deceased in his lifetime. It was usual in ancient times to bring the mortuary to church along with the corpse when it was brought to be buried, and thence it was sometimes called a *corpse-present*. In the laws of Canute it was called *soul-scot* or *symbolum animæ*. See 2 *Bl. Com.* 425.

Mortuaries are limited in amount by the still unrepealed 23 Hen. 8, c. 6, thus: None where deceased died worth less than 10 marks; 3*s.* 4*d.* where he died worth from 10 marks to 30*l.*; 6*s.* 8*d.* where from 30*l.* to 40*l.*; and 10*s.* where exceeding 40*l.*; but the same Act forbids mortuaries for married women or children, and prescribes that mortuaries for travellers be paid 'where they had their most habitation.' See also MUTA CANUM.

Mortuaries could be compounded for by parochial agreement under s. 9 of the Tithe Act, 1839 (2 & 3 Vict. c. 62).

Also, a place for the reception of the bodies of persons who have died of infectious disease, etc., to which such bodies may, in certain cases, be removed by order of a justice of the peace. See Public Health Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 49), s. 198; and Public Health (London) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 50), ss. 234–239.

Mortuum vadium, a dead pledge or mortgage. See MORTGAGE.

Mote, a meeting, an assembly. Used in

composition as *burgmote*, *folkmote*, etc. See GEMOT.

Mote-bell, the bell which was used by the Saxons to summon people to the Court.

Moteer, a customary service or payment at the Mote or Court of the lord, from which some were exempted by charter or privilege.

Mother-church [*primaria ecclesia*, Lat.]. See MATRIX ECCLESIA.

Mothering, a custom of visiting parents on Mid-Lent Sunday.—*Jac. Law Dict.*

Motibilis, one that may be removed or displaced ; also, a vagrant.—*Fleta*, l. 5, c. vi.

Motion, an occasional application to a court in the progress of a cause, e.g., a motion for an injunction or the appointment of a receiver pending the trial of the action ; or summarily and wholly unconnected with plenary proceedings, as a motion to rectify the register of a company.

As to notice of motion and procedure generally, see R. S. C., Ord. LII.

Motion for Judgment. By R. S. C. 1883, Ord. XL., it is provided that, except where by the Act or rules of Court it is otherwise provided, the judgment of the Court shall be obtained by motion for judgment.

Motive, a state of mind ; an incentive ; an object. Relevant evidence of intention.

Motor Car. Formerly motor car meant the same as light locomotive except for certain provisions as to registration. But the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 2 (1) (*e*), defines motor cars as mechanically propelled vehicles (not being vehicles classified under this section as motor cycles or invalid carriages), which are constructed themselves to carry a load or passengers and the weight of which unladen :

(i.) in the case of vehicles which are—

(1) constructed solely for the carriage of passengers and their effects ; and

(2) adapted not to carry more than seven passengers and their effects ; and

(3) fitted with tyres of the prescribed type ; does not exceed 3 tons.

(ii.) in any other case does not exceed 2½ tons.

A heavy motor car is a mechanically propelled vehicle (not being classified under the section as motor cars), which is constructed to carry a load or passengers, and the weight of which unladen exceeds 2½ tons.

A person under seventeen may not drive a motor car, or under twenty-one a heavy motor car, and in order to obtain a driving licence he must be physically fit (i.e., not suffer from certain physical diseases or disabilities which might cause him to be a source of danger) ; also he must pass a test in actual driving ; but a person who has had a driving licence previously to the commencement of the Act need not pass a driving test (s. 5), and Motor Vehicles (Driving Licences) Regulation, 1930 (No. 938). Users of motor vehicles must be insured against third-party risks (s. 35), and Motor Vehicles (Third-party Risks) Regulations, 1930 (No. 1097). As to dimensions, overall length, construction, etc., see Motor Vehicles (Construction and Use) Regulations, 1931 (No. 4). As to rate of speed, offences, reckless and dangerous driving and also careless driving, see, generally, the Road Traffic Acts, 1930–1936, and the various Regulations and Orders. There is an excise duty on all cars driven, rated on the horse-power (Finance Acts, 1920 and 1931). There are also Customs duties on all foreign motor cars.

Motor Cycle. Road Traffic Act, 1930, s. 2 (1) (*f*) : mechanically propelled vehicles (not classified as invalid carriages) with less than four wheels and the weight unladen does not exceed 8 cwt. A driving licence can be obtained at sixteen, but a driving test must be passed and also insurance against third-party risks must be taken out ; for offences, etc., see, generally, the Act.

Motor Spirit is defined by s. 84 of the Finance (1909–10) Act, 1910, as :—

> Any inflammable hydrocarbon (including any mixture of hydrocarbons and any liquid containing hydrocarbon), which is capable of being used for providing reasonably efficient motive power for a motor car.

Motor Tractor. Road Traffic Act, 1930, s. 2 (1) (*c*) : mechanically propelled vehicles which are not constructed to carry any load (other than tools for equipment, etc.), and the weight of which unladen does not exceed 7½ tons. See, generally, the Act.

Motu propio, the commencing words of a certain kind of Papal Rescript.

Moult, a mow of corn or hay.—*Paroch. Antiq.* 401.

Movables, goods, furniture, personalty.

Mulct, a fine of money or a penalty.

Mulier, (1) a woman ; (2) a virgin ; (3) a wife ; (4) a legitimate child.—1 *Inst.* 243.

Mulieratus, a legitimate son.—*Glanv.*

Mulier puisné. When a man has a bastard son, and afterwards marries the mother, and by her has also a legitimate son, the elder

son is *bastard eigné* and the younger son is *mulier puisné*. See 2 *Bl. Com.* 248.

Mulierty, lawful issue, because begotten *e muliere* (of a wife), and not *ex concubinâ*.—*Co. Litt.* 352.

Mullones fœni, cocks or ricks of hay.

Mulmutin Laws. See MOLMUTIAN LAWS.

Mulneda, a place to build a water-mill.—*Dugd. Mon.* tom. ii. 284.

Multa, or **Multura, Episcopi,** a fine anciently given to the king by the bishops, that they might have power to make their wills; and that they might have the probate of other men's wills, and the granting of administrations.—2 *Inst.* 291.

Multifariousness. This, in a bill in equity, was the improperly joining in one bill distinct and independent matters, and thereby confounding them. For the former practice, see *Story's Eq. Plead.* 224; 1 *Dan. Ch. Prac.* 5th ed., and 2 *Wms. Saund.* 295, c. See now JOINDER OF CAUSES OF ACTION.

Multipartite [fr. *multus*, Lat., many, and *pars*, a part], divided into several parts.

Multiplepoinding, a proceeding in Scotch law, of the same nature as our Interpleader.

Multiplicity. A bill in equity might have been objectionable for an undue dividing or splitting up of a single cause of suit, and thus multiplying subjects of litigation. Equity discourages unreasonable litigation. It would not, therefore, permit a bill to be brought for a part of a matter only where the whole was the proper subject of one suit. See Jud. Act, 1873, s. 24 (7) (see now Jud. Act, 1925, s. 43); and as to inferior courts, see ss. 89-91 (see now Jud. Act, 1925, ss. 201, 202, 203).

Multitude, an assembly of ten or more persons.—*Co. Litt.* 257.

Multitudo errantium non parit errori patrocinium. 11 *Co.* 75.—(The multitude of those who err gives no excuse to error.)

Multitudo imperitorum perdit curiam. 2 *Inst.* 219.—(A multitude of ignorant persons destroys a court.)

Multo, a wether sheep.—*Old Records.*

Multo fortiori. See A FORTIORI.

Multure [fr. *mouture*, Fr.; fr. *molo*, Lat., to grind], a grist or grinding; the corn ground; also the toll or fee due for grinding.

Mum, a species of fat ale brewed from wheat and bitter herbs; mentioned in revenue Acts.

Mumming. Antic diversions of the Christmas holidays, suppressed in Queen Anne's time. See 3 Hen. 8, c. 9.

Mund, peace, whence *mundbryc*, a breach of the peace.—*Leg. H. I.*, c. 37.

Mundbyrd, Mundeburde, a receiving into favour and protection.

Munera, portions of lands distributed to tenants and revocable at the lord's will, under our early feudal system.

Municipal [fr. *municipalis*, Lat., of *munus*, office, and *capio*, I take, or hold], belonging to a corporation.

Municipal Corporation. A body of persons in a town having the powers of acting as one person, of holding and transmitting property, and of regulating the government of the town. Such corporations existed in the chief towns of England (as of other countries) from very early times, deriving their authority from 'incorporating' charters granted by the Crown.

The Municipal Corporations Act, 1835 (5 & 6 Wm. 4, c. 76), passed after local inquiries by Royal Commissioners, completely reorganized the constitution of these corporations, and abrogated all charters so far, but so far only, as inconsistent with it. This Act applied to 178 corporations named in the schedules thereto, and to 68 other corporations subsequently receiving a charter, a town to which it applied being styled a 'borough.'

The Act of 1835 was amended by a series of statutes passed from time to time, and consolidated by the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), which, in turn (except for London), has been largely repealed and replaced with amendments by the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 307.

In general, the places to which the Acts apply are to a great extent under the control of a municipal corporation, consisting of the 'mayor, aldermen, and burgesses,' and acting through a 'council' elected by the burgesses, i.e., persons entitled to vote under the Representation of the People Acts, 1918 to 1929.

The voters are all resident householders who have occupied and paid rates for twelve months prior to any July, and have also been enrolled as burgesses.

The councillors are elected by the burgesses on every 1st of November. Their term of office is three years, and one-third of their number goes out of office every year. If the election be contested the poll is taken by ballot, under the Ballot Act, 1872. The aldermen, in number one-third of the number of councillors (and not necessarily burgesses), are elected by the council. They remain in office six years, one-half of their number going out of office every third year.

The mayor is elected for one year by the council from among the aldermen or councillors, or persons qualified to be such. He may, and in some towns does, receive a moderate salary. The aldermen and councillors serve gratuitously.

The council thus constituted manages the corporate property, having as officers a 'town clerk,' a 'treasurer,' and such other officers as the council think necessary. It has the control of the borough police, and as a local authority for the purposes of rating (Rating and Valuation Act, 1925); good rule and government (Local Government Act, 1933) (Public Health Acts, 1875–1936) (Housing Act, 1936), and functions conferred by other public and local Acts with powers to make bye-laws in pursuance of statutory duties, authorities and discretions, and by virtue of the charter (if any) of its constitution, including powers for raising, borrowing or advancing money as provided by statute for any of these purposes.

In most of the larger boroughs there is a separate commission of the peace, excluding the jurisdiction of the county justices, and a separate Court of Quarter Sessions, presided over by a 'recorder,' having the same jurisdiction in the borough as the justices in County Quarter Sessions have for the county. A separate commission and a separate Court of Quarter Sessions may also be granted by the Crown on petition of the Council to such boroughs as do not possess them. Where there is a separate Court of Quarter Sessions there is also a borough coroner, appointed by the council.

A considerable number of small 'unreformed corporations,' in which there were a mayor and other corporation officers, were either abolished or brought under the provisions of the Municipal Corporations Act, 1882, by the Municipal Corporations Act, 1883 (46 & 47 Vict. c. 18), and the Local Government Act, 1888. See COUNTY COUNCIL.

Municipal Law, that which pertains solely to the citizens and inhabitants of a state, and is thus distinguished from political law and the law of nations.

Muniment, support, defence, record; deed or writing upon which claims and rights are founded and depend; evidences, charters.

Muniment-house, or **Muniment-rooms,** a house or room of strength, in cathedrals, collegiate churches, castles, colleges, public buildings, etc., purposely made for keeping deeds, charters, writings, etc. 3 *Inst.* 170.

Munitions of War. As to keeping secret patents for their invention, see s. 30 of the Patents and Designs Act, 1932 (22 & 23 Geo. 5, c. 32), and Patent Rules, 1932, rr. 106–108. As to supplying such to foreign states at peace with this country, for the purpose of hostilities between themselves, see 33 & 34 Vict. c. 90. As to the establishment of a Ministry of Munitions during the Great War, see 5 & 6 Geo. 5, c. 51. It was abolished by 11 Geo. 5, c. 8. *Cf.* CONTRABAND.

Murage [fr. *murus*, Lat., a wall], money paid to keep walls in repair.

Muratio, a town or borough surrounded with walls.—*Jac. Law Dict.*

Murder [fr. *morthor, morthen*, Sax.; *murdrum*, Low Lat.]. It is thus defined by Coke (3 *Inst.* 47): 'When a person of sound memory and discretion unlawfully killeth any reasonable creature in being, with malice aforethought, either express or implied'; see 4 *Bl. Com.* 195. Consult *Russell on Crimes; Arch. Cr. Pl.; Steph. Dig.*

(1) The person committing the offence must be conscious of doing wrong, and able to discern between good and evil. See IDIOT; LUNATIC; DRUNKENNESS and MACNAUGHTON'S CASE.

(2) Death must result within a year and a day after the cause of death administered: see *R.* v. *Dyson*, 1908, 2 K. B. 454.

(3) The person killed must be a reasonable creature in being, and under the king's peace.

(4) The killing must be with malice aforethought, express or implied, and malice is implied from the perpetration of any felony, however absent from the mind of the perpetrator any intention to kill may be.

Capital Punishment.—'Every person convicted of murder shall suffer death as a felon.' —Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), s. 1. See SENTENCE OF DEATH. The execution, formerly public, has taken place in prison since 1868. See CAPITAL PUNISHMENT. On the principle that every greater felony includes a less, a person indicted for murder may be (and very frequently is) convicted of manslaughter. The Infanticide Act, 1922, provides that a woman who wilfully causes the death of her newly-born child shall be guilty of the felony of infanticide if at the time she had not fully recovered from the effect of giving birth to the child, and by reason thereof the balance of her mind was then disturbed, although but for the Act she would have been guilty of murder. By the Infant Life (Preservation) Act, 1929 (19 & 20 Geo. 5, c. 34), s. 2 (2),

where upon the trial of any person for the murder or manslaughter of any child or for infanticide, the jury may, if of opinion that the person charged is not guilty of murder, manslaughter or infanticide, return a verdict of child destruction if satisfied that such offence has been committed. As to punishment for attempted murder, see *R.* v. *White*, 1910, 2 K. B. 124.

A murderer is absolutely disqualified from deriving any benefit under the will of his victim: see *Re Hall*, 1914, P. 1, and cases there referred to.

Murdrum, the secret killing of another, also the amercement to which the vill wherein it was committed, or, if that were too poor, the whole hundred, was liable.—4 *Bl. Com.* 195.

As to the rates of compensation for murder amongst the Anglo-Saxons, see 2 *Hall. Mid. Ages*, 133.

Muriatic Acid Gas. See ALKALI WORKS.

Murorum operatio, the service of work and labour done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle; their personal service was commuted into *murage* (*q.v.*).

Muthlach, murder.

Museum. A building or institution for the cultivation of science, favoured by the legislature in the Public Libraries Acts, in the Mortmain and Charitable Uses Act, 1888, s. 6, and in the Museums and Gymnasiums Act, 1891. Powers were transferred to the Board of Education by 9 & 10 Geo. 5, c. 21, and see the Public Libraries Acts, 1892 and 1919. By the latter Act, 9 & 10 Geo. 5, c. 93, museums were transferred to the library authority.

Mushrooms. To pick these growing in their natural state in a field is not 'wilfully or maliciously to commit damage to real or personal property' within s. 52 of the Malicious Damage Act, 1861 (*Gardner* v. *Mansbridge*, (1887) 19 Q. B. D. 217).

Music. For the purposes of the Copyright Act, 1911, 'copyright' includes in the case of a musical work the right to make any record, perforated roll or other contrivance by means of which the work may be mechanically performed (s. 1 (2) (*d*)); see *Performing Right Society Ltd.* v. *Hammond's Bradford Brewery Co. Ltd.*, 1934, Ch. 121 (reproduction by radio receiving set and loud-speaker); and see also s. 19 of the Act, and as to posthumous works, s. 17. Copyright is now confined to such rights as are given by statute, the common law rights being abrogated (s. 31).

The Musical Summary Proceedings (Copyright) Act, 1902, and the Musical Copyright Act, 1906, amended by the Copyright Act, 1911, give additional protection to the owners of musical copyright against unauthorized sales, a defect in the Act of 1902 having been discovered in *Ex parte Francis*, 1903, 1 K. B. 275; the Act of 1906 empowers constables to arrest, without warrant, sellers of music notified to the chief officer of police by the owners as copyright.

Music and Dancing Licences.—The grant of these in London and Westminster and within twenty miles thereof, including the administrative county of Middlesex (Music and Dancing Licences (Middlesex) Act, 1894), is regulated by the Public Entertainment Act, 1751 (25 Geo. 2, c. 36), which enacted that any house kept for public dancing, music, or other public entertainment of the like kind, without a licence from justices, is to be deemed a disorderly house; see Home Counties (Music and Dancing) Licensing Act, 1926 (16 & 17 Geo. 5, c. 31); and by s. 3 of the Local Government Act, 1888, which transferred the licensing powers from justices to the London County Council. For Sunday entertainments, see Sunday Entertainments Act, 1932 (22 & 23 Geo. 5, c. 51).

Various local Acts in large towns (see *Geary on the Law of Public Entertainments*) regulate music-halls, etc., somewhat similarly; and the Local Government Act, 1888, substitutes the county council for the justices as the licensing authority.

Under the 'adoptive' Public Health Acts Amendment Act, 1890, Part III., if and where adopted, a house or garden, whether licensed for the sale of liquor or not, may not be kept for public 'dancing, singing, music, or other public entertainment of the like kind,' without a licence from the justices having power to grant licences for the sale of intoxicating liquor.

Musician, London. The Metropolitan Police Act, 1864 (27 & 28 Vict. c. 55, 'Bass's Act' (*Chitty's Statutes*, tit. '*Police (Metropolis)*'), repealing and strengthening the provisions of s. 57 of the Metropolitan Police Act, 1839, enacts that

> any householder within the metropolitan police district, personally, or by his servant, or by any police constable, may require any street musician or street singer to depart from the neighbourhood of the house of such householder, on account of the illness, or on account of the interruption of the ordinary occupations or pursuits of any inmate of such house, or for other reasonable or sufficient cause;

And every person who shall sound or play upon any musical instrument or shall sing in any thoroughfare or public place near any such house after being so required to depart, shall be liable to a penalty of not more than forty shillings, or, in the discretion of the magistrate before whom he shall be convicted, may be imprisoned for any time not more than three days.

[or in default of payment for not more than one month : *Reg.* v. *Hopkins*, 1893, 1 Q. B. 621],

and it shall be lawful for any constable belonging to the metropolitan police force to take into custody without warrant any person who shall offend as aforesaid : provided always, he shall be given into custody by the person making the charge : provided also, that the person making a charge for an offence against this Act shall accompany the constable who shall take into custody any person offending as aforesaid to the nearest police station-house, and there sign the charge sheet kept for such purpose.

Mussa, a moss or marsh ground ; or a place where sedges grow ; a place overrun with moss.

Muster-book, a book in which the forces are registered.—*Termes de la Ley.*

Muster-master, one who superintended the muster to prevent frauds.—35 Eliz. c. 4.

Muta canum [Fr. *meute*], a mew or kennel of hounds, one of the mortuaries to which the Crown was entitled at a bishop's decease.—2 *Bl. Com.* 426.

Mutation, a French death duty. ' "Droits de mutation par décès," which is a duty payable on transmission of property on death ' : *Re Scott*, 1914, 1 Ch. 848.

Mutatis mutandis. With the necessary changes in points of detail.

Mute of Malice, used of one who abstains from pleading to an indictment when he is able to do so. See PEINE FORTE ET DURE.

Mutilation, deprivation of a limb or any essential part. See MAYHEM.

Mutiny Act, a statute annually passed from 1689 to 1879, ' to punish mutiny and desertion, and for the better payment of the army and their quarters.' See ARMY.

Mutseddey, Mutseddee, intent upon ; also writer, accountant, or secretary.—*Indian.*

Mutual Debts, money due on both sides between two persons.—See SET-OFF ; and as to mutual credits, debts, or other mutual dealings between a debtor afterwards becoming bankrupt and a person proving a debt against him, see s. 31 of the Bankruptcy Act, 1914, and *Eberle's Hotel Co.* v. *Jonas*, (1887) 18 Q. B. D. 459.

Mutual Promises, concurrent considerations, which will support each other, unless one or the other be void ; in which case, there being no consideration on the one side, no contract can arise. But if the promise on one side be only voidable, as in consideration of money given or of a promise by an infant, it is sufficient.

Mutual promises, however, to be obligatory, must be made simultaneously. If they be made at different times on the same day they will not be a good consideration for each other because of the want of reciprocity of obligation at the moment the contract is made.—*Story on Contracts.*

Mutual Testaments, wills made by two persons who leave their effects reciprocally to the survivor. Either will may be revoked by notice during the joint lives, but the survivor cannot revoke his or her will if the benefit of the other will has been taken : see *Stone* v. *Hoskins*, 1905, P. 194 ; *In the Estate of Heys*, 1914, P. 192.

Mutuality, reciprocation ; the state of things in which one person being bound to perform some duty or service or act for another, that other on his side is bound to do something for the former.

A memorandum under the 4th section of the Sale of Goods Act, 1893 (Statute of Frauds, s. 17), or the Law of Property Act, 1925, s. 40 (Statute of Frauds, s. 4), does not require mutual signatures to bind the party signing, but if it can be shown that the signature of one party was dependent on the other party signing, the claim on the contract would fail, in the absence of both signatures, because the condition has not been fulfilled. —*Halsbury L. E., Hailsham Ed.*, vol. 7, p. 124. As to the want of mutuality as a defence to an action for specific performance, see *Fry on Specific Performance.*

Mutuation, the act of borrowing.

Mutuo, to borrow.

Mutus, silent, not having anything to say.

Standing mute is when a person, being arraigned, either cannot speak, or refuses to answer or plead. See PEINE FORTE ET DURE.

To advise a prisoner to stand mute is a contempt of Court. See MISPRISION.

Mutus et surdus (dumb and deaf).

Mutuum, a loan whereby the absolute property in the thing lent passes to the borrower, it being for consumption, and he being bound to restore, not the same thing, but other things of the same kind. Thus, if corn, wine, money, or any other thing which is not intended to be returned, but only an equivalent in kind, is lost or destroyed by accident, it is the loss of the borrower ; for it is his property, and he must restore the equivalent in kind ; the maxim *ejus est periculum cujus est dominium* applying to such cases.

In a *mutuum* the property passes immediately from the *mutuant* or lender to the *mutuary* or borrower, and the identical thing lent cannot be recovered or redemanded.—*Jones on Bailm.* 64.

Mynster-ham (*ecclesiæ mansio*, Lat.), monastic habitation; perhaps the part of a monastery set apart for purposes of hospitality or as a sanctuary for criminals.—*Anc. Inst. Eng.*

Mystery [fr. *mestier*, Fr.], an art, trade, or occupation.

N.

Naam [fr. *nam*, Sax., to take], the attaching or taking of movable goods and chattels, called *vif* or *mort*, according as the chattels were living or dead.—*Termes de la Ley.*

Nabob, Nawab, originally the governor of a province under the Mogul government of Hindostan, 'whence it became a mere title of any man of high rank, upon whom it was conferred without any office being attached to it' (*Wilson's Indian Glossary*).—*Indian.*

Naib, a deputy.—*Ibid.*

Nail, a measure of two inches and a quarter.

Nam, distress; seizure.—*Anc. Inst. Eng.*

Namation, the act of distraining or taking a distress.

Name [fr. *nomen*, Lat.; *nom*, Fr.; or *namo*, Goth.; *nama*, Sax.; *naem*, Dut.], the discriminative appellation of an individual.

Proper names are either *Christian names*, as being given at baptism, or *surnames*, from the father.—4 *Rep.* 170.

A Christian name may be altered at confirmation with consent of the bishop, and the bishop is directed by a constitution of 1281 to change 'wanton names' at confirmation. See *Blunt's Church Law*, 2nd ed. at p. 60, where two post-Reformation instances are given of a bishop changing a Christian name at confirmation, and it is said to be 'believed that cases still occur where this is done.'

Marriage confers a name upon a woman, which is not lost by her divorce, and she can acquire another only by obtaining it by repute obliterating her name by marriage; see *Fendall* v. *Goldsmid*, (1877) 2 P. D. 263. As to retainer of a title, see *Cowley* v. *Cowley*, 1901, A. C. 450.

Any one may take on himself whatever surname or as many surnames as he pleases, without an Act of Parliament or royal licence. But a man cannot have two names of baptism as he may have divers surnames (*Co. Litt.* 3 *a*). The assumption by a stranger of a name, the patronymic of a family, is no ground of action (*Du Boulay* v. *Du Boulay*, (1869) L. R. 2 C. P. 430). Names may be changed by Act of Parliament, by Royal Licence, or deed poll: see S. R. & O., 1922, Nos. 210, 211, and notes, *A. P.*, to R. S. C., Ord. LXI., r. 9. See *Falconer on Surnames*. The change of name by aliens is prohibited, subject to the provisions of the Aliens Restriction (Amendment) Act, 1919 (9 & 10 Geo. 5, c. 92), s. 7. The addition of '& Co.' was held to be a change of name in *Evans* v. *Piauneau*, 1927, 2 K. B. 374. See BUSINESS NAMES; and Registration of Business Names Act, 1916 (6 & 7 Geo. 5, c. 38), and S. R. & O., 1916, No. 186, and 1926, No. 521; also COMPANY; DIRECTORS.

Name and Arms Clause, a clause enjoining persons on whom property or estates are settled, either by deed or will, to take and use the name and arms of the settlor. As to the framing and effect of such a clause, see *Dav. Prec.*, vol. iii. Pt. I. p. 351; *Co. Litt.* 327 *a*, and Mr. Butler's note thereto; and *Re Watson*, 1930, 2 Ch. 344. For formalities required, see *Halsb. L. E.*, title '*Name.*'

Namium, a distress.—2 *Inst.* 140.

Namium vetitum, an unjust taking of the cattle of another and driving them to an unlawful place, pretending damage done by them.—3 *Bl. Com.* 149. See REPLEVIN.

Nantes, Edict of, for the security of Protestants, made by Henry IV. of France, and revoked by Louis XIV., October 2, 1685.

Narr. [abbrev. of *narratio*, Lat.], a declaration in an action.—*Jac. Law Dict.*

Narratio, a count, a declaration.

Narrator, a pleader, or reporter.

Narrow Seas, those running between two coasts not far apart. The term is sometimes applied to the English Channel.

The Firth of Forth is also 'narrow waters' as far as collision regulations are concerned (*Screw Collier Co.* v. *Kerr*, 1910, A. C. 165).

Natal, as to the union of the colonies of Natal, the Cape of Good Hope, the Transvaal, and the Orange River Colony, see the South Africa Act, 1909 (9 Edw. 7, c. 9). The Union was established May 30th, 1910 (S. R. & O., 1909 (No. 1460)). See also DOMINIONS.

Natale, the state and condition of a man.

Nathwyte. See LAIRWITE.

Nation, a people distinguished from another people, generally by their language, or government; an assembly of men of free

condition, as distinguished from a family of slaves.

National Assembly of the Church of England. 'The assembly constituted in accordance with the constitution set forth in the appendix to the address presented to His Majesty by the Convocations of Canterbury and York on the 10th day of May, 1919, and laid before Parliament' (Church of England Assembly (Powers) Act, 1919). The Church Assembly consists of the House of Bishops (i.e., members of the Upper Houses of the two Convocations), the House of Clergy (i.e., members of the two Lower Houses), and the House of Laity, which consists of representatives from the two Provinces of Canterbury and York elected in accordance with the Rules contained in the Schedule to the Representation of the Laity Measure, 1929 (19 & 20 Geo. 5, No. 2). Measures passed by the Assembly are examined by an Ecclesiastical Committee consisting of 15 members of the House of Lords appointed by the Lord Chancellor, and 15 members of the House of Commons appointed by the Speaker. This Committee reports to Parliament. On both Houses of Parliament resolving that the measure be presented to the King it has the force of an Act of Parliament as soon as the Royal Assent has been given.

National Debt, the money owing by Government to some of the public, the interest of which is paid out of the taxes raised by the whole of the public. It is regulated by the 'National Debt Act, 1870.' See FUNDS.

National Insurance. The National Insurance Act, 1911 (1 & 2 Geo. 5, c. 55), introduced by Mr. Lloyd George, established a wide system of compulsory state insurance covering both ill-health and unemployment, which is based upon premiums contributed in part by the employer, in part by the employee, and in part by the State. The Act consisted of three parts, the first dealing with National Health Insurance, the second with Unemployment Insurance, and the third contained miscellaneous provisions. This Act remained the basis of National Health Insurance, although the subject of very extensive amendment, until the National Health Insurance Act, 1924, consolidated the law. The law has been consolidated again by the National Health Insurance Act, 1936 (26 Geo. 5, and 1 Edw. 8, c. 32), amends and repeals the whole of the Acts passed in 1920, 1922, 1924 and 1928. The arrangement is as follows:—

Part I. Insured Persons and Contributions.
Part II. Benefits.
Part III. Approved Societies and Insurance Committees.
Part IV. Financial Provisions relating to Approved Societies and Insurance Committees.
Part V. Special Classes of Insured Persons.
Part VI. Central Finance.
Part VII. Central Administration.
Part VIII. Legal and Miscellaneous.
Parts IX., X., and XI. apply the Act to Scotland, Northern Ireland, and Wales.
Part XII. Interpretation, Surveys and Repeal.

Similarly, Part II. of the Act of 1911 was repealed, and replaced, after detailed amendment, and recently consolidated again by the Unemployment Insurance Act, 1935 (see *infra*). It is impossible here to do more than give a bare outline of the two branches of National Insurance, and for the determination of any particular question reference should be made to the Acts themselves and the regulations made thereunder; see also *Chitty's Statutes*, tit. '*Insurance*,' and *Comyns Carr* or *Watts on National Insurance*; and for a general outline of National Health Insurance, see *National Health Insurance Manual* by *Sir Kingsley Wood* and *T. S. Newman*, and the *Summary of the National Health Insurance Acts*, published by H.M. Stationery Office.

1. NATIONAL HEALTH INSURANCE.

The general scheme is the provision of compulsory insurance of all persons of 16 years of age and upwards who are employed either as manual workers, or at a rate of remuneration not exceeding 250*l.* per annum gained otherwise than by manual labour. Two classes of persons come within the scheme: those who *must* be insured—*Employed Contributors*; and those who *may* take advantage of the provisions of the Act—*Voluntary Contributors*.

A. *Employed Contributors.* With the exception of persons specially 'excepted' and 'exempted,' as mentioned below, all persons of whatever nationality between 16 and 70 years of age, including married women, who are employed in the United Kingdom in any of the following employments are 'employed contributors' in respect of whom contributions must be paid. See Schedule I.

(*a*) Employment under a contract of service or apprenticeship.

(*b*) Employment under a contract of service or apprenticeship as master or a member of the crew of any ship registered in the United Kingdom.

(*c*) Employment as an 'outworker,' that is to say, a person to whom articles or materials are given to be made up or worked upon in his own home or on premises not under the control of the employer.

(*d*) (generally) Employment as an officer or servant of a local or public authority.

(*e*) Employment in plying for hire with a vehicle or vessel the use of which is obtained by a contract of bailment (e.g., a taxi-cab hired by a taxi-cab driver). The owner is considered to be the employer for the purpose of the Acts.

(*f*) Employment by way of manual labour under a contract for the performance of such labour for the purposes of any trade or business.

(*g*) Employment on a British owned or registered ship when the person employed is remunerated by a share in the profits or gross earnings of the vessel.

(*h*) Service in H.M. Forces. The Acts contain special provisions governing these contributors.

The following are excepted from the operation of the Acts :

(*a*) Persons remunerated, otherwise than for manual labour, at a rate of more than 250*l.* per annum in respect of a particular employment. What is manual labour is a question of fact : the real and substantial character of the employment must be considered.

(*b*) Persons employed as apprentices, persons employed on agricultural holdings, persons employed by their parents, persons wholly maintained by their employer, if, in each case, employed without money payment.

(*c*) Husband or wife employed by his or her spouse.

(*d*) Persons casually employed, but not persons so employed for the purposes of the employer's trade or business, nor by a club for the purposes of a game or the like.

(*e*) Every agent paid by commission or share in profits who is either so employed by more than one employer and is not mainly dependent on his earnings from any one of them, or is mainly dependent on his earnings from some other source.

(*f*) Persons whose employment has been specified in a special order as being a subsidiary employment, i.e., an employment not usually a principal means of livelihood.

(*g*) Persons in the employment of the Crown, local or public authorities, or in the employment of railway or statutory companies and entitled to benefits from a superannuation fund, if excepted by a certificate issued by the Minister of Health certifying that they are entitled to sickness and disablement benefits of at least equal value to those obtained under the Acts.

(*h*) School teachers entitled to benefits under the School Teachers Superannuation Acts, and pupil and student-teachers in public elementary schools.

(*i*) Outworkers not wholly or mainly dependent on earnings as such, if the wives of insured persons.

(*j*) Crews of fishing vessels remunerated by shares in the profits, if in accordance with the custom of a port, if a special order has been made.

A person who would otherwise be an 'employed contributor' may, if he so desires, apply for a certificate of exemption if :

(*a*) in receipt of an income of not less than 26*l.* a year, which is derived otherwise than by his personal exertions ; or

(*b*) Ordinarily or mainly dependent for his livelihood upon some other person, or on earnings derived from an employment not within the Act ; or

(*c*) Being an insured person, he has been employed for less than the prescribed period (formerly less than 13 weeks in the preceding two years).

B. *Voluntary Contributors.* Voluntary contributors are persons who *may*, if they wish, come under the Acts. Married women cannot become voluntary contributors. Such persons are :

(*a*) Persons who have been employed within the meaning of the Acts and who have been insured as employed contributors for a minimum of 104 weeks, but have ceased to be employed contributors, and who have

given due notice of their intention to become voluntary contributors.

(*b*) Persons engaged in excepted employment who have received the permission of the Minister of Health to become voluntary contributors.

(*c*) Persons who were voluntary contributors at the passing of the Act and who have continued to be insured since.

Contributions. The usual rate of contribution is 9*d.* and 8½*d.* per week for men and women respectively, of which 4*d.* is paid by the employer. These sums are collected by adhesive stamps, which must be affixed to special cards by the employer, who is responsible. The normal time for carrying out this duty is when the wages are paid. The stamps directly after being affixed must be cancelled by writing the date upon them in ink. There are special provisions relating to the amounts of the contributions in the case of low wage-earners, voluntary contributors, sailors, soldiers and airmen, outworkers, etc. An employer is liable to pay contributions in respect of exempted persons.

There is a ' free insurance period ' of two years, when an insured person who is a member of an approved society ceases to be employed within the Act, or to pay contributions as a voluntary contributor. And there may in certain cases be an ' extended insurance period ' of a year ; and perhaps a ' further extended period.'

Benefits. The benefits are :

(1) Medical Benefit, i.e., medical treatment and attendance and medicine.

(2) Sickness Benefit, i.e., periodical payments during incapacity for work to a maximum of 26 weeks.

(3) Disablement Benefit, i.e., a continuation of periodical payments after the sickness benefit has ceased. These payments are smaller than those made as sickness benefit.

(4) Maternity Benefit, i.e., a payment of 2*l.* to a mother on her confinement. If both husband and wife are insured, this benefit is doubled.

(5) Additional Benefits, i.e., further benefits which an approved society can give to its members as a result of a surplus balance. These benefits must be of a specified character and approved by the Minister of Health.

All these benefits are subject to various qualifications and conditions. The administration of the scheme is carried out through self-governing societies known as ' Approved Societies,' who administer the above benefits, except (1), which are administered by statutory bodies known as Insurance Committees. Those persons who do not join an approved society are called *Deposit Contributors*, and are not entitled to money benefits, but can draw out their past contributions in case of sickness. The Minister of Health, the Welsh Board of Health, the Scottish Board of Health, and the Ministery of Labour for Northern Ireland have wide statutory powers, and are in control of the administration as a whole.

2. UNEMPLOYMENT INSURANCE

As stated above, Part II. of the National Insurance Act, 1911, together with its amending Acts, was repealed by the Unemployment Insurance Act, 1920 (10 & 11 Geo. 5, c. 30), and now the Unemployment Insurance Act, 1935 (25 Geo. 5, c. 8), consolidates the Acts 1920–1934, and repeals all the Acts prior to 1934. It is arranged as follows :—

Part I. Insured Persons.
Part II. Contributions.
Part III. Benefit.
Part IV. Administration and Finance.
Part V. Arrangements and Schemes.
Part VI. Education and Powers of Education Authorities.
Part VII. Miscellaneous and General.

The Unemployment Insurance (Agriculture) Act, 1936 (26 Geo. 5, and 1 Edw. 8, c. 13), includes employment in agriculture (hitherto excepted), among the insurable employments.

Owing to the prevalence of unemployment, due to economic conditions brought about by the Great War, this branch of the law has been and continues to be the subject of much amending legislation. Until the law takes a more permanent and enduring form, the only guide to the law existing at any given time will be the statutes then in force. It may, however, be added that the minimum age for entry into insurance (which is the age at which under the law his parents cease to be under an obligation to send him to school) is the school-leaving age, now 15 (Education Act, 1936), for all persons who are engaged in an employment of a manual character, other than certain employments specially excepted, such as, e.g., private domestic service, female nurses, teachers, agents paid by commission, employment otherwise than by manual labour at over 250*l.* a year, etc., come within the operation

of the Acts. (See the principal Act, Schedule I., as amended by the Act of 1936.) The Acts contain somewhat similar provisions as to exceptions and exemptions, as do those dealing with National Health Insurance (see above). The object of the above-mentioned legislation is to impose compulsory insurance against unemployment upon all such employed persons as come within the Acts, so that when out of employment they may receive an 'unemployment benefit,' i.e., payment at a rate and for a period authorized by statute, if they have fulfilled certain specified conditions. The sums required for this purpose are obtained in part from the employer, in part from the workman, and in part are provided by the State, as in the case of Health Insurance. See WORKMEN (*Unemployed*).

Nationality, the quality which arises from being a member of a particular State. It arises through place of birth, parentage or naturalization, and implies allegiance.

National Trust. The National Trust for Places of Historic Interest formed under the National Trust Act, 1907 (7 Edw. 7, c. cxxxvi.), and see 9 & 10 Geo. 5, c. clxxxiv., for the purpose of preserving such places.

Nations, Law of. See INTERNATIONAL LAW. The principal offences against the law of nations are: (1) Violations of safe conducts; (2) Infringements of the rights of ambassadors; and (3) Piracy. See the works of *Grotius, Vattel* and others.

Nativi conventionarii, villeins or bondmen by contract or agreement.—*Leg. H. I.* c. 76.

Nativi de stipite, villeins or bondmen by birth or stock.

Nativitas [fr. *neifty*], the servitude, bondage, or villeinage of woman.—*Leg. Wm. I.*

Nativo habendo, a writ that lay to a sheriff from a lord who claimed inheritance in any villein, when his villein had absconded, for the apprehending and restoring him to such lord. It was in the nature of a writ of right to recover inheritance in a villein; upon which the lord pursued his plaint, and declared thereupon, and the villein made his defence, so that the question of freedom was tried and determined.—*Fitz. N. B.* 77.

Nativus, a servant born.—*Spelm.*

Natura Brevium. See FITZHERBERT.

Natural Affection, that love which one has for his kindred. It is held to be a good consideration for certain purposes. See CONSIDERATION.

Natural Allegiance, that perpetual attachment which is due from all natural-born subjects to their sovereign; *local* allegiance is temporary only, being due from an alien or stranger born for so long a time as he continues within the sovereign's dominions and protection.—*Fost.* 184.

Natural-born Subjects, those that are born within the dominions of the Crown of England and within the allegiance of the sovereign. See ALIEN.

Natural Child, the child in fact, the child of one's body. Some children are both the natural and legitimate offspring of a marriage, i.e., those duly born in wedlock. Some are the legitimate but not the natural offspring of a marriage, i.e., those who are born in wedlock, and never bastardized, although begotten in adultery and in fact the *natural* children of a stranger. See Shakespeare's *King John*, Act i., sc. 1.

Some are natural children only; i.e., bastards, born out of wedlock, and those born in wedlock, who are bastardized, and hence the word is popularly more often used as though it were simply equivalent to bastard. See LEGITIMATION; BASTARD and BASTARDIZE.

Natural Equity. See EQUITY.

Natural Infancy, a period of non-responsible life, which ends with the seventh year of a person's age.

Natural Obligations, duties which have a definite object, but are not necessarily subject to any legal obligation.

Natural Persons, such as we are, formed by the Deity, as distinguished from *artificial* persons or corporations, formed by human laws, for purposes of society and government.

Naturale est quidlibet dissolvi eo modo quo ligatur. *Jenk. Cent.* 66.—(It is natural for a thing to be unbound in the same way in which it was bound).

Naturalization, investing aliens with the privileges of native subjects. See ALIEN.

Nature, Law of, certain rules of conduct supposed to be so just that they are binding upon all mankind. See NATIONS, LAW OF; and consult *Maine's Ancient Law.*

Naufrage [fr. *naufragium*, Lat.], shipwreck.

Naulage [fr. *naulum*, Lat.], the freight of passengers in a ship.—*Johns.*; *Webster.*

Nautæ [Lat.], sailors; carriers by water.

Navagium, a duty of certain tenants to carry their lord's goods in a ship.—*Dugd. Mon.* tom. i. 922.

Naval Discipline Acts. See NAVY.

Naval Reserves. Originally volunteer forces, the Naval Coast Volunteers (16 & 17 Vict. c. 73); now the Royal Naval Reserve;

see 22 & 23 Vict. c. 40, and succeeding Acts, and the Royal Naval Volunteer Reserve, which was formed under 3 Edw. 7, c. 6.

Navicularis [Lat.], a sea captain.

Navigation Acts, restricting the import or export of goods except in British bottoms, i.e., in ships the owners of which and the large proportion of the crews of which were British, were various enactments passed for the protection of British shipping and commerce as against foreign countries. The first 'Navigation Act' was passed during the Commonwealth, in 1651, to restrain the competition of the Dutch marine, and its restrictions were repeated in 1660 by 12 Car. 2, c. 18, sometimes styled the '*Charta Maritima*,' but earlier Acts of the same nature (see, e.g., 5 Rich. 2, stat. 1, c. 3) had been passed in the reigns of Richard the Second, Henry the Seventh, and Elizabeth. All the Navigation Acts were repealed in 1849. See *Pulling's Shipping Code.*

Navy [fr. *navis*, Lat., a ship], an assemblage of ships, commonly ships of war; a fleet.

The discipline of the Navy was formerly regulated by certain express rules, articles, and orders, first enacted by the authority of Parliament soon after the Restoration, but it is now regulated by the Naval Discipline Act (29 & 30 Vict. c. 109), as amended by the Naval Discipline Acts, 1884, 1909, 1915 (2), 1917, and 1922. See *Chit. Stat.*, tit. '*Navy*.'

As to the self-governing Colonies, see the Naval Discipline (Dominion Naval Forces) Act, 1911.

Navy and Marines (Wills) Acts, 1865, 1897, and 1914, and Wills (Soldiers and Sailors) Act, 1918. See NUNCUPATIVE WILL.

Navy Bills, bills drawn by officers of the Royal Navy for their pay, etc. It is a felony to forge them. See FORGERY.

Nazeranna, a sum paid to government as an acknowledgment for a grant of lands, or any public office.—*Indian.*

Nazim, composer, arranger, adjuster. The first officer of a province, and minister of the department of criminal justice.—*Indian.*

Ne admittas (that you admit not), a prohibitory writ directed to the bishop at the request of the plaintiff or defendant, where a *quare impedit* is depending, when either party fears that the bishop will admit the other's clerk during the suit between them; it ought to be issued within six calendar months after the avoidance, before the bishop may present by lapse; for it is in vain to sue out this writ when the title to present has devolved upon the bishop.—*Fitz. N. B.* 37.

Near. In the Railway and Canal Traffic Act, 1854, used of railway stations not more than one mile distant from each other; and in the Unemployed Workmen Act, 1905, s. 1 (*a*), by which the Ministry of Health may make orders extending s. 1 to 'boroughs or districts adjoining or near to London,' used without any definition.

Neat, or **Net,** the weight of a pure commodity alone, without the container cask, bag, dross, packing, etc., opposed to 'gross' weight (*Continental* 'tare' opposed to 'brut'), also 'undiluted.' In accounts a sum of money after deduction of all stated outgoings or expenses, or other deductions.—*Com. term.*

Net rent. In houses to which the Rent and Mortgage Interest Restrictions apply the rent on the 3rd August, 1914, less the rates (if any) payable by the landlord and included in that rent.

Neat Cattle, oxen or heifers.

Neat-land, land let out to the yeomanry.

Ne bailla pas (he did not deliver).

Necation [fr. *neco*, Lat.], the act of killing.

Necessaries, a relative term, not strictly limited to such things as are absolutely requisite for support and subsistence, but to be construed liberally, and varying with the state and degree, the rank, fortune, and age of the person to whom they are supplied; *Wharton* v. *Mackenzie*, (1845) 5 Q. B. 606. It has often been held that an infant is bound to pay a reasonable price for such necessary things as relate to his maintenance and education—as food, lodging, apparel, medical attendance, schooling, and instruction—unless credit be given solely to the parent, which is presumed to be the fact if it appear that the infant was placed at school or is supported by him: see *Co. Litt.* 172 *a*; *Ryder* v. *Wombwell*, (1868) L. R. 4 Ex. 32; *Barnes* v. *Toye*, (1884) 13 Q. B. D. 410; *Roberts* v. *Gray*, 1913, 1 K. B. 520; and INFANT.

Where 'necessaries,' that is, 'goods suitable to the condition in life' of an infant, 'and to his actual requirements at the time of the sale and delivery,' 'are sold and delivered to an infant or to a person who, by reason of mental incapacity or drunkenness, is incompetent to contract, he must pay a reasonable price therefor.'—Sale of Goods Act, 1893, s. 2.

While husband and wife live together, and goods supplied to the wife are necessaries, both in quality and quantity, the law raises

a presumption of assent on the part of the husband to the contract, and renders him liable upon it. Under the law of principal and agent, necessaries are a question of fact in the particular circumstances of the case. The mandate may be revoked or limited, e.g., by express notice to persons supplying goods. See *Lush*, '*Husband and Wife*.' See HUSBAND AND WIFE.

The master of a ship has an implied authority to bind the owner to pay for 'necessaries' for the ship ordered by the master at any port; and this term includes whatever the owner as a prudent man would have ordered himself if present; and the amount due may be recovered in the Probate, Divorce, and Admiralty Division of the High Court of Justice, or, if the sum does not exceed 150*l*., in a county court having Admiralty jurisdiction.—Admiralty Court Act, 1861 (24 & 25 Vict. c. 10); County Courts Admiralty Jurisdiction Act, 1868 (31 & 32 Vict. c. 71), s. 3; Judicature Act, 1925 (15 & 16 Geo. 5, c. 49).

Under s. 4 (2) of the Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), a partial dependant is one who is partially dependent on another for 'the ordinary necessaries of life suitable for persons of his class and position.' Here, 'necessaries' has the same meaning as has been attached to it in other connections, e.g., in cases of infants' contracts (*Kennedy* v. *Horden Collieries Ltd.*, 1925, 2 K. B. 438). It does not, however, include savings (*Welsh Navigation Steam Coal Co. Ltd.* v. *Evans*, 1927, A. C. 834).

Necessity, that which cannot be otherwise; and see ACT OF GOD; INEVITABLE ACCIDENT.

Necessity, Agent of. An agent of necessity may be constituted in two ways: (1) 'Extraordinary emergencies may arise, in which a person who is an agent, may, from the very necessities of the case, be justified in assuming extraordinary powers; . . . his acts, fairly done, under such circumstances, will be binding upon his principal' (*Story on Agency*, 9th ed. s. 141). (2) A stranger acting without any authority may become an agent under circumstances of positive necessity. The doctrine originated in marine adventure, but has been gradually extended: see *Prager* v. *Blatspiel*, 1924, 1 K. B. 566; see *Gwillian* v. *Twist*, 1895, 2 Q. B. 84; *Largan* v. *G. W. R. Co.*, 30 L. T. 173.

A wife deserted by her husband has authority by law, as an agent of necessity, to pledge his credit for necessaries suitable to her station in life and for costs reasonably incurred in taking proceedings against him.

A wife defending a divorce suit is not an agent of necessity as regards her costs (*Arnold and Weaver* v. *Amari*, 1928, 1 K. B. 584).

Necessity, Homicide by, a species of justifiable homicide, because it arises from some unavoidable necessity, without any will, intention, or desire, and without any inadvertence or negligence in the party killing, and therefore without any shadow of blame. As, for instance, by virtue of such an office as obliges one, in the execution of public justice, to put a malefactor to death who has forfeited his life to the laws of his country; but to kill a man in order to eat him, and so escape death by hunger, is murder; see *Reg.* v. *Dudley*, (1884) 14 Q. B. D. 273; and JUSTIFIABLE HOMICIDE.

Neck-verse, the Latin sentence *miserere mei Deus*, Psalm li. 1, because the reading of it was made a test by which to distinguish those who, in presumption of Law, were qualified, in point of learning, and admissible to benefit of clergy. See BENEFIT OF CLERGY.

Ne disturba pas, the general issue in *quare impedit*. It simply denied that the defendant obstructed the presentation, and was adapted to no other ground of defence. See now C. L. P. Act, 1860, ss. 26, 27, and PLEADING.

Ne dona pas, or non dedit, the general issue in a formedon, now abolished. It denied the gift in tail to have been made in manner and form as alleged, and was therefore the proper plea, if the tenant meant to dispute the fact of the gift, but did not apply to any other case.—5 *East*, 289.

Ne exeat regno, a writ to prevent a person from leaving the realm to the damage of a person to whom he is indebted until he has given security for the amount of the debt; since the Judicature Acts not to be issued except in cases coming within s. 6 of the Debtors Act, 1869: see *Drover* v. *Beyer*, (1879) 13 Ch. D. 242.

Negative. In general a negative cannot be proved or testified by witnesses.—2 *Inst.* 662. But this rule does not apply where one party charges another with a culpable omission or breach of duty; in such a case the person who makes the charge is bound to prove it, though it may involve a negative, for it is one of the first principles of justice not to presume that a person has acted illegally till the contrary is proved. Where the presumption of law is in favour of a defendant, then the plaintiff must disprove

the defence, though he may have to prove a negative.

In summary proceedings any exception, etc., may be proved by the defendant, but need not be negatived in the information.—Summary Jurisdiction Act, 1879, s. 39 (2).—1 *Phil. Evid.* c. vii., s. 4.

Negative Pregnant, a form of denial which does not sufficiently distinguish that which is denied from that which is admitted. As to its former effect in pleading, see *Steph. Plead.*, 7th ed. 340.

Neggildare, to claim kindred.—*Jac. Law Dict.*

Negligence, acting carelessly, a question of law or fact or of mixed fact and law, depending entirely upon the nature of a duty, which the person charged with negligence has failed to comply with or perform in the particular circumstance of each case. A very convenient classification has been formulated corresponding to the degree of negligence entailing liability measured by the degree of care undertaken or required in each case, i.e., (1) ordinary, which is the want of ordinary diligence; (2) slight, the want of great diligence; and (3) gross, the want of slight diligence. A smaller degree of negligence will render a person liable for injury to infants than in the case of adults: see *Cooke* v. *Midland Great Western Railway*, 1909, A. C. 229; and *Glasgow Corporation* v. *Taylor*, 1922, 1 A. C. 44. There is also a peculiar duty to take precaution in the case of dangerous articles: see *Dominion Natural Gas Co.* v. *Collins*, 1909, A. C. 640. This case should be distinguished from the principle in *Fletcher* v. *Rylands*, L. R. 3 H. L. 330 (*Sm. L. C.*), where the custodian of a dangerous thing (e.g., water stored by him, poisonous trees or fumes, sewage, vicious or untamed animals, electricity) is an absolute insurer against, and responsible for any damage done owing to the thing escaping, unless, possibly, the damage is due to the plaintiff's act or default, *vis major*, or the act of God, or under statutory sanction positively enjoining the act causing damage; even in this last-mentioned case the defendant would still be under a special duty to take precautions, as held in the Dominion case, *ubi supra*. So also an employer is liable for an accident arising out of dangerous work, even if he employs an independent contractor (*Honeywill* v. *Stein Ltd.* v. *Larkin Brothers, etc., Ltd.*, 1934, 1 K. B. 191.

So in the civil law there are three degrees of negligence: (1) *lata culpa*, gross neglect; (2) *levis culpa*, ordinary neglect; and (3) *levissima culpa*, slight neglect.—*Halifax, C. L.* 61.

The question of negligence may be one entirely of law, where the case falls within a general settled rule or principle of law; more often, of law and fact and sometimes of fact only where it is left to the jury to decide whether the defendant has shown a want of care which would have been expected in the ordinary course of events in the circumstances.

Burden of Proof.—The onus of proving negligence rests on the plaintiff; in some cases *res ipsa loquitur*, i.e., where the thing resulting from it speaks for itself, as in the case of a railway collision between trains owned by the same company (*Carpue* v. *London, Brighton, and South Coast Railway Co.*, (1844) 5 Q. B. 747).

Master and Servant.— A master is responsible to the public, and also, under certain conditions, to his servant, for the negligence of his servant, although a fellow servant with others, acting in the execution of his master's business. See MASTER AND SERVANT.

A manufacturer is liable for negligence in the making or preparation of his wares for sale and use by the public, for whom they are intended: see, e.g., *Grant* v. *Australian Knitting Mills Ltd.*, 79 S. J. 815.

Action by Representatives of Deceased Persons.—An action for pecuniary loss arising from negligence causing death passes to the representative or next of kin of the deceased, by the Fatal Accidents Act, 1846 (9 & 10 Vict. c. 93) ('Lord Campbell's Act'), and the Fatal Accidents Act, 1864 (27 & 28 Vict. c. 95). See *Chitty's Statutes*, tit. '*Executors*,' and the Fatal Accidents (Damages) Act, 1908 (8 Edw. 7, c. 7). The Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), amends the Fatal Accidents Acts, 1846–1908, so as to include adopted and illegitimate children among dependants, and damages may be awarded in respect of funeral expenses. This Act has to a great extent revolutionized the application of the principle *actio personalis moritur cum persona*, to which the above-mentioned Acts have only been isolated exceptions. See ACTIO PERSONALIS and LAW REFORM. See CAMPBELL'S (LORD) ACTS.

These Acts apply as well for the benefit of the representatives of a deceased foreigner as for those of a British subject, at all events if the wrong-doer is not a foreigner (*Davidson* v. *Hill*, 1901, 2 K. B. 606).

Contributory Negligence of Plaintiff.—If the plaintiff has been guilty of contributory negligence, in other words, if with ordinary care he might have avoided the consequence of the defendant's negligence, he cannot recover (*Butterfield* v. *Forester*, (1809) 11 East, 60, and *British Columbia Electric Railway* v. *Loach*, 1916, 1 A. C. 719); and see VOLENTI NON FIT INJURIA.

Consult *Beven on Negligence* and *Smith's Leading Cases*, sub tit. *Coggs* v. *Bernard*.

Negligent Escape, where a person escapes from the custody of the sheriff or other officer. See ESCAPE.

Negoce [fr. *negotium*, Lat.], business, trade, management of affairs.

Negotiable Instruments, those the right of action upon which is, by exception from the common rule, freely assignable from one to another, such as bills of exchange and promissory notes. Any person acquiring a negotiable instrument for value and in good faith can enforce the contract contained in it against the person liable on it, although the person from whom he has obtained it had no title. See also CHOSE.

Promissory notes were made negotiable by 3 & 4 Anne, c. 9, and 7 Anne, c. 25, and placed in all respects upon the same footing with inland bills of exchange.

The Bills of Exchange Act, 1882, contains the law as to negotiation of bills of exchange, promissory notes, and cheques. Section 31 declares that these instruments are negotiated when they are transferred from one person to another in such a manner as to constitute the transferee the holder of them, and s. 32 enumerates the conditions under which an indorsement may operate as a negotiation, as that the indorsement must be written on the bill itself, and be signed by the indorser, and must be an indorsement of the entire bill. A cheque or bill marked 'pay cash or order' is not within the Act and is not a negotiable instrument (*North and South Insurance Co.* v. *National Provincial Bank Ltd.*, (1936), 105 L. J. K. B. 163). See BILL OF EXCHANGE and NOT NEGOTIABLE.

Negotiation, treaty of business, whether public or private.

Negotiorum gestor, a person who spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, etc.

In cases of this sort, as he acts wholly without authority, there can, strictly speaking, be no contract. But the Roman Law raised a *quasi* mandate, by implication, for the benefit of the owner in many of such cases. Nor is an implication of this sort wholly unknown to the Common Law, where there has been a subsequent ratification of the acts by the owner; and sometimes where unauthorized acts are done, positive presumptions are made by law for the benefit of particular parties. Thus, if a stranger enter upon a minor's lands and take the profits, the law will, in many cases, oblige him to account to the minor for the profits as his bailiff; for it will be presumed that he entered to take them in trust for the infant. See *Wall* v. *Stanwick*, (1887) 34 Ch. D. 763.

As the *negotiorum gestor* interferes without any actual mandate, there is good reason for requiring him to exert the requisite skill and knowledge to accomplish the object or business which he undertakes; to do everything which is incident to or dependent upon that object or business, and to finish whatever he has begun. Without such an obligation every person in the community would be at the mercy of ignorant and officious friends.—*Story on Bailments*.

Neife, a woman born in villenage.—2 *Bl. Com.* 94.

Neifty. See NATIVITAS.

Ne injuste vexes, a writ founded on Magna Charta that lay for a tenant distrained by his lord, for more services than he ought to perform; and it was a prohibition to the lord unjustly to distrain or vex his tenant; in a special use it was where the tenant had prejudiced himself by doing greater services, or paying more rent without constraint, than he needed; for, in that case, by reason of the lord's seisin, the tenant could not avoid it by avowry, but was driven to his writ for remedy.—*Fitz. N. B.* 10. Abolished by 3 & 4 Wm. 4, c. 27, s. 35.

Ne luminibus officiatur, a servitude restraining the owner of a house from obstructing the light of his neighbour.

Nembda [Teut.], a jury.—3 *Bl. Com.* 350.

Nemine contradicente, abbrev. *nem. con.* [Lat.], the phrase to signify the unanimous consent of the Members of the House of Commons to a vote or resolution; it is analogous to the term *nemine dissentiente* (*nem. dis.*) in the House of Peers.

Nemo agit in seipsum. *Jenk. Cent.* 40.—(No one impleads himself.)

Nemo aliquam partem recte intelligere potest antequam totum iterum atque iterum perlegerit. *Broom's Leg. Max.*—(No one is able rightly to understand one part before he has again and again read through the whole.)

Nemo contra factum suum venire potest. 2 *Inst.* 66.—(No one can go against his own deed.) See ESTOPPEL.

Nemo dat qui non habet. *Jenk. Cent.* 250. —(He who hath not cannot give.)

Nemo dat quod non habet. (No one can give that which he has not. In other words, No one can give a better title than he has). Consult *Broom's Leg. Max.* In application of this maxim, it is enacted by the Sale of Goods Act, 1893, s. 21 (1), that ' where goods are sold by a person who is not the owner thereof, and who does not sell them with the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.'

Nemo debet bis vexari, si constat curiæ quod sit pro unâ et eâdem causâ. 5 *Co.* 61.—(No man ought to be twice put to trouble, if it appear to the Court that it is for one and the same cause.) In civil actions the general rule is, that the judgment of a court of concurrent jurisdiction directly upon the point is, as a plea, a bar, or as evidence, conclusive between the same parties upon the same matter directly in question in another court. The exception to this rule is in the action of ejectment.—2 *Selw. N. P.* 763.

It is also well established in the criminal law, that when a man is indicted for an offence, and acquitted, he cannot afterwards be indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted upon it by proof of the facts contained in the second indictment.—*Arch. Cr. Plead.* For a recent instance of the application of the maxim, see *Rex.* v. *Simpson*, 1914, 1 K. B. 66. See AUTREFOIS CONVICT.

But an abortive trial without a verdict, as if a jury be discharged for inability to agree, may be followed by a new trial, as was held by the Exchequer Chamber in *Winsor* v. *Reg.*, (1866) L. R. 1 Q. B. 390, where the prisoner was hanged after a second trial for murder.

Nemo debet esse judex in propriâ causâ. 12 *Co.* 113.—(No one should be judge in his own cause.) See *Dimes* v. *Grand Junction Canal Co.*, (1852) 3 H. L. C. 759, in which the judgment of Lord Chancellor Cottenham was set aside by the House of Lords on the ground of his having been a shareholder in the defendant company.

Nemo debet locupletari alienâ jacturâ.—(No one ought to be enriched by another's disaster.) Cited per Bovill, C.J., in *Fletcher* v. *Alexander*, (1868) L. R. 3 C. P. 381.

Nemo ex proprio dolo consequitur actionem. *Broom's Leg. Max.*—(No one maintains an action arising out of his own wrong.)

Nemo patriam in quâ natus est exuere nec ligeantiæ debitum ejurare possit. *Co. Litt.* 129.—(No man can disclaim the country in which he was born, nor abjure the bond of allegiance.) But see EXPATRIATION and ALIEN.

Nemo potest contra recordum verificare per patriam. 2 *Inst.* 380.—(No one can verify by the country [i.e., by jury] against a record.)

Nemo potest esse simul actor et judex. *Broom's Leg. Max.*—(No one can be at once suitor and judge.)

Nemo potest esse tenens et dominus. *Gilb. Ten.* 142.—(No one can be both tenant and lord.)

Nemo præsumitur alienam posteritatem suæ prætulisse. *Wing* 285.—(No one is presumed to prefer the posterity of another to his own.)

Nemo præsumitur malus.—(No one is presumed to be bad.)

Nemo tenetur prodere seipsum.—(No one is bound to betray himself.)

The Evidence Act, 1851 (14 & 15 Vict. c. 99), which by s. 5 makes parties admissible witnesses in actions, expressly saved criminal proceedings from its operation, but a series of particular enactments, e.g., the Licensing Act, 1872, s. 51, the Criminal Law Amendment Act, 1885, s. 20, and the Law of Libel Amendment Act, 1888, s. 9, and finally the general Criminal Evidence Act, 1898 (see that title), make defendants competent, but not compellable, to give evidence.

Nephew [fr. *nepos*, Lat.], (1) the son of a brother or sister, or half-brother or half-sister; (2) in special cases, a great-nephew (*Weeds* v. *Bristow*, (1866) L. R. 2 Eq. 333), or nephew by marriage (*Sherratt* v. *Mountford*, (1873) L. R. 8 Ch. 928), and even an illegitimate nephew (*In the goods of Ashton*, 1892, P. 83).

Nepos, a grandson. **Neptis**, a granddaughter. See *Whitlock* v. *Whitlock*, (1924) 40 T. L. R. 566.

Ne recipiatur, a caveat by a defendant to prevent a plaintiff from trying his cause at certain sittings, where the cause was not entered in due time.—*R.* 43, H. T. 1853.

Ne relessa pas (he did not release).

Nether House of Parliament. The House of Commons was so called in the time of Henry VIII.

Net profits, clear profits after all deductions. See *Watson* v. *Haggitt*, 1928, A. C. 127.

Nets. A custom for fishermen to spread their nets to dry on the lands of a private owner at all times seasonable for fishing is good, as was held of two fishermen of Walmer in Kent in *Mercer* v. *Denne*, 1904, 2 Ch. 534.

Ne unques. Never.

Never Indebted, Plea of, a species of traverse which occurred in actions of debt on simple contract, and was resorted to when the defendant meant to deny in point of fact the existence of any express contract to the effect alleged in the declaration, or to deny the matters of fact from which such contract would by law be implied.—*Steph. Plead.*, 7th ed. 153, 156. By R. S. C. 1883, Ord. XIX., r. 17, a defendant may not deny generally the facts alleged by the plaintiff. See, further, PLEADING.

New Assignment, a form of pleading which sometimes arose from the generality of the declaration, when, the complaint not having been set out with sufficient precision, it became necessary, from the evasiveness of the plea, to re-assign the cause of action with fresh particulars. It most frequently occurred in actions of trespass, as where two assaults had been committed, one of which was justifiable and the other indefensible; or in trespass *quare clausum fregit*, when the defendant claimed a right of way.

New assignment is now abolished, and it is provided that everything formerly alleged by way of new assignment is to be introduced by way of amendment of the statement of claim.—R. S. C. 1883, Ord. XXIII., r. 6 (annulled by R. S. C., July, 1902, r. 7). See *Bullen and Leake's Pleadings*, 9th ed., p. 574.

New Building. Under the Road Improvement Act, 1925 (15 & 16 Geo. 5, c. 68), s. 11, new building 'includes any addition to an existing building.'

The question whether any building is a 'new building' is in general one of fact (see *Ballard* v. *Horton's Estates Ltd.*, (1926) 24 L. G. R. 449). So also in the case of temporary buildings (*q.v.*) (*Rodwell* v. *Wade*, (1924) 23 L. G. R. 174; and *Keeling* v. *Wirral Rural District Council*, (1925) 23 L. G. R. 201).

Sect. 23 of the Public Health Act (Amendment) Act, 1907 (7 Edw. 7, c. 53), contained elaborate definitions of a 'new building,' but this section has been repealed as from the 1st October, 1937, by the Public Health Act, 1936, and of which the provisions relating to building and building bye-laws will be found in Part II. of the Act. 'New building' is not defined, but s. 62 provides for the application of bye-laws for the construction, materials, space for, lighting, ventilation, and dimensions of rooms for human habitation, also height of existing buildings, when altered, extended or changed. See also Factory Acts, London Building Acts and Local Acts.

New Forest, a royal forest in Hampshire, created by William the Conqueror. See 41 Geo. 3, c. 108; 48 Geo. 3, c. 72; 50 Geo. 3, c. 116; 51 Geo. 3, c. 94 (as to timber); 59 Geo. 3, c. 86 (as to common of pasture); 14 & 15 Vict. c. 76 (as to deer); 59 Geo. 3, c. 86, and 10 Geo. 4, c. 50 (as to leases); 17 & 18 Vict. c. 49 (as to settlement of claims); and 29 & 30 Vict. c. 63 (as to game).

Newgate, Delivery of. See CENTRAL CRIMINAL COURT; also 25 Geo. 3, c. 18.

New Inn, an Inn of Chancery. See INNS OF CHANCERY.

New Parishes Acts. 6 & 7 Vict. c. 37 (called 'Peel's Act'), 7 & 8 Vict. c. 94, 19 & 20 Vict. c. 104, and 32 & 33 Vict. c. 94, passed in 1843, 1844, 1856, and 1869, for better providing for the spiritual care of populous parishes by the establishment of district churches therein. See *Trower's New Parishes Acts.*

News. Spreading false news to make discord between the sovereign and nobility, or concerning any great man of the realm, was punishable by Stat. West. I., 3 Edw. 1, c. 34; 2 Rich. 2, st. 1, c. 5; and 12 Rich. 2, c. 11; but all these three Acts have been repealed by the Statute Law Revision Act, 1887 (50 & 51 Vict. c. 59). As to spreading false reports during the Great War, see Defence of the Realm Consolidation Act, 1914 (5 Geo. 5, c. 8), s. 1 (1) (*c*); and see SEDITION.

Newspapers, periodical publications containing intelligence of passing events. They have from time to time been the subject of enactments for their general regulation. The principal of these were 60 Geo. 3 & 1 Geo. 4, c. 9, and 6 & 7 Wm. 4, c. 76. But these and other Acts were repealed by the Newspapers Printers and Reading Rooms Repeal Act, 1869, with the exception of certain sections re-enacted by that Act, amongst which the most important are 39 Geo. 3, c. 79, s. 29, and 2 & 3 Vict. c. 12, s. 2, by which printers of newspapers must print their names and places of abode thereon, etc.

The Judicial Proceedings (Regulation of

Reports) Act, 1926 (16 & 17 Geo. 5, c. 61), makes it an offence to print or publish in relation to judicial proceedings any indecent matter, or indecent medical, surgical, or physiological details calculated to injure public morals. The same Act makes it unlawful to print or publish in relation to matrimonial causes any particulars other than the names, addresses, and occupations of parties and witnesses; a concise statement of the charges, defences, countercharges; submissions on points of law; the decision of the Court thereon; and the summing-up of the judge, finding of the jury, and judgment of the Court.

No prosecution under this Act may be commenced without the sanction of the Attorney-General.

Libel.—Under the Libel Act, 1843 (6 & 7 Vict. c. 96), s. 2, the defendant in any action for a libel contained in a public newspaper may plead an apology and payment into court. The Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), as amended by the Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), requires the consent of a judge at chambers to the prosecution of a newspaper for libel, allows the defence of justification to be gone into by justices, allows justices to summarily convict, and gives 'privilege' (see LIBEL) to newspaper reports of proceedings in a court or at public meetings.

The Act of 1881 also establishes a register of newspaper proprietors, open to public search, defining 'newspaper' in the Act as meaning

any paper containing public news, intelligence, or occurrences, or any remarks or observations therein [an obvious misprint for 'thereon'] printed for sale, and published in England or Ireland periodically, or in parts or numbers at intervals not exceeding 26 days between the publication of any two such papers, parts, or numbers.

Consult *Odgers on Libel.*

New Style. The modern system of computing time was introduced into Great Britain in 1752 by the Calendar (New Style) Act, 1750 (24 Geo. 2, c. 23), the 3rd of September of that year being reckoned as the 14th. See NEW YEAR'S DAY.

New Trial. If any defect of judgment happen from causes wholly extrinsic, i.e., arising from matters foreign to or *dehors* the record, the only remedy the party injured by it has (except formerly error *coram nobis* or *vobis* in some few cases) is by applying to the Court for a new trial, which is in substitution for a bill of exceptions. But the Court must be satisfied that there are strong probable grounds to suppose that the merits have not been fairly and fully discussed, and that the decision is not agreeable to the justice and truth of the case before they will grant a new trial.

The following is a summary of the cases in which a new trial may be granted. They are all subject to the rule that in an action of contract, unless some right independent of the damages be in question, the amount in dispute must be 20*l.* at least for the Court to interfere.

(1) Mistakes, etc., of a judge. If a judge misdirect a jury, even in a penal action, it is generally a good ground for a new trial. So if a judge improperly nonsuit a plaintiff. So if a judge should admit improper evidence, or reject evidence which ought to be admitted, by which means the result of the trial or inquiry has been different from what it otherwise would have been. It is expressly provided by the Rules of the Supreme Court, however, that a new trial 'shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned by the trial of the action' (R. S. C. 1883, Ord. XXXIX., r. 6).

(2) Default or misconduct of the officer of the Court. As where a cause is, by mistake, entered in a wrong list, and the cause is tried as undefended in the defendant's absence.

(3) Default or misconduct of the jury. If a juror has been sworn by a wrong *surname*, and it has been productive of some injustice. If a jury find a verdict 'against the weight of evidence,' but in this case, more than in any other, the Court will be very reluctant to grant the new trial. For excessive damages and for the smallness of the damages, if out of all proportion to the injury. For the misconduct of the jury, as if they had eaten or drunk at the expense of the party for whom they had afterwards found a verdict, or if they determine their verdict by lot, or if any of them had declared that the plaintiff should never have a verdict.

(4) Absence, etc., of counsel or solicitor. The instances are very rare in which the Court has granted a new trial on this ground.

(5) Default or misconduct of the opposite

party. If a party, for whom a verdict is afterwards given, deliver to the jury, after they have left the box, evidence which had not been adduced in court, a new trial will be granted. So if he have laboured the jury, or used improper influence with them. So if he had misled or taken by surprise the opposite party. So where no notice of trial has been given: but if the defendant appear to defend, this irregularity is waived.

(6) Default or misconduct of witnesses. The general rule is, that a new trial will not be granted on the ground that evidence has not been given that might have been given at the trial, for the plaintiff ought, if unprepared with his evidence, either to make application to postpone the trial before the jury are sworn, or should withdraw his record and not take the chance of a verdict. The Court has granted a new trial where it appeared clearly that the plaintiff's case was a mere fiction supported by perjury, which the defendant could not at the time of the trial be prepared to answer.

(7) Discovery of new evidence after the trial. A new trial will seldom be granted where a verdict has been given against a party, or a plaintiff has been nonsuited for want of evidence which might have been produced at the trial, because it would tend to introduce perjury. But if new evidence have been discovered after the trial, the Court will grant a new trial (which has usually been upon payment of costs) if it be necessary, in order to do justice between the parties; but the discovery of witnesses who can contradict those produced on the former trial seems to be no ground for a new trial, nor will the Court grant a new trial to let a party into a defence of which he was apprised at the first trial.

(8) Where one of several issues, etc., has been wrongfully decided. A new trial may be ordered on any question in an action, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question (R. S. C. 1883, Ord. XXXIX., r. 7).

(9) Where there has been a previous new trial. If the jury on the second trial find for the party against whom the former verdict was given, the Court, if the case be doubtful, or the second verdict do not accord with the justice of the case, may be induced to grant a third trial, but this is entirely in the discretion of the Court, even after two concurring verdicts.

(10) Where a party has been taken by surprise.

A new trial may be awarded for the same causes, after inquiry before the sheriff, as after a verdict.

As to time and manner of moving for a new trial, see Ord. XXXIX. The time for applying for a new trial runs from the verdict of the jury, and not from the giving of judgment (*Greene* v. *Croome*, 1908, 1 K. B. 277).

The motion must be made to the Court of Appeal. See Ord. XXXIX., r. 1 (trial without jury); Jud. Act, 1925, s. 30 (1) (replacing Jud. Act, 1890, s. 1). New trials in criminal cases are abolished by s. 20 of the Criminal Appeal Act, 1907 (7 Edw. 7, c. 23). See CRIMINAL APPEAL ACT. As to new trial in County Court, see C. C. R., Ord. XXXI.; *Brown* v. *Dean*, 1910, A. C. 373.

New Year's Day, the 1st of January. The 25th of March was the civil and legal New Year's Day till the alteration of the style in 1752, when it was permanently fixed as the 1st January.

In Scotland the year was, by a proclamation which bears date 27th November, 1599, ordered thenceforth to commence in that kingdom on the 1st January instead of the 25th March. By the Bank Holidays Act, 1871 (34 Vict. c. 17), New Year's Day is made a bank holiday in Scotland, and bills, etc., becoming due on that day are payable on the following day. See HOLIDAY.

New Zealand, Bishopric of, constituted by 15 & 16 Vict. c. 88.

Nexi, among the Romans, persons free-born, who, for debt, were delivered bound to their creditors, and obliged to serve them until they could pay their debts.

Next Friend. At law, an infant having a guardian might sue by his guardian, as such, or by his next friend, though he must always have defended by his guardian. In equity he sued by next friend, and not by guardian, and defended by guardian *ad litem*. A married woman, before the Married Women's Property Act, could not sue either at law or in equity unless her husband were joined.

Infants may sue as plaintiffs by their next friends in the manner practised before the Jud. Acts in the Court of Chancery (as to which see *Dan. Ch. Pr.*, 5th ed. p. 602), and may in like manner defend any action by their guardian appointed for that purpose by Ord. XVI., r. 16. The next friend of an infant is *primâ facie* liable for the costs, which are, however, reimbursed to him out of the infant's estate, provided he have acted properly; but the next friend of a *feme covert* did not incur the like responsibility.

A married woman had, by Ord. XVI., r. 8, of the Rules of 1875, the same right of suing by a next friend as an infant, but the Married Women's Property Act, 1882, s. 1, sub-s. 2 (repealed, reproduced and extended by Law Reform (Married Women and Tortfeasors) Act, 1935, s. 1), by allowing a married woman to sue in all respects as if she were a *feme sole*, has rendered the ' next friend ' in her case unnecessary. See R. S. C. 1883, Ord. XVI., r. 16. As to the capacity of a married woman to act as next friend or guardian *ad litem*, see *A. P.*, 1937, *notes* to Order XVI., r. 16.

Persons of unsound mind sue by their committee or next friend, and defend by their committees or guardians appointed for that purpose (R. S. C. 1883, Ord. XVI., r. 17).

Next of Kin. A person, or set of persons, standing nearest in blood relationship to another person. See DISTRIBUTION, STATUTES OF.

Next Presentation, the right to present to an ecclesiastical benefice on the occurrence of the next vacancy. The purchase of the next presentation of a vacant benefice is illegal and void ; and a clerk could not purchase a next presentation, even if the church were full, with a view of presenting himself. The sale of next presentations is now abolished and the transfer of rights of patronage of a benefice strictly regulated by the Benefices Act, 1898, and the rules made thereunder, and further restricted by the Benefices Act, 1898 (Amendment) Measure, 1923 (14 & 15 Geo. 5, No. 1).

Nexum, the ; a formal transfer of ownership of a thing, or obligation.—*Civ. Law.*

Nicole, an ancient name for Lincoln.

Niece [fr. *neptis*, Lat.], the daughter of a brother or sister ; may, as nephew, mean great-niece, or niece by marriage. See NEPHEW.

Nief. See NEIFE.

Nient comprise (not contained), an exception taken to a petition, because the thing desired was not contained in the deed or proceeding upon which the petition was founded.—*Jac. Law Dict.*

Nient culpable (not guilty), a plea in criminal prosecutions ; see 4 *Bl. Com.* 339.

Nient dedire (to disown nothing), to suffer judgment by not denying or opposing it, i.e., by default.

Nient le fait (not his deed).

Niger liber, the black book or register in the Exchequer ; chartularies of abbeys, cathedrals, etc.

Niger Territories, now the Nigerian Protectorate, by O. C., S. R. & O., 1913, No. 1267, p. 232.

Night, the time of darkness between sunset and sunrise. Under the Night Poaching Act, 1828 (9 Geo. 4, c. 69), s. 12, the night begins one hour after sunset, and ends one hour before sunrise. Under the Larceny Act, 1916, s. 25 (see BURGLARY), and the Factory Act, 1901, s. 156, night is between 9 p.m. and 6 a.m.

Night-House, the name sometimes given to a refreshment-house before the Licensing Act, 1872. See PUBLIC-HOUSE CLOSING ACT.

Night Magistrate, a constable of the night ; the head of a watch-house.—*Scots Term.*

Night Walkers, vagrants, pilferers, disturbers of the peace. They may be arrested by the police, and committed to custody till the morning.—2 *Hale, P. C.* 90. Also a name for a common prostitute : see s. 54 (11) of the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47) ; *Chitty's Statutes*, tit. ' *Police (Metropolis).*'

Nihil capiat per breve (that he take nothing by his writ). Where an issue, arising upon a declaration or temporary plea, is decided for the defendant, the judgment is, generally, that the plaintiff take nothing, etc., and that the defendant go thereof without day, etc., which is a judgment of *nihil capiat*, etc.

Nihil habet forum ex scenâ.—*Bacon.* (The Court has nothing to do with what is not before it.)

Nihil or **nil habuit in tenementis** (he [the landlord] had no interest in the tenements [demised]), a plea denying the lessor's title pleaded in an action of debt only, brought by a lessor against a lessee for years, or at will, without deed or occupation by the lessee, for if the lessee had become tenant he would have been estopped from denying his landlord's title.

Nihil in lege intolerabilius est eandem rem diverso jure censeri. 4 *Rep.* 93 *a.*—(Nothing is more intolerable in law than that the same thing should be judged by a different rule.)

Nihil præscribitur nisi quod possidetur. Lord Hale, *De Jure Maris*, 32.—(Nothing is prescribed except what is possessed.)

Nihil quod est contra rationem est licitum. (Nothing is allowed which is contrary to reason.)

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est. 2 *Inst.* 359.—(Nothing is so consonant to natural equity as that a thing should be dissolved by the same means by

which it was bound.) See *Broom's Leg. Max.*, referring especially to *Ashford* v. *Thornton*, (1819) 1 B. & Ald. 405, the absurd law of which (see BATTEL) had to be abolished by statute, 59 Geo. 3, c. 56.

Nihil tam conveniens est naturali æquitati quam voluntatem domini rem suam in alium transferre ratam habere. 1 *Co.* 100.—(Nothing is so consonant to natural equity as to regard the intention of the owner in transferring his own property to another.)

Nihils, or **Nichils,** debts to the Crown which a sheriff, when making up his accounts for the Exchequer, said were nothing worth and illeviable, for the insufficiency of the parties from whom due. Sheriffs' accounts are now audited by such persons, etc., as the Treasury direct.—Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 22.

Nil debet (he owes nothing), the old form of the general issue in all actions of debt not founded on a specialty. This plea was not allowed after *Reg. Gen. T. T.* 1853, r. 11.

Nil dicit, Judgment by. See DEFAULT.

Nimia subtilitas in jure reprobatur. *Wing.* 26.—(Too much subtlety in law is disapproved.)

Nimmer, a thief; a pilferer.

Nisan, the Babylonish name for Abib, the first sacred and seventh civil month of the Jewish year.

Nisi. A decree, rule, or order of the Court is said to be made *nisi* when it is to take effect unless the party against whom it is made comes before the Court and gives reasons by a certain date why it should not take effect. See DECREE NISI; ABSOLUTE.

Nisi Prius, a Common Law phrase, which originated thus:

An action was formerly triable only in the court where it was brought. But it was provided by Magna Charta, in ease of the subject, that assizes of novel disseisin and mort-ancestor (which were the most common remedies of that day) should thenceforward instead of being tried at Westminster, in the superior court, be taken in their proper counties, and for this purpose justices were to be sent into every county once a year to take these assizes there.—1 *Reeves*, 246. These local trials being convenient, were applied to other actions: for by the statute of *Nisi Prius*, 13 Edw. 1, st. 1, t. 30, as the general course of proceedings, writs of *venire* for summoning juries to the superior courts are in the following terms:—*Præcipimus tibi quod venire facias coram Justiciariis nostris apud Westm. in Octavis Sancti Michaelis Nisi talis et talis, tali die et loco, ad partes illas venerint duodecim, etc.* Thus the trial was to be had at Westminster only in the event of *its not previously taking place* in the county before the justices appointed to take the assizes. This clause of *nisi* or *nisi prius* is not now retained in the *venire*, but it occurs in the record and the judgment roll. And it is enforced by a subsequent statute of 14 Edw. 3, c. 16, which authorizes a trial before the justices of assize, in lieu of the superior Court, and gives it the *name* of a trial at *Nisi Prius.*—2 *Inst.* 424.

Nisi Prius Record. This was an instrument in the nature of a commission to the judges at *Nisi Prius* for the trial of a cause, written on parchment and delivered to the officer of the court in which the cause was to be tried. Any variance between the record and the issue should have been objected to at the time of trial, but the judges had power to amend variances. See RECORD and TRIAL.

Nitro-Glycerine. See the Explosives Act, 1875, and EXPLOSIVES.

Nizam, an arranger; the superior officer of a province charged with the administration of criminal law.—*Indian.*

Niazmut, arrangement, government, the officer of the Nazam or Nizam.—*Ibid.*

Nizamut adawlut, the Chief Criminal Court of the British provinces in India.—*Ibid.*

N. L. See NON LIQUET.

Nobile officium, the equitable jurisdiction of the Court of Session in Scotland.

Nobility, a division of the people, comprehending dukes, marquesses, earls, viscounts, and barons. These had anciently duties annexed to their respective honours; they are created either by writ, i.e., by royal summons to attend the house of peers, or by letters-patent, i.e., by royal grant of any dignity and degree of peerage.

Noble. See GEORGE-NOBLE.

Nocent, guilty; criminal.

Noctanter (by night), an abolished writ which issued out of Chancery, and returned to the King's Bench, for the prostration of inclosures, etc.—7 & 8 Geo. 4, c. 27.

Noctes and **Noctem de firmâ,** entertainment of meat and drink for so many nights.—*Domesday.*

Nodfyrs, or **Nedfri** [fr. *neb*, Sax., necessary], necessary fire. See *Spelman.*

Noisy Nuisance. An action may lie for a noisy nuisance, as by ringing bells (*Soltau* v. *De Held*, (1851) 2 Sim. N. S. 133); user of stable (*Ball* v. *Ray*, (1873) L. R. 8 Ch. 467); or printing works (*Polsue* v. *Rushmer*, 1907,

A. C. 121); or hotel kitchen (*Vanderpant* v. *Mayfair Hotel Co. Ltd.*, 1930, 1 Ch. 138). As to nuisance caused by rifle practice, see *Hawley* v. *Steele*, (1877) 6 Ch. D. 521. As to motor horns, etc., the Minister of Transport may prohibit noise and hooting (20 & 21 Geo. 5, c. 43, s. 30; and 24 & 25 Geo. 5, c. 50, s. 9); and see MUSICIAN.

Noka, a half ingate, generally 7½ acres.

Nolens volens, whether willing or unwilling.

Nolle prosequi (to be unwilling to prosecute) was a proceeding in the nature of an undertaking by the plaintiff when he had misconceived the nature of the action, or the party to be sued, to forbear to proceed in a suit altogether, or as to some part of it, or as to some of the defendants. It differed from a *non pros.*, which put a plaintiff out of court with respect to all the defendants. See now DISCONTINUANCE. The King by his Attorney-General may enter a *nolle prosequi* on an information or indictment: this does not operate as a bar to a new indictment. Consult *Jac. Law Dict.*; *Robertson*, '*Civil Proceedings.*'

Nolunt leges Angliæ (in the original *Anglie*) **mutare.** See MERTON, STATUTE OF.

Nomen collectivum, a singular noun of multitude.

Nomen generalissimum, a most universal term, as land.

Nomina Villarum, an account of the names of all the villages and the possessors thereof, in each county, drawn up by several sheriffs in 1315, and returned by them into the Exchequer, where it was preserved.

Nominal Damages. See DAMAGES.

Nominal Partner, one who has not any actual interest in the trade or business, or its profits; but by allowing his name to be used holds himself out to the world as apparently having an interest. See PARTNERSHIP; HOLDING OUT.

Nominate Contracts, those distinguished by particular names.—*Civil Law.*

Nominatim, by name; expressed one by one.

Nomination, the act of mentioning by name; especially the power of appointing, by virtue of some manor or otherwise, a clerk to a patron of a benefice, by him to be presented to the ordinary. A nominator must appoint his clerk within six months after avoidance; if he do not, and the patron presents his clerk before the bishop has taken any benefit of the lapse, he is obliged to admit such clerk.—*Plowd.* 529. Also (see Ballot Act, 1872; Municipal Corporations Act, 1882, s. 55; Representation of People (No. 2) Act, 1920 (10 & 11 Geo. 5, c. 35); and Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), Sched. II., Part I., para. 2 (1)) the written proposal of a candidate at a parliamentary or municipal election. As to the power of a member of a friendly society or an industrial or a provident society to dispose by 'nomination' of sums payable on his death, see Friendly Societies Act, 1896, s. 56; Friendly Societies Act, 1908, s. 5; *Bennett* v. *Slater*, 1899, 1 Q. B. 45; Industrial and Provident Societies Act, 1893, ss. 25-27.

Nominativus pendens, a nominative case grammatically unconnected with the rest of the sentence in which it stands. The opening words in the ordinary form of a deed *inter partes* [This deed, etc., down to whereas], though an intelligible and convenient part of the deed, having regard to the predicate 'witnesseth' or 'now this deed witnesseth,' are of this kind.

Nomine pœnæ (under the description of a penalty), an additional rent payable by way of penalty in the event of certain acts prejudicial to the landlord being done by the tenant, as if he should plough up pasture.

The Agricultural Holdings Act, 1923 (13 & 14 Geo. 5, c. 9), by s. 29 restricts penal rents to actual damage suffered, excepting, however, from this restriction penal rents for breaking up permanent pasture, grubbing underwoods, felling, etc., trees, or relating to the burning of heather. See *Aggs on Agricultural Holdings.*

Nomocanon [fr. νόμος, Gk., law; and κανών, a rule]. 1. A collection of canons and imperial laws relative or conformable thereto. The first nomocanon was made by Johannes Scholasticus in 554. Photius, patriarch of Constantinople, in 883, compiled another nomocanon, or collation of the civil laws with the canons; this is the most celebrated.

2. A collection of the ancient canons of the apostles, councils, and fathers, without any regard to imperial constitutions. Such is the nomocanon by M. Cotelier.—*Encyc. Londin.*

Nomographer [fr. νόμος, Gk., law; and γράφω, to write], one who writes on the subject of laws.

Nomotheta [Gk.], a law-giver, or law commissioner.

Nomothetical, legislative.

Non-ability, inability; an exception against a person.—*Fitz. N. B.* 35, 65. See DISABILITY.

Non-acceptance, the refusal of acceptance.

Non-access. When a husband could not, in the course of nature, by reason of his absence, have been the father of his wife's child, the child is a bastard.

Access is presumed during wedlock; but this presumption may be encountered by proof of circumstances showing that sexual intercourse did not take place within such a time that the husband could be the father. As to what is such a time, see GESTATION. As to the admissibility of evidence by husband or wife of non-access, see ACCESS.

Non-act, a forbearance from action; the contrary to act.

Nonæ et decimæ, payments made to the church, by those who were tenants of church-farms. The first was a rent or duty for things belonging to husbandry, the second was claimed in right of the church.

Non-age, minority. See INFANT.

Nonagium, or **Nonage,** a ninth part of movables which was paid to the clergy on the death of persons in their parish, and claimed on pretence of being distributed to pious uses.—*Blount.*

Non-appearance, the omission of timely and proper appearance; a failure of appearance. See APPEARANCE.

Non assumpsit (he did not promise), a plea by way of traverse, which occurred in the action of *assumpsit* or promises. This plea operated as a denial in point of fact of the existence of any express promise to the effect alleged in the declaration, or of the matters of fact from which the promise alleged would be implied by law: see *Steph. Plead.*, 7th ed. 154, 160. See, too, as to the effect of the plea, *Bullen and Leake's Prec. of Pleadings.*

Non assumpsit infra sex annos (he did not promise within six years). This was the form of pleading the Statute of Limitations. See LIMITATION and PLEADING.

Non bis in idem (not twice tried for the same offence).

Non cepit (he took not). This was a plea by way of traverse, which occurred in the action of *replevin.* It applied to the case where the defendant had not, in fact, taken the cattle or goods, or where he did not take them or have them in the place mentioned in the declaration, the place being a material point in this action.

Non-claim, the omission or neglect of him that ought to challenge his right within a time limited, as within a year and a day; but now no continual or other claim preserves any right of making an entry or distress or of bringing an action.—3 & 4 Wm. 4, c. 27, s. 11.

Non compos mentis, said of a person who is not of sound memory and understanding. See IDIOT, MENTAL DEFECTIVE, and PERSON OF UNSOUND MIND.

Non concessit (he did not grant), a plea resorted to by a stranger to a deed, because estoppels do not hold with respect to strangers. This plea brought into issue the title of the grantor as well as the operation of the deed. See now PLEADING.

Nonconformist. See DISSENTERS.

Non constat. It does not appear; it is not proved (that the asserted or implied conclusion follows from the premises).

Non culpabilis, sometimes abbreviated *Non cul.* (not guilty).

Non damnificatus (not injured). This was a plea in an action of debt on an indemnity bond, or bond conditioned 'to keep the plaintiff harmless and indemnified,' etc. It was in the nature of a plea of performance; being used where the defendant meant to allege that the plaintiff had been kept harmless and indemnified, according to the tenor of the condition.—*Steph. Plead.*, 7th ed., 300–301. See now PLEADING.

Non dat qui non habet. (He cannot give that which he has not.)

Non decimando, a custom or prescription to be discharged of all tithes, etc.

Non decipitur qui scit se decipi. (He is not deceived who knows himself to be deceived.)

Non demisit (he demised not). 1. A plea resorted to where a plaintiff declared upon a demise without stating the indenture in an action of debt for rent. 2. A plea in bar, in replevin, to an avowry for arrears of rent, that the avowrant did not demise.

Non detinet, a plea by way of traverse, which occurred in the action of detinue. This plea alleged that the defendant did not detain 'the said goods in the said declaration specified,' etc. It operated accordingly as a denial of the detention of the goods. But, under this plea, the defendant could not deny that they were the plaintiff's.—*Steph. Plead.*, 7th ed. 154, 163.

Non-direction, omission on the part of a judge to enforce a necessary point of law upon a jury. See NEW TRIAL; and see Jud. Act, 1875, s. 22, which preserves the right of any party to have the issues for trial by jury left to the jury, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues. See *Young* v. *Hoffman Manufacturing Co.*, (1907) 76 L. J. K. B. 993.

Nones, days in the Roman calendar, so called because they reckoned nine days from

them to the Ides. The seventh day of March, May, July, and October, and the fifth day of all other months.—*Kenn. Paroch. Antiq.* 92.

Non est disputandum contra principia negantem. *Co. Litt.* 343.—(We cannot dispute against a man who denies first principles.)

Non est factum ('I never made the deed'). This was a plea by way of traverse, which occurred in debt on bond or other specialty, and also in covenant. It denied that the deed mentioned in the declaration was the defendant's deed; under this, the defendant might contend at the trial that the deed was never executed in point of fact; but he could not deny its validity in point of law. And see *Howatson* v. *Webb*, 1908, 1 Ch. 1, and ASSUMPSIT and PLEADING.

Non est inventus, a sheriff's return to a writ when the defendant is not to be found in his bailiwick.

Non-feasance, an offence of omission. The term is usually applied to a failure to perform a duty to the public. As to the liability to an action for damages for non-feasance as distinguished from mis-feasance, see *Maguire* v. *Liverpool Corporation*, 1905, 1 K. B. 767; *McClelland* v. *Manchester Corporation*, 1912, 1 K. B. 118; and *Boyntin* v. *Ancholme Drainage and Navigation Commissioners*, 1921, 2 K. B. 213.

Non-feasance not amounting to gross negligence in gratuitous bailments or undertakings is not actionable, but mis-feasance in such cases imposes a liability; and see NEGLIGENCE.

Non implacitando aliquem de libero tenemento sine brevi, a writ to prohibit bailiffs, etc., from distraining or impleading any man touching his freehold without the king's writ.—*Reg. Brev.* 171. Obsolete.

Non infregit conventionem, a plea which raised a substantial issue in an action for non-repair according to covenant, whether there was a want of repairs or not. See PLEADING.

Non intromittant Clause, a clause of a charter of a municipal borough, whereby the borough is exempted from the jurisdiction of the justices of the peace for the county. See *R.* v. *Sainsbury*, (1791) 4 T. R. 451.

Non intromittendo, quando breve præcipe in capite subdole impetratur, a writ addressed to the justices of the bench, or in eyre, commanding them not to give one who, under colour of entitling the king to land, etc., as holding of him *in capite*, had deceitfully obtained the writ called *præcipe in capite*, any benefit thereof, but to put him to his writ of right.—*Reg. Brev.* 4. Obsolete.

Non-issuable Pleas, those upon which a decision would not determine the action upon the merits, as a plea in abatement. See PLEADING.

Non-joinder of Parties. See PARTIES and ABATEMENT.

Nonjuror, one who (conceiving the Stuart family unjustly deposed) refused to swear allegiance to those who succeeded them.

Non jus sed seisina facit stipitem. *Fleta*, l. 6.—(Not right, but seisin, makes a stock.) But see INHERITANCE.

Non liquet (it does not appear clear), a verdict given by a jury when a matter was to be deferred to another day of trial.

The same phrase was used by the Romans; after hearing a cause, such of the judges as thought it not sufficiently clear to pronounce upon cast a ballot into the urn with the two letters N.L. for *non liquet*.

Non merchandizanda victualia, an ancient writ addressed to justices of assize, to inquire whether the magistrates of a town sold victuals in gross or by retail during the time of their being in office, which was contrary to an obsolete statute; and to punish them if they did.—*Reg. Brev.* 184. Obsolete.

Non molestando, a writ that lay for a person who was molested contrary to the king's protection granted to him.—*Reg. Brev.* 184.

Non obstante (notwithstanding), a licence from the Crown to do that which could not be lawfully done without it. Also, a clause frequent in statutes and letters-patent, importing a licence from the Crown to do a thing, which by Common Law might be done, but, being restrained by Act of Parliament, could not be done without such licence.—*Plowd.* 501.

But the doctrine of *non obstante*, which sets the prerogative above the law, was effectually demolished by the Bill of Rights at the Revolution of 1688, which enacts that no dispensation, by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of none effect, except a dispensation be allowed in such statute.

Non obstante veredicto, Judgment. Judgment, 'notwithstanding the verdict,' for a plaintiff in a case where a jury has found for the defendant in a manner substantially contrary to law. See JUDGMENT.

Non omittas, the clause 'that you omit not by reason of any liberty in your bailiwick,' which is usually inserted in all pro-

cesses addressed to sheriffs, which makes the liberty *pro hâc vice* parcel of the sheriff's bailiwick, and the sheriff must enter and execute the writ within the liberty.

If a writ do not contain a *non omittas* clause, the sheriff directs his mandate either to the lord or the bailiff of the liberty, by whom the writ is executed and returned.

Non omnium quæ a majoribus constituta sunt ratio reddi potest. (A reason cannot be given for all things our forefathers were pleased to ordain.)

Non plevin, default in not replevying land in due time. See 9 Edw. 3, c. 2.

Non ponendis in assisis et juratis, a writ formerly granted for freeing and discharging persons from serving on assizes and juries.—*Fitz. N. B.* 165.

Non possessori incumbit necessitas probandi possessiones ad se pertinere. *Broom's Leg. Max.*—(A person in possession is not bound to prove that the possessions belong to him.)

Non procedendo ad assisam rege inconsulto, a writ to stop the trial of a cause appertaining to one who is in the royal service, etc., until the sovereign's pleasure be further known.—*Reg. Brev.* 220.

Non pros., abbrev. for *non prosequitur* (he [the plaintiff] does not pursue [his action]). Where the plaintiff failed to take the proper step in his action in the proper time, the defendant entered what was called a *non prosequitur*, and signed final judgment against the plaintiff, who was said to be *non pros.*

Under R. S. C. 1883, Ord. XXVII., when the plaintiff neglects to proceed, the course is for the defendant to apply for a dismissal of the action for want of prosecution.

Non-residentio pro clerico regis, a writ addressed to a bishop, charging him not to molest a clerk employed in the royal service, by reason of his non-residence; in which case he is to be discharged.—*Reg. Brev.* 58.

Non-resistance. See DIVINE RIGHT.

Non-sane Memory, a person labouring under mental alienation.

Non sequitur (it does not follow).

Non solvendo pecuniam ad quam clericus multatur pro non-residentia, a writ prohibiting an ordinary to take a pecuniary mulct imposed on a clerk of the sovereign for non-residence.—*Reg. Brev.* 59.

Nonsuit [*non est prosecutus*, Lat.]. The judge orders a nonsuit when the plaintiff fails to make out a legal cause of action or fails to support his pleadings by any evidence; whether the evidence which he gives can be considered any evidence at all of a cause of action is a question of law for the judge. By the former practice a plaintiff after a nonsuit might, on paying all costs, recommence his action; by the Rules of 1875 any judgment of nonsuit, unless the court or a judge should otherwise direct, had the same effect as judgment upon the merits for the defendant (Jud. Act, 1875, Ord. XLI., r. 6); but this rule has been rescinded, and it is not reproduced. A plaintiff cannot now elect to be nonsuited, and if he offers no evidence it is the duty of the Court to direct the jury to find a verdict for the defendant, and the usual consequences of such verdict will follow (*Fox* v. *Star Newspaper Co.*, 1900, A. C. 19); but a judge cannot order a nonsuit on plaintiff's opening without the consent of his counsel; see *Fletcher* v. *L. & N. W. R. Co.*, 1892, 1 Q. B. 122; and R. S. C. Ord. XXVI., r. 1. See TRIAL.

Non sum informatus, a formal answer made of course by an attorney, that he was not informed to say anything material in defence of his client; by which he was deemed to leave it undefended, and so judgment passed against his client. See WARRANT OF ATTORNEY.

Non-summons, Wager of Law of, the mode in which a tenant or defendant in a real action pleaded, when the summons which followed the original was not served within the proper time.—31 Eliz. c. 3, s. 2.

Non-tenult was a plea in bar to replevin, to avowry for arrears of rent, that the plaintiff did not hold in manner and form, as the avowry alleged. See PLEADING.

Non-tenure, a plea in bar to a real action, by saying that he (the defendant) held not the land mentioned in the plaintiff's count or declaration, or at least some part thereof. It was either general, where one denied ever to have been tenant of the land in question, or special, where it was alleged he was not tenant on the day whereon the writ was sued out.—1 *Mod.* 181.

The distinction between real and personal actions has now practically ceased to exist. See ACTION.

Non-terminus, the vacation between term and term, formerly called the time or days of the King's peace. See now title TERMS.

Non-user. Non-user, or neglect, in public offices that concern the administration of justice, or the commonwealth, is of itself a direct and immediate cause of forfeiture; but non-user of a private office is no cause of forfeiture, unless some special damage is proved

to be occasioned thereby.—2 *Bl. Com.* 153; and see LETTERS PATENT.

Non videntur qui errant consentire.—(They do not appear to consent who commit a mistake.) See *Broom's Leg. Max.*

Nook of Land [*nocata terræ*, Lat.], twelve acres and a half, *sed qu.*—*Dugd. Warwick*, p. 665.

Norfolk Groat, ¼*d.*

Normal [fr. *norma*, Lat., a rule or precept], opposed to exceptional; that state wherein any body most exactly comports in all its parts with the abstract idea thereof, and is most exactly fitted to perform its proper functions, is entitled normal.

Norman-French, the tongue in which several formal proceedings of state are still carried on. The language, having remained the same since the date of the Conquest, at which it was introduced into England, is very different from the French of this day, retaining all the peculiarities which at that time distinguished every province from the rest. A peculiar mode of pronunciation (considered authentic) is believed to have been handed down and preserved by the officials, who have, on particular occasions, to speak the tongue. Norman-French was the language of our legal procedure till the 36 Edw. 3.

Norroy [fr. *nord* and *roy*, Fr.], the title of the third of the three kings-at-arms, or provincial heralds. See HERALDS.

Northampton, Statutes made at, 2 Edw. 3, A.D. 1328, respecting pardons for felonies, conduct of assizes, etc.: in part repealed by Stat. Law Rev. Act, 1863. See *R.* v. *Meade*, (1903) 19 T. L. R. 540.

North Britain, Scotland.

Northern Ireland, that part of Ireland other than the Irish Free State. By the Government of Ireland Act, 1926, s. 1, Northern Ireland consists of six counties: Antrim, Armagh, Down, Fermanagh, Londonderry, and Tyrone, including boroughs of Belfast and Londonderry, with (1) a representation of 13 members (including one from the Queen's University of Belfast) in the Parliament of the United Kingdom and Northern Ireland (see IMPERIAL PARLIAMENT), and (2) a Parliament of Northern Ireland, consisting of the King, a Senate and a House of Commons. The supreme authority of the Imperial Parliament is preserved. The Royal Assent is given to Bills by the Governor of Northern Ireland. The Senate consists of 24 members, 22 elected by the House of Commons of Northern Ireland, and 2 (as *ex-officio* members), the Lord Mayor of Belfast and the Mayor of Londonderry. The House of Commons consists of 52 members. Certain legislative powers are reserved for the Imperial Parliament; see ss. 4 *et seq.* of the Act of 1920, relating (subject to the provisions of the Act), *inter alia*, to the succession or property of the Crown, making of peace or war, the armed forces of the Crown, treaties and relations with foreign States, or the Dominions, dignities and titles of honour, treason, aliens, naturalization or domicile, cables and wireless, aerial navigation, lighthouses, coinage, negotiable instruments, trade marks, designs and patent rights; also under s. 91, postal services. For financial provisions and generally, see the Act of 1920, and subsequent Acts of the United Kingdom, which do not exclude their application to Northern Ireland. See IRELAND.

Noscitur a sociis, a test of construction of a single word: where there is a string of words in an Act of Parliament, and the meaning of one of them is doubtful, that meaning is given to it which it shares with the other words. So, if the words 'horse, cow, or other animal' occur, 'animal' is held to apply to brutes only. See EJUSDEM GENERIS.

Noscitur ex socio, qui non cognoscitur ex se. *Moore*, 817.—(He who cannot be known from himself may be known from his associate.)

Nosocomi, managers of pauper hospitals.—*Civ. Law.*

Notarial Act. (1) A written certification or authentication under the signature or official seal of a notary of any document or entry, or (2) any instrument, attestation or certificate by a notary in the execution of his office.

Notary, or **Notary Public** [fr. *notaire*, Fr., fr. *notarius*, Lat.], an officer who takes notes of anything which may concern the public; he attests deeds or writings to make them authentic in another country; but is principally employed in mercantile affairs, as to make protests of bills of exchange, etc. He cannot permit another to act in his name, and in London he must be free of the Scriveners' Company. See 25 Hen. 8, c. 27, ss. 3, 4; the Public Notaries Acts, 1801, 1833, and 1843 (41 Geo. 3, c. 79, 3 & 4 Wm. 4, c. 70, and 6 & 7 Vict. c. 90); and consult *Brooke on the Office, etc., of a Notary*, 6th ed., by *Cranstoun*. The Court of Faculties makes the appointment in accordance with the Public Notaries Acts, and the Master of that Court has inherent jurisdiction to strike a notary public off the roll (*Re Champion*,

1906, P. 86). As to its jurisdiction in the case of the Colonies, see *Bailleau* v. *Victorian Society of Notaries*, 1904, P. 180.

In Scotland a notary public must now be a qualified solicitor unless he was admitted a notary public prior to the year immediately following the passing of the Act of 1876 (36 & 37 Vict. c. 63), s. 24. His chief powers and duties are similar to those of a notary public in England. And see SCRIVENER.

Note a Bill, To. When a foreign bill has been dishonoured, it is usual for a notary public to present it again on the same day, and if it be not then paid, to make a minute, consisting of his initials, the day, month, and year, and reason, if assigned, of non-payment. The making of this minute is called 'noting the bill.' See NOTING, and *Smith's Merc. Law; Byles on Bills.*

Note of a Fine, a brief of a fine made by the chirographer before it was engrossed. Abolished by 3 & 4 Wm. 4, c. 74.

Note of Allowance. This was a note delivered by a master to a party to a cause, who alleged that there was error in law in the record and proceedings allowing him to bring error. See C. L. P. Act, 1852, s. 149. Error has now, however, been abolished (Jud. Act, 1875, Ord. LVIII., r. 1).

Proceedings in error in law were deemed a *supersedeas* of execution from the service of the copy of such note, together with the statement of the grounds of error intended to be argued.—C. L. P. Act, 1852, s. 150.

Note of Hand, a promissory note. See PROMISSORY NOTE.

Notes, Judge's. A judge usually takes notes of the *vivâ voce* evidence given during the trial of an action, and these are in practice always referred to on appeal, although they cannot be obtained as a matter of right. In criminal trials the judge must, it seems, take such notes and furnish them, in cases of appeal, to the Court of Criminal Appeal (Court of Criminal Appeal Act, 1907, ss. 8 and 9 (*a*); and Criminal Appeal Rules, 1908, r. 14). At the trial or hearing of any action or matter in the county court in which there is a right of appeal, the judge, at the request of either party, shall make a note of any question of law raised, and of the facts in evidence relating thereto, and of his decision thereon, and of his decision of the action or matter. Any party to the action is entitled to a copy at his own expense (County Courts Act, 1888, ss. 120 and 121). See now County Courts Act, 1934 (c. 53), ss. 105, 108; and *McGrah* v. *Cartwright*, (1889) 23 Q. B. D. 3, as to the duty of an appellant to supply copies for the use of the Court. See SHORTHAND NOTES.

Not Guilty, a plea by way of traverse which occurred in actions of trespass, libel, or other tort, and amounted to a denial only of the breach of duty or wrongful act alleged to have been committed by the defendant; this was called pleading the 'general issue.' See PLEADING.

The plea of not guilty, in criminal proceedings, is the proper form wherever a prisoner means either to deny or justify the charge in the indictment; the effect of which plea is, that on the one hand, it puts the prosecutor to the proof of every material fact alleged in the indictment or information, and on the other it entitles the defendant to avail himself of any defensive circumstances as amply as if he had pleaded them in a specific form.

Not Guilty by Statute. Very many Acts from time to time allowed defendants sued for doing things in pursuance of them to plead 'not guilty by statute' (or the general issue, as it was described in the statute). They are mostly repealed by the Public Authorities Protection Act, 1893; but the defence is still provided for by R. S. C., Ord. XIX., r. 12, and Ord. XXI., r. 19. Consult *Bullen & Leake, Prec. of Plead.*, 7th ed. pp. 749, 797. See also *Aggs on Agricultural Holdings*, 4th ed. p. 387.

Not Negotiable. These words are sometimes added as part of the crossing of a cheque, with the result that no one who takes the cheque can have or can give a better title than the person had from whom he took it: see Bills of Exchange Act, 1882, s. 81; *G. W. Ry. Co.* v. *London and County Bank*, 1901, A. C. p. 422.

A warrant for interest on War Stock signed by the Chief Accountant of the Bank of England and crossed '& Co.,' not negotiable, directing the bank's cashiers to pay a certain sum to the order of a certain person is a cheque within the meaning of the Bills of Exchange Act, 1882, and a 'warrant for payment of a dividend' within s. 95 of the same Act. A banker in good faith and without negligence receiving payment for a customer who has no title is entitled to the protection of s. 82 of the Act (*Slingsby* v. *Westminster Bank Ltd.*, 1931, 1 K. B. 173; see also *Importers Company Ltd.* v. *Westminster Bank Ltd.*, 1927, 2 K. B. 297; and *R. E. Jones Ltd.* v. *Waring and Gillow Ltd.*, 1925, 2 K. B. 612; 1926, A. C. 670).

Notice, the making something known to a person of which he was or might be

ignorant. Notice is either (1) statutory; (2) actual, which brings the knowledge of a fact directly home to the party; or (3) constructive or implied, which is no more than evidence of facts which raise such a strong presumption of notice that equity will not allow the presumption to be rebutted.

Constructive notice may be subdivided into: (*a*) where the facts of which actual evidence is supplied give rise to a further inquiry which a man exercising ordinary caution would make equity has added constructive notice of the facts, which that inquiry would have elicited; and (*b*) where there has been a designed abstinence from inquiry for the very purpose of avoiding notice. See CONSTRUCTIVE NOTICE.

A purchaser with notice may protect himself by purchasing the title of another *bonâ fide* purchaser for a valuable consideration without notice; for, otherwise, such *bonâ fide* purchaser would not enjoy the full benefit of his own unexceptionable title. If a person, who has notice (except in the case of a charity), sell to another, who has no notice, and is a *bonâ fide* purchaser for valuable consideration, the latter may protect his title, although it was affected with the equity arising from notice in the hands of the person from whom he derived it; for, otherwise, no man would be safe in any purchase, but would be liable to have his own title defeated by secret equities, of which he could have no possible means of making a discovery.—*Le Neve* v. *Le Neve*, (1747) Amb. 436; 2 *W. & T. L. C.* The decision of Lord Hardwicke in the great case of *Le Neve* v. *Le Neve* certainly went very far to nullify the Middlesex Registry Act of 1708, and the principle of it is not to be applied in the construction of a modern statute; see *Re Monolithic Building Co.*, 1915, 1 Ch. 643, where the Court of Appeal held that s. 93 of the Companies (Consolidation) Act, 1908, and now ss. 79–83 and 87 of the Companies Act, 1929, avoided an unregistered mortgage as against a subsequent registered incumbrancer, even with express notice.

The principle on which this case was decided has become statutory under the Law of Property Act, 1925, and the Land Charges Act, 1925. See s. 199 of the Law of Property Act, 1925, sub tit. CONSTRUCTIVE NOTICE, and see LAW OF PROPERTY ACT; (*Curtain*).

The doctrine of constructive trusts has also been narrowed down by the Conveyancing Act, 1911, s. 13, reproduced by the Law of Property Act, 1925, s. 112, which provides that a 10*s.* stamp on a transfer of mortgage does not by itself give notice of a trust; and see also s. 113 (*ibid.*), which absolves persons dealing in good faith with a mortgagee or with the mortgagor after discharge of the mortgage from any duty to inquire into the trusts of the mortgage money even if he has notice of the trust, and under the Trustee Act, 1925, s. 28, a trustee or personal representative acting for one trust or estate is not in the absence of fraud affected by notice obtained through acting for another.

Subject to the foregoing limitations on the doctrine and effect of notice, a purchaser of a legal estate or equitable interest in land will be affected by every and any right, equity, or incumbrance of which he has actual or constructive notice. As to the length of title in which notice will be imputed, see *Re Cousins*, (1886) 31 C. D. 671, and the Law of Property Act, 1925, s. 44.

By s. 198 of the Law of Property Act, 1925, registration under the Land Charges Act, 1925, at the Land Registry or any local registry according to the statutory requirements constitutes notice of the instrument or matter registered, but this relates only to instruments and matters which must be registered. Purchasers of land are protected to some extent by s. 43 of the L. P. Act, 1925, but in *Forsey* v. *Hollebone*, 1927, 2 Ch. 379, it was held that relief could not be given to the purchaser (who had become affected with notice of a town planning resolution registered in a local land charges registry without disclosure by the vendor), as the registered incumbrance (if it was an incumbrance) was not such as to enable the purchaser to rescind. See LAND CHARGES.

Further, whether or not an instrument or matter has been registered, the absence of the documents of title to the property by itself constitutes notice in all cases in which the same are material, and so does the occupation of land or any title or claim of an occupier, though the notice does not necessarily mean notice of an adverse claim.

To sum up, purchasers for value are affected by notice, actual or constructive; Law of Property Act, 1925, s. 205 (1) (xvii.) of (1) mortgages effected before 1926 (*ibid.*), 1st Sched., Parts VII. and VIII. (for transfers and mortgages, effected after 1925, see *infra*); (2) trusts, settlements and equities of every kind created or arising before 1926, unless shielded by the '*curtain*' (see LAW OF PROPERTY ACT, 1925), or acquired after

1925, and if registrable, not registered; (3) restrictive covenants and equitable easements created before 1926; (4) estate contracts made before 1926, unless the benefit has been acquired after 1925 and not registered. On the other hand, purchasers for value will not be affected by notice of the following conveyances and transactions of which the legal title or effect has not been perfected by registration under the Land Charges Act, 1925, before completion of the purchase: (1) land charges in Class A of s. 10 of that Act created after 1888 or acquired after 1888, and not registered within the first year after conveyance; (2) land charges in Class B of the same section; (3) in Class C of s. 10, where the charge is created or transferred after 1925, including (i.) mortgages, not excepting first mortgages (not completed by possession of the title deeds) and required to be registered; (ii. and iii.) any equitable charge acquired after 1925 which is registrable under Class C (ii.) and (iii.) of s. 10, and under Class D, death duties on deaths after 1925, restrictive covenants made after 1925, and equitable easements arising after 1925. Further, purchasers for money or money's worth of a legal estate will not, but all other purchasers will, be affected (1) by notice of an unregistered estate contract within s. 10 (*ibid.*), including contracts to make a settlement of land made or acquired after 1925. The Land Charges Act, 1925, does not apply to registered land, with a few exceptions. See REGISTERED LAND AND LAND CHARGES, and ANNUITIES.

A purchaser for valuable consideration, without notice of a prior equitable right, who obtains the legal estate at the time of his purchase, is entitled to priority in equity, as well as at law, according to the maxim: Where conflicting equities are equal, the law shall prevail.' Nor will equity prevent a *bonâ fide* purchaser, without notice, from protecting himself against a person claiming under a prior equitable title, by getting in the outstanding legal estate, because, as the equities of both are equal, the purchaser should not be deprived of the advantage of his superior activity or diligence. And where he has merely the best right to call for the legal estate, he is entitled to the protection of equity.—*Bassett* v. *Nosworthy*, Rep. *temp.* Finch, 102 (1673); 2 *W. & T. L. C.* The application of this doctrine has been profoundly modified by the Land Charges Act, 1925, the Land Registration Act, 1925, the Law of Property Act, 1925, and by the fact that not only the first but all subsequent legal mortgages of a legal estate are now legal estates, and tacking or getting in the legal estate by a subsequent mortgagee and squeezing out an intervening mortgagee has been abolished by s. 94 of the Law of Property Act, 1925, except in regard to further advances under the statutory conditions (see FURTHER ADVANCES; MORTGAGES).

Notice of a memorandum relating to restrictive covenants or easements endorsed on one of the title deeds which are not handed to a purchaser under a title common to other parties will affect purchasers of other parts of the land under the same title (s. 200, *ibid*), but without prejudice to any obligation to register as land charges, restrictive covenants of freehold land, estate contracts and equitable easements, liberties or privileges created or registrable after 1925 (see s. 10 of the Land Charges Act, 1925). Notice of a previous assent or conveyance on the probate or grant of administration will constitute notice to subsequent purchasers under the same title (see Administration of Estates Act, 1925, s. 36). Further, by ss. 137 and 138 of the Law of Property Act, trustees who have received notices of equitable interests are obliged to produce them to any person interested in the equitable interest, at the cost of the latter.

In regard to priority of charges, s. 97 of the Law of Property Act, 1925, provides that every mortgage affecting legal estate in land after 1925, whether legal or equitable (not being a mortgage protected by deposit of documents relating to the legal estate affected), is to rank according to its date of registration as a land charge. Mortgages and charges of registered land or of land within the limits of a local deed registry do not come within this rule, and see also DEARLE *v.* HALL; LAND CHARGES; REGISTRATION OF LAND; PRIORITIES; MORTGAGE. See also PUBLIC NOTICE.

Notice in Lieu of Service. See SUMMONS.

Notice of Accident. The Notice of Accidents Act, 1906, requires annual returns and notices of accidents in mines and quarries to be given, and in the case of accidents in factories and workshops notice must be sent to the district inspector, and also in certain events to the certifying surgeon of the district. In the case of mines, however, provision for notice is now made by the Coal Mines Act, 1911, Part IV. See CERTIFYING SURGEON; COAL MINES. Notice of accident must be in writing when given under s. 4 of the Employers Liability Act, 1880 (*Keen* v.

Millwall Dock Co., (1882) 8 Q. B. D. 482); or under s. 2 (1) of the Workmen's Compensation Act, 1906 (see now Workmen's Compensation Act, 1925, s. 14) (*Hughes* v. *Coed Talon Co.*, 1909, 1 K. B. 957); or under the Coal Mines Act, 1911; notice of road accident by motor vehicle, see Road Traffic Act, 1930, s. 22. Notice of Accidents Act, 1894 (c. 28), provides for notice of and inquiry into accidents occurring in certain employments and industries.

Notice of Action. By numerous statutes—e.g., by the Poor Law Amendment Act, 1834 (4 & 5 Wm. 4, c. 76—both public and private, it was enacted that no action should be brought against persons, acting in pursuance of these statutes, until the expiration of a certain time after notice in writing had been given to the defendant that such action would be brought; but by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61 (see PUBLIC AUTHORITIES), so much of any public general Act as enacts that, in any proceeding to which that Act applies (i.e., in any proceeding against any person for any act done in pursuance of any Act of Parliament, etc.), notice of action is to be given, is repealed.

Notice of Dishonour. The 49th section of the Bills of Exchange Act, 1882, contains fifteen rules as to notice of dishonour, of which the more important are these:—

The notice must be given by or on behalf of the holder or of an indorser himself liable (sub-s. 1).

The notice may be given in writing or by personal communication. If written it need not be signed, and an insufficient written notice may be supplemented by a verbal communication (sub-ss. 5, 7).

The notice may (sub-s. 12) be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter. In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(*a*) When the person giving and the person to receive notice *reside in the same place*, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(*b*) Where the person giving and the person to receive notice *reside in different places*, the notice is sent off on the day after the dishonour of the bill if there be a post at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter.

Notice of Motion. See MOTION.

Notice of Trial may be given by a plaintiff with the reply, if any, or at any time after the issues of fact are ready for trial (R. S. C., Ord. XXXVI., r. 11), or by a defendant, if not given by the plaintiff within six weeks after the close of the pleadings (r. 12). Ten days' notice of trial must be given, unless the party to whom it is given has consented to take short notice; in which case four days are sufficient (r. 14).

Notice of Writ, against defendant out of jurisdiction. See SUMMONS.

Notice to Admit. The parties to a suit may, by their solicitors, agree to admit at the trial documents and facts; and such agreement often saves trouble and expense, where there is no ground for disputing them.

'Either party may call on the other by notice to admit any document saving all just exceptions, and in case of refusal, or neglect to admit, the costs of proving the document shall be paid by the party neglecting or refusing, whatever the result of the cause may be, unless at the hearing or trial the judge shall certify that the refusal was reasonable; and no costs of proving any document are allowed unless notice be given, except where the omission to give the notice is a saving of expense' (R. S. C., Ord. XXXII., r. 2). This rule is frequently acted upon. There is another (r. 4), providing for a notice to admit facts first introduced in 1883, and not so much used.

Notice to Produce. If one party be in possession of any written instrument which would be evidence for the other if produced, a notice to produce it at the trial may be served either upon him, his solicitor, or agent. The notice must specify the instrument with a particularity sufficient to inform the opposite party what he is called upon to produce. It must be served a reasonable time before trial, so as to enable the party served to make an effectual search, and produce the same at the proper time.

It is optional with the party upon whom the notice has been served to produce the instrument required or not. If he do not, then, upon proving the service of the notice by affidavit, permission will be given to prove the contents of the instrument by a copy or other secondary evidence, in the same manner as if it had been lost.—1 *Chit. Arch. Prac.*

Notice may also be given (under R. S. C., 1883, Ord. XXXI.) by any party to an action to any other party in whose pleadings or affidavits any document is referred to, to produce such document for inspection, and to permit copies to be taken thereof.

Notice to Quit. Where there is a tenancy from year to year subsisting, it can only be

put an end to by notice to quit, which may be given by either party, and must be given one half-year previously to the expiration of the current year of tenancy, so as to expire at the same period of the year in which the tenant entered upon the premises. This rule is to be invariably followed in all cases, except where there is some special agreement between the parties to a different effect, or where a particular local custom intervenes, or where the Agricultural Holdings Act, 1923, applies, in which case. by s. 25 of that Act, a notice must be given to terminate the tenancy twelve months from the end of the then current year of the tenancy.

Where the term of a lease is to end on a precise day, there is no occasion for a notice to quit previously to bringing an action of ejectment, because both parties are equally apprised of the termination of the term. If a tenant continue in possession by consent after his lease has expired, or rent has been received, a notice must be given before he can be ejected; for where, by consent of both parties, a tenant continues in possession after the expiration of his term, the law implies a tacit renovation of the contract, and in such cases the tenant usually holds from year to year upon the former terms. No fresh notice, however, is necessary where a tenant, after having given or been given a notice, contumaciously or wilfully holds over, and becomes liable for double rent according to the Distress for Rent Act, 1737 (11 Geo. 2, c. 19), s. 18. Where a lessee holds under a void demise, no notice is necessary; but where a lease granted by a tenant for life under a limited power of leasing, which exceeded his power, was void, and not capable of being confirmed by the remainder-man, but the remainder-man received money as rent after the death of the tenant for life, it was held to be an admission of a tenancy from year to year, and that a notice to quit must be given before any ejectment could be brought. And though a lease be void by the Statute of Frauds as to the duration of the term, it is considered that the tenant holds under the terms of the lease in other respects, and therefore that the landlord can only put an end to the tenancy at the expiration of the year. In the case of a tenancy from year to year, so long as both parties please, if the tenant die his personal representatives have the same interest in the land which their testator or intestate had, and are, therefore, entitled to the same notic to quit; for such tenancy is a chattel interest, and whatever chattel the deceased had must vest in them as his legal representatives. Where the reversion has been conveyed by the lessor during the existence of the tenancy from year to year, the tenant is entitled to a notice to quit before he can be ejected by the grantee of the reversion.

No notice to quit is necessary where the tenant does an act which amounts to a disavowal of the title of the lessor; as where the tenant has attorned to some other person, or answered an application for rent by saying that his connection as tenant with the party applying has ceased.

A verbal notice to quit by a tenant under a parol lease is sufficient, but where a power is given to determine a lease on giving a notice in writing, it cannot be determined on giving a verbal notice. The notice should, however, in all cases be in writing, as being more susceptible of proof, and it may be attested by a witness, who, however, need not be called to prove it.—C. L. P. Act, 1854, s. 26.

A notice to quit given by a mortgagor before default was held a good notice to determine the tenancy; and a notice given to a steward of a corporation is sufficient, without additional evidence that he had an authority under seal from the corporation for such purpose. A receiver appointed by the Court, with a general authority to let the lands to tenants from year to year, has authority to determine such tenancies by a regular notice to quit. A mere agent to receive rents has no implied authority to give a notice to quit, but an agent to receive rents and let has authority to determine a tenancy. An agent ought to have authority to give such notice at the time when it begins to operate; for a recognition subsequent to that date of the authority will not make the notice good (see *Doe* d. *Mann* v. *Walters*, (1830) 10 B. & C. 625). And a notice to quit by an agent of an agent is not sufficient without a recognition by the principal. A notice on an under-tenant, given by the original lessor, is not good.

Form of Notice.—The common form of notice by a landlord, in the case of a tenancy from year to year, which was held to be good in *Hirst* v. *Horn*, (1840) 6 M. & W. 393, is as follows:—

I hereby give you notice to quit and deliver up possession of the premises which you hold of me as tenant thereof on the day of next [or] at the expiration of the year of your tenancy which shall expire next after the end of one-half year from the service of this notice.

Dated this day of 19 ,

A. B.

The notice should be clear and certain, neither ambiguous nor optional (*Phipps* v. *Rogers*, (1924) 40 T. L. R. 845).

Leaving a notice to quit at the tenant's house with a servant, without further proof of its having been explained to the servant, or that it came to the tenant's hands, is not sufficient.

If a landlord receive or distrain for rent due after the expiration of a notice to quit it is a waiver of that notice, and giving a second notice to quit generally amounts to waiver of a notice previously given. If a landlord have given a notice to quit, and the tenant holds over, the landlord cannot waive his notice and distrain for rent subsequently accruing. If, at the end of the year (where there has been a tenancy from year to year), the landlord accept another person as his tenant in substitution for the former tenant, without any surrender in writing, such acceptance and substitution is a surrender and dispenses with a notice to quit.

In order to determine a periodic tenancy (e.g., a tenancy from week to week or from quarter to quarter), a notice to quit must be one which expires at the end of a period (*Queen's Club Gardens* v. *Bignell*, 1924, 1 K. B. 117).

Under the Rent Restriction Acts the service and expiration of a formal notice to quit on a controlled tenant are as a rule a condition precedent to an action for recovery of the premises or ejectment in the county courts. Consult *Foa* or *Woodfall on Landlord and Tenant*.

Notice under the Land Registration Act, 1925. An entry on the register affecting the registered proprietor of the land and persons desiring title under him with notice of the estate claim or other matter comprised in the notice (see s. 48 of the Act). Leases exceeding 21 years, annuities or rent-charge, severance of mines or minerals, land charges, deposits of land certificates are, *inter alia*, subject-matter of notice on the register. Consult *Fortescue-Brickdale* and *Stewart Wallace on the Land Registration Act*, 1925.

Notice to Third Party, i.e., to a person not being a party to the writ of summons in an action. See THIRD PARTY.

Notification of Births. Notice must be sent by post within 36 hours of the birth to the district medical officer of health by the father or person in attendance on the mother. See Births and Deaths Registration Act, 1926; the Registration (Births, Stillbirths, Deaths and Marriages) Consolidated Regulations, 1927 and 1930; Registration of Births Regulations, 1929; and Public Health Act, 1936; and BIRTHS, MARRIAGES AND DEATHS.

Noting. The making of a memorandum or note on a bill of exchange by a notary which states that he has presented the bill for payment or acceptance, and that it has been dishonoured. It is usual, in cases of non-payment of bills of exchange, for London bankers, after six o'clock on the day upon which the bills fall due, to cause inland bills to be noted. The duty of a notary in protesting a bill consists in three parts: (1) demanding, (2) noting, (3) protesting. To preserve the recourse against the drawer or indorser of an inland bill it is not necessary to note or protest it. Noting is for business purposes generally taken as showing due presentment. The expenses of noting can be recovered as liquidated damages (Bills of Exchange Act, 1882, s. 57). See *Chalmers*, *Bills of Exchange*.

Although, in the case of inland bills of exchange, neither noting nor protesting is necessary, the case is widely different in the case of a dishonoured foreign bill, which should certainly be taken to a notary the day it is refused acceptance or payment, and it is his business to note, demand, and protest it; and notice of this must be sent the same day to the drawer and indorsers, with a copy of the bill, if the drawer and indorsers are abroad, but mere notice is sufficient if they are in England. A bill must be noted not later than the next succeeding day of business after the day of dishonour. See Bills of Exchange Act, 1882, s. 51, and Bills of Exchange (Time of Noting) Act, 1917. See PROTEST.

Not proven, a verdict allowed to be given in criminal trials in Scotland. A prisoner in whose case it is pronounced cannot be tried again.

Nova constitutio futuris formam imponere debet non præteritis. 2 *Inst.* 292.—(A new state of the law ought to affect the future, not the past.)

Nova customa, an imposition or duty. See ANTIQUA CUSTOMA.

Nova oblata. See OBLATA.

Nova Statuta, the statutes beginning with Edward III. See VETERA STATUTA.

Novæ Narrationes (new counts). The collection called *Novæ Narrationes* contains pleadings in actions during the reign of Edward III. It consists principally of declarations, as the title imports; but there are sometimes pleas and subsequent pleadings. The *Articuli ad Novas Narrationes* is

usually subjoined to this little book, and is a small treatise on the method of pleading. It first treats of actions and courts, then goes through each particular writ, and the declaration upon it, accompanied with directions, and illustrated by precedents.—3 *Reeves*, c. xvi., 152.

Novale, land newly ploughed and converted into tillage, and which had not been tilled before within the memory of man; also fallow land.—*Chambers.*

Novatio non præsumitur.—(A novation is not presumed.)

Novation, the substitution, with the creditor's consent, of a new debtor for an old one. The cases on novation between a customer and a firm will be found discussed in *Lindley on Partnership.* Slight evidence is sufficient to show that a creditor who continues his dealings with incoming partners accepts the new firm as his debtors instead of the old firm (see *Smith* v. *Patrick*, 1901, A. C. 282). Even in the case of an amalgamation of companies there is nothing to prevent novation if established by sufficient evidence. Many such cases arose in the winding-up of the Albert Company and the European Company, which will be found collected in *Buckley on Companies.*

Novel disseisin (recent disseisin). See Assise of Novel Disseisin.

Novellæ, those constitutions of the Civil Law which were made after the publication of the Theodosian code; but sometimes the Julian edition only is meant.

Novellæ, or *Novellæ Constitutiones*, form a part of the *Corpus Juris.* Most of them were published in Greek, and their Greek title is *Αυτοκράτορος Ἰουστινιάνου Αὐγούστου Νεαραὶ Διατάξεις.* Some of them were published in Latin, and some in both languages.

The first of these Novellæ of Justinian belongs to the year A.D. 535 (Nov. 1), and the latest to the year A.D. 565 (Nov. 137), but most of them were published between the years 535 and 539. These Constitutiones were published after the completion of the second edition of the Code, for the purpose of supplying what was deficient in that work. Indeed, it appears that on the completion of his second edition of the new Code, the emperor designed to form many new constitutions which he might publish into a body by themselves, so as to render a third revision of the Code unnecessary, and that he contemplated giving to this body of law the name of *Novellæ Constitutiones.*—*Just. in Cod.* '*cordi nobis,*' § 4.

It does not, however, appear that any official compilation of these new constitutions appeared in the lifetime of Justinian. The Greek text of the Novellæ, as we now have them, consists of 168 Novellæ, of which 159 belong to Justinian, and the rest to Justin the Second and to Tiberius; they are generally divided into chapters. There is a Latin epitome of these Novellæ, by Julian, a teacher of the law at Constantinople, which contains 125 Novellæ. The epitome was probably made in the time of Justinian, and the author was probably Antecessor, at Constantinople. There is also another collection of 134 Novellæ, in a Latin version made from the Greek text. This collection is generally called *Liber Authenticorum;* the compiler and the time of the compilation are unknown. This collection has been made independently of the Greek compilation. It is divided into nine *collationes*, and the *collationes* are divided into *tituli.* The most complete work on the history of the Novellæ is by Biener, *Geschichte der Novellen.* See also *Beytrag zu Litterar-Geschichte des Novellen Auszugs von Julian; Von Haubold, Zeitschrift*, etc., iv.; *Smith's Dict. of Antiq.*

Novelty. The objection to a patent or design on the ground that it is not new or original is often termed an objection 'for want of novelty.' See Patents and Designs Act, 1907, ss. 1, 7, and 49, as amended by the Patents and Designs Act, 1932.

Noviter ad notitiam perventa (matters newly come to the knowledge of a party).

Novum judicium non dat novum jus, sed declarat antiquum; quia judicium est juris dictum et per judicium jus est noviter revelatum quod diu fuit velatum. 10 *Co.* 42.—(A new adjudication does not make a new law, but declares the old; because adjudication is the utterance of the law, and by adjudication the law is newly revealed which was for a long time hidden.)

Novus homo, a pardoned criminal or discharged insolvent; a parvenu.

Noxa sequitur caput. *Jus. Civ.*—(Guilt follows the person.)

Noxal Action, an action for damage by irrational animals.—*Sand. Just.*

Noxious or **Offensive Gas.** Very comprehensively defined by s. 27 (1) of the Alkali, etc., Works Regulation Act, 1906 (6 Edw. 7, c. 14), which by s. 2 enjoins the owner of every alkali work to use the best practicable means for preventing the discharge of the gas into the atmosphere; and see Public Health Act, 1936, ss. 72 to 82.

Nuces colligere (to collect nuts).

This was formerly one of the works or

services imposed by lords upon their inferior tenants.—*Par. Antiq.* 495.

Nudum Pactum (a naked agreement), an agreement made without any consideration, upon which therefore, unless it be made by deed, no action will lie.

Nudum pactum est ubi nulla subest causa præter conventionem ; sed ubi subest causa, fit obligatio, et parit actionem. *Plow.* 309. —(A naked contract is where there is no foundation for it except the agreement ; but where there is a ground, it becomes an obligation, and gives a right of action.) Similarly, *Nuda pactio obligationem non parit. Dig.* 2, 14, 7, s. 4.—(A naked promise does not beget an obligation) ; and *ex nudo pacto non oritur actio. Noy's Max.* 24.—(An action does not arise from a bare promise.)—See CONSIDERATION ; and *Vanbergen* v. *St. Edmund's Properties Ltd.*, 1933, 2 K. B. 223.

Nuisance [fr. *nuire*, Fr., to hurt], something noxious or offensive. Any unauthorized act which, without direct physical interference, materially impairs the use and enjoyment by another of his property, or prejudicially affects his health, comfort, or convenience, is a nuisance.

Nuisance may be distinguished from negligence in that nuisance is an act or omission causing injury, the injury itself giving rise to an action for damages, while a person suffering from damage due to negligence must prove that the damage was caused by some want of care, according to its degree which was required in the particular circumstances of the case. Actions against persons or public undertakings for damage under statutory powers are generally founded on negligence. Where the actual method of exercising the power creating a nuisance is indicated by the statute negligence in the authorized method may be actionable. The onus appears to be on a defendant pleading that the nuisance was inevitable and compulsory by statute to show that the highest degree of care was used to prevent a nuisance when conforming with the statute (see *Manchester Corporation* v. *Farnsworth*, 1930, A. C. 171), but see Railway Fires Act, 1905 (5 Edw. 7, c. 11), as to fires on agricultural land or to crops caused by sparks from an engine ; if the power is permissive only, due care must be exercised not to infringe the rights of other people ; while statutory powers which are without prejudice to such rights may give rise to an action for damages without any proof of negligence. See *Hulsb. L. E.*, title '*Nuisance.*'

Nuisance is of two kinds : (1) public ; (2) private. If a nuisance affects the property or the health, comfort, or convenience of the general public, or of all persons who happen to come within its operation, it is a public nuisance. If, however, it affects the health, comfort, or convenience of only one or two persons, it is a private—not a public—nuisance, and affords ground only for an action of tort. But that which is either in its nature or its consequences an injury or a damage to all persons who come within the sphere of its operation is a public nuisance, though it may be so in a greater degree to some than it is to others (*Odgers on the Common Law*, p. 230).

A public nuisance may give rise to proceedings of different kinds :—

(1) It may give ground for an indictment by a private individual, or a criminal information at the suit of the Attorney-General.

(2) It may give ground for a civil action, called an information, by the Attorney-General, either of his own motion or at the instance of some person aggrieved, called 'the relator,' who must obtain the sanction of the Attorney-General before writ.

(3) It may also give rise to an action at the suit of some private individual who is specially injured by it beyond the rest of the public, for a public nuisance may be a tort as well as a crime (*Odgers on the Common Law, ubi sup.*).

In the case of a private nuisance the usual remedy is an action in the Chancery Division for an injunction and damages. As to what acts will amount to a nuisance, see *Walter* v. *Selfe*, (1851) 4 De G. & S. 322 ; *Soltau* v. *De Held*, (1851) 2 Sim. N. S. 142. And see ABATEMENT.

'Any premises in such a state as to be a nuisance or injurious to health,' 'any animal so kept,' 'any chimney (not being the chimney of a private dwelling-house) sending forth black smoke in such quantity as to be a nuisance,' and other nuisances described in s. 91 of the Public Health Act, 1875, reproduced and extended by the Public Health Act, 1936, ss. 91–100—s. 101 (Smoke), s. 107 (Offensive Trades), s. 108 (Fried Fish), may be dealt with summarily under that Act by complaint before justices of the peace by a local authority, who are bound to inspect their district to detect nuisances, to serve notices requiring abatement, and to make complaint to justices on the notices not being complied with. As to the metropolis, see Public Health (London) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 50), Parts IV. and V. See NOISE ; SMOKE ; INJUNCTION.

The fact that a nuisance existed when the plaintiff first came is not a defence to an action for nuisance (*Elliotson* v. *Feetham*, (1835) 2 Bing. N. C. 134). And no prescriptive rights can be acquired for a nuisance.

Nuisances Removal Acts, repealed and replaced (except as to the Metropolis) by the Public Health Acts, 1875 and 1936, and repealed as to the Metropolis by the Public Health (London) Act, 1891, now itself repealed and replaced with amendments by the Public Health (London) Act, 1936. See PUBLIC HEALTH.

Nul prendra advantage de son tort demesne. 2 *Inst.* 713.—(No one shall take advantage of his own wrong.)

Nul tiel agard (no such award), a plea traversing an award. Under this plea a defendant could not object to the award in point of law.—1 *Salk.* 72.

Nul tiel Record, Issue of, a traverse that there is no such record. This was the proper form of issue whenever a question arose as to what had judicially taken place in a superior court of record; for the law presumes that, if it took place, there will remain a record of the proceeding.—3 *B. & C.* 449.

Nul Tort, Plea of, a traverse in a real action that no wrong was done; it was a species of the general issue.

Null and Void. These words when used in a statute or legal document indicate the exact contrary of the words 'full force and effect.'

Nulla bona (no goods), a return made by a sheriff to a *fi. fa.*, etc., when there is no property to levy upon.

Nullity, want of force or efficacy; an error in litigation which is incurable, and thus differs from an irregularity, which is amendable.

Nullity of Marriage, a matrimonial suit instituted for the purpose of obtaining a decree, declaring that a supposed marriage is null and void. See MARRIAGE.

The Matrimonial Causes Act, 1873 (36 Vict. c. 31), extended to proceedings for nullity of marriage the provisions of the Matrimonial Causes Acts of 1860 and 1866, ss. 7 and 3 respectively, with reference to the intervention of the king's proctor, and see now Matrimonial Causes Act, 1937, and DIVORCE. See INTERVENTION, and *Browne and Latey, Divorce.*

Nullius filius (the son of nobody, i.e., a natural child). See BASTARD.

Nullum simile est idem nisi quatuor pedibus currit. Similarity is not analogy unless it runs on all fours.

Nullum tempus aut locus occurit regi 2 *Inst.* 273; *Jenk. Cent.* 83.—(No time or place affects the king.) But see the Crown Suits Act, 1769 (9 Geo. 3, c. 16), commonly called the 'Nullum Tempus Act,' by which the right of the Crown to sue for land, etc., was limited to sixty years; and the Crown Suits Act, 1861 (24 & 25 Vict. c. 62), amending that Act; and s. 9 of the Crown Lands Act, 1906 (6 Edw. 7, c. 28), placing a limitation of sixty years on the recovery of quit rents, etc., payable in Ireland; and see *Carson's Real Property Statutes* (*Notes to the Real Property Limitation Acts, etc.*).

Nullus commodum capere potest de injuriâ suâ propriâ. *Co. Litt.* 148 *b.*—(No one can obtain an advantage by his own wrong.) See *Broom's Leg. Maxims*, and the cases cited, e.g., *Hooper* v. *Lane*, (1857) 6 H. L. C. at p. 461, per Bramwell, B.; and *Doe* v. *Bancks*, (1821) 4 B. & Ald. 401, in which it has been held that a lessee cannot take advantage of his own wrongful act, and a proviso for re-entry by the lessor thereupon, even though the proviso be that the term shall cease, or that the lease shall be utterly void for all purposes, only makes the lease voidable at the option of the lessor.

Nummata, the price of anything in money, as *denariata* is the price of a thing by computation of pence, and *librata* of pounds.

Nummata terræ, an acre of land.—*Spelm.*

Nun (*monialis*), a female bound by vows of celibacy, living in company with other nuns in a nunnery or convent. An obsolete Act of 1285 (13 Edw. 1, c. 6) (Statute of Westminster the Second) punishes the abduction of a nun, though consenting, from her convent by three years' imprisonment and fine. Nuns are excepted from Jury Service by 12 & 13 Geo. 5, c. 11.

Nunc pro tunc, a proceeding taken *now* for *then*, i.e., the proper time when it should have been taken; for example, special leave granted at the hearing to cross-appeal against an order for a new trial (*Toronto Railway* v. *King*, 1908, A. C. 260). As to entering judgments and orders *nunc pro tunc*, see Ord. LII., r. 15.

Nuncio, a messenger, servant, etc., a spiritual envoy from the Pope.

Nuncupate, to declare publicly and solemnly.

Nuncupative Will, a verbal testament depending merely upon oral evidence, being declared by the testator *in extremis* before a sufficient number of witnesses and afterwards reduced to writing.—2 *Bl. Com.* 500.

The Statute of Frauds, 29 Car. 2, c. 3,

restricted nuncupative wills, except when made by mariners at sea, and soldiers in actual service. Nuncupative wills are abolished by the Wills Act, 1837, s. 9, but with a proviso by s. 11 that any soldier being in actual military service, or any marine or seaman being at sea, may dispose of his personal estate, as he might have done before the making of this Act. A will made by a soldier under s. 11 accordingly requires no attestation, and s. 15, avoiding gifts to attesting witnesses, has no application to such a will (*Re Limond*, 1915, 2 Ch. 240). The Wills (Soldiers and Sailors) Act, 1918, slightly enlarges the class of persons to whom s. 11 applies (s. 2), and extends the right to make wills, without the formalities required by the Act of 1837, to real property in the case of persons within this class (s. 3). See the Navy and Marines (Wills) Acts, 1865, 1897, and 1914, as to the disposal of money and effects under the control of the Admiralty which belonged to certain classes of deceased members of the Royal Navy and Marines.

Nundination, traffic at fairs and markets; any buying and selling.

Nunquam indebitatus. See NEVER INDEBTED.

Nuper obit (he lately died), an abolished writ that lay for a sister and co-heir, deforced by her coparcener of lands or tenements, whereof their father, brother, or any other common ancestor died seised of an estate in fee simple.—*Fitz. N. B.* 197.

Nuptial, pertaining to marriage; constituting marriage; used or done in marriage.

Nuptias non concubitus sed consensus facit. *Co. Litt.* 33.—(Not cohabitation but consent makes a marriage.)

Nurture, Guardianship of. See GUARDIAN

Nurus [Lat.], a daughter-in-law.

Nuzzer, a vow, an offering, a present made to a superior.—*Indian.*

O.

Oath [fr. *ath*, Sax.], an appeal to God to witness the truth of a statement. It is called a *corporal oath*, where a witness, when he swears, places his right hand on the Holy Evangelists.

The Christian religion, though it prohibits swearing, excepts oaths required by legal authority (*Art. Ch. of Engl.* xxxix.). All who believe in a God, the avenger of falsehood, have always been admitted to give evidence, but the old rule was, that all witnesses must take an oath of some kind. Very gradually, however, the legislature has relaxed this rule, and the privilege of affirming (see AFFIRMATION) instead of taking an oath has now been universally granted by the Oaths Act, 1888, by which—

> Every person upon objection to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to his religious belief, shall be permitted to make his solemn affirmation instead of taking an oath in all places and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if he had taken the oath.

By s. 3 of the same Act, if an oath has been duly taken the fact that the person taking it had no religious belief does not affect its validity, and swearing with uplifted hand is authorized by the enactment of s. 5 that—

> If any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he shall be permitted so to do, and an oath shall be administered to him in such form and manner without further question.

Swearing in this fashion has by the Oaths Act, 1909, been made the usual form of taking any oath, section 2 enacting that—

> 2.—(1) Any oath may be administered and taken in the form and manner following:—
>
> The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words 'I swear by Almighty God that . . . ,' followed by the words of the oath prescribed by law.
>
> (2) The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question:
>
> Provided that, in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any manner which is now lawful.

The Statutory Declarations Act, 1835, abolishes unnecessary and extra-judicial oaths, and empowers any justice of the peace, notary public, or other officer authorized to administer an oath to take voluntary declarations in the form specified in the Act. And any person wilfully making such declaration false in any material particular is guilty of a misdemeanour.

Promissory oaths are those required to be taken by persons on their appointment to certain offices, as the oath of allegiance, of which the present form is, 'I——, do

swear that I will be faithful and bear true allegiance to His Majesty [King George VI.], his heirs and successors, according to law.'

These oaths have undergone much revision of late years by Parliament. By the Promissory Oaths Act, 1868, a number of unnecessary oaths have been abolished, and declarations substituted. That Act also provides new forms of the Oath of Allegiance, Judicial Oath, and Official Oath to be taken by particular officers. The Promissory Oaths Act, 1871, expressly repeals a number of Acts already impliedly repealed.

The Parliamentary Oaths Act, 1866 (29 Vict. c. 19), requires the oath of allegiance to be taken by members of Parliament before sitting or voting, and the Promissory Oaths Act, 1868, substitutes a new form of oath, but does not otherwise alter the Act of 1866. By the Act of 1866 a Quaker or other person, permitted by law to affirm, may make affirmation instead of oath, but an atheist, although permitted by law (see AFFIRMATION) to affirm in a court of justice, could not affirm under this Act (*Clarke* v. *Bradlaugh*, (1881) 7 Q. B. D. 38), and in Mr. Bradlaugh's case the House of Commons, when he was first elected, refused to allow him to make oath, so that he could not take his seat; but Mr. Bradlaugh, on being re-elected to a subsequent Parliament, made oath without objection.

The Oaths Act, 1888 (see *ante*), now allows an affirmation in all places and for all purposes.

The Interpretation Act, 1889, by s. 3 enacts that in every Act passed after 1850—

The expressions 'oath' and 'affidavit' shall, in the case of persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression 'swear' shall, in the like case, include affirm and declare.

In the Perjury Act, 1911, the word 'oath' includes 'affirmation' and 'declaration,' and the word 'swear' includes 'affirm' and 'declare'; see s. 15, and PERJURY.

The administering of unlawful oaths is an offence against the Government, and punishable by penal servitude. The following statutes relate to this offence: 37 Geo. 3, c. 123; 39 Geo. 3, c. 79; 52 Geo. 3, c. 104; 57 Geo. 3, c. 19; 1 Vict. c. 91.

As to 'Commissioners for Oaths,' see that title.

As to the oath to be taken by members of the Parliament of the Irish Free State, see the Irish Free State (Agreement) Act, 1922, Sched., art. 4.

Oath of Calumny. The oath administered in Scotland to pursuers in actions of Divorce and Nullity of Marriage on grounds of impotency.

Obedientia, an office, or the administration of it.—*Canon Law.*

Obedientia est legis essentia. 11 *Co.* 100.—(Obedience is the essence of law.)

Obedientiarius, a monastic officer.

Obit [a corruption of the Latin *obiit*, or *obivit*, he died], a funeral solemnity or office for the dead; the anniversary office.

The tenure of obit, or obituary, or chantry lands is taken away by 1 Edw. 6, c. 14, and 15 Car. 2, c. 9.

Obiter dictum, an opinion not necessary to a judgment. See DICTUM.

Objection to Evidence. If a document, or question to a witness, tendered by one party be objected to, all the counsel on the side objecting may be heard against the admissibility, and all on the other side may be heard in support; the senior counsel on the first side is heard in reply.

Objection to Indictment. On this being taken, the same course is followed as set out under the last title.

Objurgatrices, scolds, or unquiet women, punished with the cucking-stool. See CASTIGATORY.

Oblata, gifts or offerings made to the king by any of his subjects. In the Exchequer it signified old debts, brought as it were together from precedent years, and put on the present sheriff's charge. —*Jac. Law Dict.*

Oblata terræ, half an acre, or, as some say, half a perch of land.—*Spelm.*

Oblations, offerings to God and the Church, fees payable to the clergy for marrying, burying, and by way of 'Easter offerings.' See *Reg.* v. *Hall*, (1866) L. R. 1 Q. B. 632. (Those things are called oblations which are offered to God and the Church by pious and faithful Christians, whether the things are movable or immovable.)—2 *Inst.* 389. Easter offerings are assessable to income tax (*Cooper* v. *Blakiston*, 1909, A. C. 104).

Baptismal fees were abolished by 35 & 36 Vict. c. 36.

Obligation, an act which binds a person to some performance; also a bond containing a penalty, with a condition annexed for paying of money at a certain time, or for the performance of a covenant, etc.; also foreign government and other bonds and debentures.

Obligee, the person in whose favour an obligation or bond is entered into; a creditor.

Obligor, he who enters into an obligation or bond ; a debtor.

Obliqua oratio, the manner of reporting a speech in which ' he,' not ' I,' stands for the speaker in giving his words ; and hence the words ' you, ' your,' never occur, and every sentence begins with the word *that* expressed or understood, but generally expressed in the first sentence only. It is opposed to the *oratio directa*, sometimes called a speech in the first person, in which the very words of the speaker are given.

Obreption, obtaining gift of escheat by false suggestion.—*Bell's Scots Law Dict.*

Obscene Publication Act, 1857 (20 & 21 Vict. c. 83). See INDECENT PRINTS.

Obsignatory, ratifying and confirming.

Obsolete, invalid by virtue of discontinuance, said of a law or practice which has ceased to be enforced or be in use by reason of change of manners and circumstances, as ' wager or battel ' (see BATTEL, WAGER OF), the punishment of the stocks (see STOCKS), the provision of the Gaming Act of Henry VIII. (33 Hen. 8, c. 9) (*Revised Statutes*, 2nd ed., vol. i. p. 378, published in 1888 ; *Chitty's Statutes*, tit. ' *Games and Gaming* '), by which labourers and others are forbidden to play cards or other specified games ' out of Christmas,' but allowed to play them in Christmas in their masters' houses and in their masters' presence ; and that of 1285 in the *Stat. Westm. Sec.*, 13 Edw. 1, c. 34, by which elopement with a nun from her convent, although the nun consent, is punishable by three years' imprisonment and fine. For further instances, see the Statute Law Revision Act, 1908 (8 Edw. 7, c. 49) ; and see also STATUTE LAW REVISION. But however absurd and, in common language, obsolete an English statute may be, it does not become legally obsolete by mere non-user, though the fact of non-user may be extremely important when the question is whether there has been a repeal by implication. See *The India* (No. 2), (1864) 33 L. J. Adm. 193. In Scotland the law is otherwise : see *Bell's Law Dict.*, tit. ' *Desuetude*,' and so in the Civil Law desuetude works invalidity.

As to the English Common Law, Wager of Battel survived till 1819 and required a statute, or was deemed to require one, for its abolition, and so did pressing to death for want of a plea, and the inquiry whether the prisoner fled for his crime in criminal cases (see the title PEINE FORTE ET DURE, and FLY FOR IT), but the view of Lord Coleridge, C.J., in *Reg.* v. *Ramsay and Foote*, (1883) 48 L. T. at p. 735, to the effect that ' law grows,' would, it is submitted, be judicially taken generally at the present day ; otherwise ' eavesdroppers ' and ' scolds ' (see those titles) would still be liable to indictment.

Obstetricante manu [by the hand of a midwife, Lat.], said of evidence of a child helped out by its nurse, etc.

Obstriction, obligation ; bond.

Obstructive Building. A building which by reason of its contact with or proximity to other buildings is dangerous or injurious to health (Housing Act, 1936, s. 54). For powers of local authorities in regard to obstructive buildings, see that Act, and *Jackson* v. *Knutsford Urban D. C.*, 1914, 2 Ch. 686.

Obtemperandum est consuetudini rationabili tanquam legi. 4 *Co.* 38.—(A reasonable custom is to be obeyed as a law.)

Obtest, to call solemnly upon, to adjure ; to protest.

Obventions, offerings ; tithes and oblations.

Occasio, a tribute which the lord imposed on his vassals or tenants for his necessity.

Occasionari, to be charged or loaded with payments or occasional penalties.

Occasiones, assarts. See ASSART.

Occultatio thesauri inventi fraudulosa. 3 *Inst.* 133.—(The concealment of discovered treasure is fraudulent.)

Occupancy, mere possession or use either by agreement or otherwise without other claim (if any) to the ownership or enjoyment of property, also taking possession of land to which no one else lays claim or without leave of the owner.

The right of occupancy has been confined by the laws of England within a very narrow compass, e.g., where a person was tenant *pur autre vie*, or had an estate granted to himself only (without mentioning his heirs) for the life of another man, and died without alienation, during the life of the *cestui que vie*, or him by whose life it was holden ; in this case, he that entered first on the land was called the *occupant or common occupant* and might lawfully retain the possession so long as the *cestui que vie* lived, by right of occupancy (see *Re Michell, Moore* v. *Moore*, 1892, 2 Ch. 96). The title of common occupancy is now, in effect, abolished, for it is enacted by the Wills Act, 1837, s. 3, that an estate *pur autre vie*, of whatever tenure, and whether it be an incorporeal or corporeal hereditament, may in all cases be devised by will, and, by s. 6, that if no disposition by will be made of an estate *pur autre vie* of a free-

hold nature, it shall be chargeable in the hands of the heir or *special occupant* if it come to him by reason of special occupancy of an estate of inheritance *pur autre vie* (*q.v.*) as assets by descent (as in the case of freehold land, in fee-simple); and should there be no special occupant of any estate *pur autre vie*, it shall go to the executor or administrator of the party that had the estate by virtue of the grant; and in every case where it comes to the hands of such personal representative, shall be assets in his hands, to be applied and distributed in the same manner as personal estate.

This law was in force until 1926, s. 45 of the Administration of Estates Act, 1925, having abolished special occupancy among all other then existing rules of descent of legal estate in land. See AUTRE VIE.

A property in goods and chattels may be acquired by occupancy, for—

(1) It has been said that anybody authorized by the Crown may seize to his own use such goods as belong to an alien enemy.

(2) All persons may, on their own lands, or in the seas, generally exercise the right to pursue and take any fowl or insect of the air, any fish or inhabitant of the waters, and any beast or reptile of the field. The exceptions to this right are royal fish, such as whales, sturgeons, etc., animals of forest, chase, or free warren, fish belonging to a 'several' or 'free' fishery.

(3) Property arising from accession. See ACCESSION, PROPERTY BY.

(4) Property arising from confusion. See CONFUSION, PROPERTY BY.

As to title by occupancy of States to territory, see *Hall, Int. Law*, Ch. II., and generally, see 2 *Bl. Com.*, pp. 258, 400, and POSSESSION.

Occupant, he who is in possession of a thing. See OCCUPANCY.

Occupatile, that which has been left by the right owner, and is now possessed by another.

Occupation, possession; act of taking possession; also, trade or mystery; and see OCCUPIER.

Occupative, possessed, used, employed.

Occupavit, a writ that lay for him who was ejected from his freehold in time of war, as the writ of *novel disseisin* lay for one disseised in time of peace.

Occupier, the person residing in or upon or having a right to reside in or upon any house, land, or place; formerly rateable to the poor rate under the Poor Relief Act, 1601, 43 Eliz. c. 2, and as 'inhabitant occupier' and entitled to the parliamentary franchise, under the Representation of the People Acts, 1867 and 1884, now a person liable to pay rates by reason of occupation of premises under the Rating and Valuation Acts, 1925, 1932, and see Representation of the People Act, 1918 (7 & 8 Geo. 5. s. 641), s. 3.

Occupier's Liability Notice, the notice which the owner of land out of which tithe rent-charge issues is required, by sub-s. 6 of s. 2 of the Tithe Act, 1891, to give to the owner of the tithe rent-charge of the liability of the occupier of the land, under a contract made before the Act, to pay such tithe rent-charge to such owner of land. Unless this notice (which is styled an 'occupier's liability notice' by r. 3 of the Tithe Rent-charge Recovery Rules, 1891) is served as required by the Tithe Act, 1891, the landowner may not recover from the occupier any sum which he has paid for tithe rent-charge, without a certificate from the County Court 'that there was good and sufficient cause for the failure to give such notice, and that the occupier has not been prejudiced thereby.' For form of notice, see *Thring's Tithe Act*, 1891, at p. 58, and now, generally, the Tithe Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 43), s. 20 (3) (Transitional Provisions).

Ochlern, a name of dignity; a freeholder. —*Skene.* Obsolete.

Ochlocracy [fr. ὄχλος, Gk., a multitude, and κράτος, power or command], a form of government wherein the populace has the whole power and administration in its own hand; a democracy; mob-rule.

Octave, the eighth day after any feast, inclusive.

Octo Tales. See DECEM TALES.

Odhal, alodial, which see.

Odio et atiâ, a writ anciently called *breve de bono et malo*, addressed to the sheriff to inquire whether a man committed to prison upon suspicion of murder were committed on just cause of suspicion, or only upon malice and ill-will; and if, upon the inquisition, it was found that he was not guilty, then there issued another writ to the sheriff to bail him.—*Reg. Brev.* 133. But the practice now is to issue a *habeas corpus*.

Odiosa et inhonesta non sunt in lege præsumenda; et in facto quod in se habet et bonum et malum, magis de bono quam de malo præsumendum est. *Co. Litt.* 78.—(Odious and dishonest things are not to be presumed in law; and in an act which partakes both of good and bad, the pre-

sumption should be done in favour of what is good than what is bad.)

Œconomicus, an executor.

Œcumenical. See ECUMENICAL.

Offence, crime; act of wickedness. It is used as a *genus*, comprehending every crime and misdemeanour, or as a *species*, signifying a crime not indictable, but punishable summarily, or by the forfeiture of a penalty.

There are certain acts which are heinous sins and odious in the public eye and are punishable in the Ecclesiastical Courts, but not being punishable at Common Law, and the proceedings in the Ecclesiastical Courts being held to be *pro salute animæ* and not to entail any temporal injury, they cannot be classed with ordinary Common Law and statutory offences; and it is no slander to impute them unless special damage follows.

Other offences are divided into three classes, viz.:—

(1) Treasons; (2) Felonies; and (3) Misdemeanours. See several titles.

Consult *Russell on Crimes*; *Archbold's* or *Roscoe's Criminal Evidence.*

Offer of Shares to the Public. Shares and debentures of limited companies, when allotted or agreed to be allotted with a view to sale to the public, must when offered to the public comply with the provisions of s. 38 of the Companies Act, 1929; and see PROSPECTUS. Further, any offer in writing to any member of the public of any shares for purchase except as provided, i.e. (*a*) shares dealt in with permission of any recognized stock exchange in Great Britain; (*b*) shares allotted with a view to sale to the public; and (*c*) offers to persons doing regular business in the purchase or sale of shares, must comply with s. 356 of the same Act; s. 356 also absolutely prohibits 'share pushing,' i.e., any person going from house to house (not being an office used for business purposes) offering shares for subscription or purchase to the public or any member of the public.

Offerings, personal tithes, payable by custom to the parson or vicar of a parish, either occasionally, as at sacraments, marriages, churching of women, burials, etc.; or at constant times, as at Easter, Christmas, etc. —2 & 3 Edw. 6, cc. 13, 20 (repealed by the Church Assembly Measure, 16 & 17 Geo. 5, No. 5), and 21. Voluntary Easter offerings received by an incumbent are profits accruing to him and are assessable for income tax (*Cooper* v. *Blakiston*, 1909. A. C. 104).

Offertorium, the offerings of the faithful, or the place where they are made or kept; the service at the time of Communion.

Off-going Crop. See AWAY-GOING CROPS.

Office, an employment, either judicial, municipal (see CORPORATE OFFICE), civil, military, or ecclesiastical.

As to obtaining offices by desert only, the repealed 12 Ric. 2, c. 2, enacted that—

> The Chancellor, Treasurer, . . . the Justices of the one bench and the other, Barons of the Exchequer and all other that shall be called to ordain, name, or make justices of the peace, sheriffs, . . . or any other officer or minister of the King shall be firmly sworn that they shall not ordain, name, or make justice of peace, sheriff . . . nor other officer or minister of the King for any gift or brocage, favour or affection: nor that none that pursueth by him or by other privily or openly to be in any manner of office shall be put in the same office or in any other; but that they make all such officers and ministers of the best and most lawful men, and sufficient to their estimation and knowledge.

Officia magistratus non debent esse venalia. —(The offices of a magistrate ought not to be saleable.)

Lord Coke (*Co. Litt.* 234 *a*) speaks of the above statute as 'a law worthy to be written in letters of gold, but more worthy to be put in execution,' 'for certainly,' he adds, 'never shall justice be duly administered, but when the officers and ministers of justice be of such quality, and come to their places in such manner, as by this law is required.'

The Act remained on the Statute Book until its repeal by the Promissory Oaths Act, 1871—the particularities of the Act of Richard the Second having been (it is presumed) conceived to have been superseded by the generalities of the Promissory Oaths Act, 1868.

The sale of offices is also prohibited by the Sale of Offices Acts of 1551 and 1809. See *Chitty's Statutes*, tit. '*Offices*,' and *Sterry* v. *Clifton*, (1850) 19 L. J. C. P. 237, where it was held that certain official clerkships of attorneys might be considered partnership property.

Any words, whether written or spoken, which disparage a man in the way of his office or calling are defamatory, and are actionable *per se*, i.e., without proof of special damage. See PUBLIC OFFICE.

Office-copy, a transcript of a proceeding filed in the proper office of a court under the seal of such office. As to when office-copies are receivable in evidence, see *Taylor on Evidence*; and as to official marking, etc., see R. S. C. 1883, Ord. LXVI., r. 7.

Office found, the finding of a jury in an inquest of office of a fact which entitles the Crown to the possession of lands or tene-

ments, goods, or chattels.—*Jac. Law Dict.* See INQUEST OF OFFICE, and FORFEITURE.

Office of a Judge: the prosecutor in an ecclesiastical criminal suit is called the *promotor officii judicis*. He is either *necessarius* when the prosecution is *ex mero motu judicis*, or *voluntarius*.—*Oughton, Ordo Judiciorum.*

Office of Profit. The holding of such an office under the Crown in general incapacitates the holder from sitting or voting in the House of Commons. An Act of 1707 (6 Anne, c.41) (c. 7 in Statutes at Large) provides that no person who shall have any new office or place of profit whatsoever under the Crown created since 25th October, 1705, or certain other specified offices, shall be capable of being elected or sitting or voting as a member of the House of Commons in any Parliament. The acceptance by a member of any office of profit from the Crown, other than one of those specified, disqualifies him from continuing a member without re-election.

This very strict rule has many statutory exceptions which allow the holders of offices created since 1705 to seek re-election. Section 52 of the Representation of the People Act, 1867 (30 & 31 Vict. c. 102), allowed Ministers to transfer from one office to another without re-election provided that the office is one of those mentioned in the schedule to the Act or added thereto by subsequent legislation. The Re-election of Ministers Act, 1919 (9 & 10 Geo. 5, c. 2), as amended by the Re-election of Ministers (Amendment) Act, 1926 (16 & 17 Geo. 5, c. 19) (which also repeals s. 52 of the Act of 1867, *supra*), provides that where a member accepts an office of profit under the Crown, the holding of which does not disqualify him from being re-elected but only from continuing a member, he shall not be obliged to vacate his seat, and see House of Commons Disqualification (Declaration of Law) Act, 1935 (25 & 26 Geo. 5, c. 38). 'An office or place of profit under the Crown' is any office held direct from the Crown which nominally carries a salary; thus, e.g., the stewardship of the Chiltern Hundreds (*q.v.*) is such an office, although it carries no salary. This office, as also that of the steward of the manors of East Hendred, Northstead or Hempholme, is excluded from the operation of the Act of 1919. Many offices of profit are specially designated in various Acts as disqualifying their holders from sitting in the House of Commons—e.g., the Master of the Rolls, by Judicature Act, 1925, s. 12 (2), replacing the Judicature Act of 1875, s. 5.

Officer. See ARMY; NAVY. A contract between the Crown and any of its military or naval officers for services rendered or to be rendered is not enforceable in a Court of law (see *Kynaston* v. *A.-G.*, 49 T. L. R. 300).

Officers of the Supreme Court. By the Judicature Act, 1873, s. 77, the officers of the various courts, whose jurisdiction is by that Act transferred to the High Court of Justice, of the Court of Appeal, were attached to the Supreme Court; by the Judicature Act, 1875, Ord. LX., r. 1, these officers were attached to the divisions which represented the courts of which they were formerly officers; and by the Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78), they were transferred to the Central Office of the Supreme Court. See, now, Judicature Act, 1925, *ss.* 105, 221-232.

Offices of the Supreme Court. The offices of the Supreme Court are to be open every day except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter Week. Whit Monday, the first Monday in August, Christmas-day and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving, the day appointed to be kept as the King's birthday, and such days as the Lord Chancellor, with the concurrence of the Lord Chief Justice, the Master of the Rolls and the President of the Probate, Divorce and Admiralty Division, shall direct.—R. S. C., Ord. LXIII., r. 6 (as amended)

As to the vacations in the offices of the Supreme Court, see VACATION.

Official, formal; authorised.

In the Civil Law, he is a minister of, or attendant upon, a magistrate. In the Canon Law, he is the person to whom a bishop commits the charge of his spiritual jurisdiction; there is one in every diocese, called *officialis principalis*, i.e., chancellor; the rest, if there are more, are *officiales foranei*, i.e, commissaries. In our statutes he is the person whom the archdeacon appoints as his substitute. *Wood's Inst.* 30, 505.

Official Assignees, certain persons from the class of merchants or accountants who were appointed by the Lord Chancellor under the Bankruptcy Acts, 1849 and 1861, to act in bankruptcies; one of whom must have been an assignee of the bankrupt's estate and effects, together with the assignee or assignees chosen by the creditors. All the personal estate, the profits of the realty, and the proceeds of all such estates as were sold were received by such official assignees

alone, and paid into the Bank of England to the credit of the Accountant in Bankruptcy. These officials ceased to exist under the system of bankruptcy introduced in 1869, but the ' Official Receivers ' established by the Act of 1883 greatly resemble them.

Official Liquidators, officers appointed to conduct the proceedings and to assist the Court in winding up a joint-stock company. —Companies Act, 1862, s. 92. See now Companies Act, 1929, s. 185, replacing the Companies (Consolidation) Act, 1908, ss. 149 *et seq.*, where they are styled ' liquidators.'

Official Log-book, a log-book in a certain form, and containing certain specified entries required by ss. 239 and 240 of the Merchant Shipping Act, 1894, re-enacting ss. 280—282 of the Merchant Shipping Act, 1854, to be kept by all British merchant ships, except those exclusively engaged in the coasting trade. By s. 239 (6) the entries are admissible as evidence.

Official Managers, persons formerly appointed, under statutes now repealed, to superintend the winding-up of insolvent companies under the control of the Court of Chancery.

Official Oath. By the Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72), a form of ' official oath ' is prescribed, to be taken by each of the officers named in the schedule annexed thereto, as soon as may be after his acceptance of office by the officer.

Official Receivers, officers appointed by the Board of Trade under s. 66 of the Bankruptcy Act, 1883, to act as interim receivers and managers of bankrupts' estates, pending the appointment of trustees in bankruptcy: see now Bankruptcy Act, 1914, ss. 70 *et seq.* The report of an official receiver is absolutely privileged (*Bottomley* v. *Brougham*, 1908, 1 K. B. 584; *Burr* v. *Smith*, 1909 2 K. B. 306). As to the official receiver becoming provisional liquidator on the making of a winding-up order, see Companies Act, 1929, s. 185, and LIQUIDATOR.

Official Referee. See REFERENCE.

Official Secrets. The Official Secrets Act, 1889, was the first Act aimed at the prevention of the disclosure of official secrets. This Act was repealed and re-enacted with amendments by the Official Secrets Act, 1911, which has been amended by the Official Secrets Act, 1920. It is made an offence to spy in a ' prohibited place,' or wrongfully to communicate codes, plans, models, documents, or information relating to such a place, or to munitions of war, or which are used in such a place. There are special provisions as to arrest, the harbouring of spies, and the issue of search warrants. A Secretary of State may require the production of any document relating to a telegram or cable or wireless message. Every person who carries on the business of receiving letters, postal packets, or telegrams for other persons must be registered with the police and keep a record of the letters, etc., passing through his hands, and must not give up a letter, etc., unless a receipt is signed, or written instructions for delivery are given, by the addressee.

Official Solicitor. The duties of this officer at the present time are nowhere very clearly defined: see Judicature Act, 1925, s. 129, replacing Official Solicitor Act, 1919 (9 & 10 Geo. 5, c. 30). A petition or summons respecting any dealing with a dormant fund, i.e., a fund in Court which has not been dealt with for fifteen years, must be served on the Official Solicitor: R. S. C. Ord. XXII., r. 11; and he has placed upon him by the Court of Chancery Act, 1860 (20 & 23 Vict. c. 149), s. 2, the duty of visiting prisoners committed for contempt, and he may be assigned as solicitor to pauper litigants, and acts as guardian *ad litem* to persons under a disability. Subject to an order to the contrary, under Ord. LXIII., r. 13, his costs are taxed as between party and party (*Eady* v. *Elsdon*, 1901, 2 K. B. 460).

Official Trustees of Charitable Funds, officers of the Charity Commissioners appointed to hold stocks and securities belonging to charities: see Charitable Trusts Act, 1853, s. 51; Charitable Trusts Amendment Act, 1855, s. 18; Charitable Trusts Act, 1887, s. 4.

Official Trustee of Charity Lands, the secretary for the time being of the Charity Commissioners, who is constituted a corporation sole by that name for taking and holding charity lands: see Charitable Trusts Act, 1853, s. 49; Charitable Trusts Amendment Act, 1855, s. 15.

Official Use, an active use, which imposed some duty on the legal owner or feoffee to uses, as a conveyance to A. with directions for him to sell the estate and distribute the proceeds amongst B., C., and D. To enable A. to perform this duty he kept the legal estate under the Statute of Uses.

Officiality, the Court or jurisdiction of which an official is head.

Officialis non faciendis vel amovendis, a writ addressed to the magistrates of a corporation, requiring them not to make such a

man an officer, or to put one out of the office he has, until inquiry is made of his manners, etc.—*Reg. Brev.* 126.

Officina justitiæ, a department of the Common Law jurisdiction of Chancery, out of which original writs issued.

Officio, Ex. By virtue of his office ; e.g., the Lord Chief Justice of England is a member of the Court of Appeal, *ex officio.*

Officio, Ex, Oath, an oath whereby a person might be obliged to make his answer to any matters alleged against him, and extending originally even to criminal charges. It was derived from the practice of the Ecclesiastical Courts : see 3 *Bl. Com.* 447.

Officious Will, a testament by which a testator leaves his property to his family.—*Sand. Just.*

Officium nemini debet esse damnosum. (An office ought to be injurious to no one.)

Off Licence. A justices' licence for the sale of intoxicating liquor not to be consumed on the premises (Licensing (Consolidation) Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), s. 110).

Oil in Navigable Waters Act, 1922 (12 & 13 Geo. 5, c. 39). An Act directed against the fouling of the territorial waters of Great Britain and Northern Ireland, and the waters of harbours therein, by the discharge of oil or spirit, especially crude fuel oil, petroleum, and petrol.

Old Age Pension. See PENSION.

Old Bailey. The popular name for the Central Criminal Court.

Old Bailey Sessions. These were superseded by the Central Criminal Court, which see.

Old Metal, Dealers in. See METAL.

Old Style. See NEW YEAR'S DAY.

Old Tenures, a treatise, so called to distinguish it from Littleton's book on the same subject, which gives an account of the various tenures by which land was holden, the nature of estates, and some other incidents to landed property in the reign of Edward III. It is a very scanty tract, but has the merit of having led the way to Littleton's famous work.—3 *Reeves*, 151.

Oleron, an island lying in the Bay of Acquitain, at the mouth of the river Charente, formerly in the possession of England. The inhabitants of Oleron have been able mariners for seven or eight hundred years past. They are said to have drawn up the laws of the Navy still called the Laws of Oleron. According to some French writers these maritime laws were digested as the *Rôole des Jugemens d'Oleron,* by direction of Queen Eleanor, wife of Henry II. as Duchess of Guienne, and enlarged and improved by her son Richard I. Selden (*de Dom. Mar.* c. xiv.) maintains that they were compiled and promulgated by Richard I. as King of England. Writers, as Mons. Boucher, of Paris, and the English Luders, consider the whole account fallacious. The former calls the story of our Richard I. and Queen Eleanor *une chimère des plus invraisemblables.* —*Monthly Review*, December, 1811 ; and see *Nouveau Larousse*, tom. vi. p. 488. The laws of Oleron were to a great extent the foundation of the maritime laws of most states of Europe.

Oligarchy, a form of government wherein the administration of affairs is lodged in the hands of a few persons.

Olympiad, a Grecian epoch : the space of four years.

Omittance, forbearance.

Omne crimen ebrietas et incendit et detegit. *Co. Litt.* 247.—(Drunkenness both kindles and uncovers every crime.) See DRUNKENNESS.

Omne majus continet in se minus. *Jenk. Cent.* 208.—(The greater contains or embraces the less ; e.g., a person on an indictment for murder may be convicted of manslaughter.)

Omne quod solo inædificatur solo cedit. *Dig.* 47, 3. 1.—(Everything which is built upon the soil belongs to the soil.) Similarly, *Quicquid plantatur solo, solo cedit.* (Whatever is planted in the soil belongs to the soil.) See FIXTURES.

Omnes licentiam habent his, quæ pro se introducta sunt, renunciare. *Broom's Leg. Max.*—(Every one has a right to renounce those things which have been granted for his own benefit.) Similarly, *Quilibet potest renunciare juri pro se introducto.* 2 Inst. 183. —(Every person may decline to take advantage of a law made for his own benefit.) See WAIVER.

Omnia præsumuntur contra spoliatorem.—(All things are presumed against a wrongdoer.) See *Armory* v. *Delamirie,* (1722) 1 Str. 504 ; 1 *Smith L. C. ; Broom's Leg. Max.*

Omnia præsumuntur solemniter [or **rite**] **esse acta.** *Co. Litt.* 6.—(All things are presumed to have been done rightly.) Similarly, *Omnia præsumuntur ritè et solemniter esse acta donec probetur in contrarium. Co. Litt.* 232.—(All things are presumed to have been rightly and duly performed until it is proved to the contrary.)

Omnibus, a vehicle *for all.* By the Town Police Clauses Act, 1889 (52 & 53 Vict. c. 14),

bye-laws may be made under the Town Police Clauses Act, 1847 (see that title), for regulation of omnibuses, which term is defined by s. 3, and includes, for the purposes of the Act, *char-à-bancs*, wagonettes, brakes, stage-coaches, and other carriages plying or standing for hire by or used to carry passengers at separate fares. See, generally, London Passenger Transport Act, 1933 (23 Geo. 5, c. 14); Road Traffic Act, 1934 (24 & 25 Geo. 5, c. 50), ss. 24 *et seq.*

Omnis consensus tollit errorem. 2 *Inst.* 123.—(Every assent removes error.)

Omnis nova constitutio futuris temporibus formam imponere debet, non præteritis. 2 *Inst.* 95.—(Every new enactment should affect future, not past times.)

Omnis ratihabitio retrotrahitur et mandato priori æquiparatur. *Co. Litt.* 207.—(Every consent given to what has been already done has a retrospective effect, and is equivalent to a previous request, provided that the interests of third parties have not been affected in the interim.) See *Mann* v. *Walters*, (1830) 10 B. & C. 626, and *Broom's Leg. Max.*, and RATIFICATION.

Omnium, the aggregate of certain portions of different stocks in the public funds.—*Com. term.*

Oncunne, accused.—*Du Cange.*

One Hundred Thousand Pounds Clause, a clause in the conveyance by the tenant-in-tail to the tenant to the *præcipe*, which provided that if the latter did not pay 100,000*l.* (or some other sum grossly in excess of the value of the land) on a specified date subsequent to the recovery, the estate of the tenant to the *præcipe* was to be avoided. See 1 *Preston's Conveyancing*, 109 and 110; and see RECOVERY.

Onerando pro ratâ portionis, a writ that lay for a joint-tenant, or tenant-in-common, who was distrained for more rent than his proportion of the land came to.—*Reg. Brev.* 182. See now for the implied powers conferred by s. 190, Law of Property Act, 1925.

Onerari non debet (he ought not to be burdened), a form of commencement of a pleading, substituted in some few cases for *actionem non.* But see 1 *Saund.* 290, n. *b.*

Onerous Cause, a good and legal consideration.—*Scots term.*

O. Ni. It was the course of the Exchequer, as soon as a sheriff or escheator entered into his account for issues, amerciaments, etc., to mark upon his head *O. Ni:* which denoted *oneratur, nisi habeat sufficientem exonerationem*, and presently he became the king's debtor, and a *debet* was set upon his head; whereupon the parties *paruvaile* became debtors to the sheriff or escheator, and discharged against the king.—4 *Inst.* 116.

Onus episcopale, ancient customary payments from the clergy, to their diocesan bishop, of synodals, pentecostals, etc.

Onus importandi, the charge of importing merchandise, mentioned in 12 Car. 2, c. 28.

Onus probandi, the burden of proof. See BURDEN OF PROOF.

Open Contract, a complete contract of which the meaning admits the implications of law without special conditions, or except so far as such conditions may modify these implications, as a contract to sell land without mentioning the day for completion of the purchase, or without stipulations as to title or otherwise. See Vendor and Purchaser Act, 1874, ss. 1, 2; Conveyancing Act, 1881, s. 3, reproduced with amendments by ss. 44 and 45, Law of Property Act, 1925. See CONTRACT FOR SALE OF LAND.

Open Court. Every court of justice is open to every subject of the King (*Scott* v. *Scott*, 1913, A. C. 417, at p. 440). By statute the place where justices summarily convict is an open court (Summary Jurisdiction Act, 1848, s. 12), but not so the place where they commit a prisoner for trial at assizes or sessions (Indictable Offences Act, 1848, s. 19). Whether a coroner's court is an open court is a matter of doub if it is not a Court of Justice; it is submitted that it is not (see *Jervis on Coroners*, citing *Garnett* v. *Ferrand*, (1827) 6 B. & C. 611); the general rule is that all courts of justice are open to all so long as there is room. See *Scott* v. *Scott, ubi supra*, where the whole question of hearing cases *in camerâ* is discussed. See also *R.* v. *Gov. of Lewes Prison*, 1917, 2 K. B. 254; and *McPherson* v. *McPherson*, 1936, A. C. 177.

See CAMERA; JUVENILE COURTS.

Opening Biddings. Before 1867, where estates were sold, under the decree of a Court of Equity, the Court considered itself to have a greater power over the contract than if the contract were made between party and party; and as the aim of the Court was to obtain as great a price as possible for the estate, it would open the biddings after the estate was sold, and put up the estate for sale again.

But the Sale of Land by Auction Act, 1867, has, by s. 7, abolished this inconvenient practice (under which biddings were opened even more than once), with an exception for cases of fraud or improper manage-

ment of a sale, in which, upon the application of any person interested in the land, 'the Court may either open the biddings, holding such bidder bound by his bidding, or discharge him from being the purchaser, and order the land to be resold'; see *Delves* v. *Delves*, (1875) L. R. 20 Eq. 77.

Opening the Case. On a trial before a jury the party who upholds the affirmative of the issue begins, in conformity with the Civil Law maxim: *Ei incumbit probatio, qui dicit, non qui negat; cum, per rerum naturam, factum negantis probatio nulla sit.—Cod.* 4. See RIGHT TO BEGIN.

Opening the Pleadings, stating briefly at a trial before a jury the substance of the pleadings. This is done by the junior counsel for the plaintiff at the commencement of the trial.

Open Law [*lex manifesta*, Lat.], the making or waging of law.—*Magna Charta*, c. 21.

Open Policy, one in which the value of the ship or goods insured is to be ascertained in case of loss.

Open Space. By the Metropolitan Open Spaces Acts of 1877 and 1881, the Metropolitan Board of Works (succeeded by the London County Council, under s. 40, sub-s. 8, of the Local Government Act, 1888) had power to acquire and to hold for the use of the public any open spaces within the metropolis. These Acts were extended, with amendments, to urban sanitary districts, and, with the consent of the Local Government Board, to rural sanitary districts, by the Open Spaces Act of 1887; and the Open Spaces Act, 1890, empowered the trustees of land held upon trust for the purposes of public recreation to transfer it to the local authorities of their districts for those purposes. The Open Spaces Act, 1906, consolidates these four Acts (see *Chitty's Statutes*, tit. '*Public Improvements*'), and by s. 20 enacts that:—

> In this Act, unless the context otherwise requires,—
> The expression 'open space' means any land, whether inclosed or not, on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied.

The above definition much enlarges that of 1881 as amended by the Act of 1887, and see *Bermondsey Borough Council* v. *Mortimer*, 1926, P. 87, as to the requirements for a faculty from the Consistory Court under this Act to convert a closed churchyard into an open space.

Square gardens in cities and boroughs are still protected by the Town Gardens Protection Act, 1863, within which statute it was held in 1868 that Leicester Square in London did not come (*Tulk* v. *Metropolitan Board of Works*, (1868) L. R. 3 Q. B. 682). See also London Squares Preservation Act, 1931 (c. xciii.), and for powers of the Minister of Health, other departments and local authorities, the Housing Acts, the Town and Country Planning Acts, and the Ribbon Development Act, 1935, and Public Works Facilities Act, 1930, s. 2; also Local Government Act, 1933, s. 174, providing that a compulsory order for the acquisition of an open space is provisional only and must be confirmed by Parliament; and as to open spaces held in undivided shares (transitional), see Law of Property Act, 1925, s. 39, and 1st. Sched., Part V. (5); and *Re Bradford City*, 1928, Ch. 138, and *Re Townshend*, 1930, 2 Ch. 328.

Open Theft [*open theof*, Sax.], a theft that is manifest.—*Reg. Hen.* 1, c. 13.

Opentide, the time after corn is carried out of the fields.—*Britt.*

Operarii, such tenants under feudal tenures as held some little portions of land by the duty of performing bodily labour and servile works for their lord.

Operatio, one day's work performed by a tenant for his lord.

Operative Part. The operative part of a formal instrument consists of the words which carry out the principal object or objects of the instrument.

Operative Words. The words in the formal part of an instrument which carry out or effect the contention of the parties, e.g., 'grant' or 'bargain and sell' in a conveyance. See DEED.

Opetide, the ancient time of marriage, from Epiphany to Ash-Wednesday.

Opinion. A technical term applied to the judgment * of a Law Lord delivered in the House of Lords. Also the written advice given by counsel upon facts submitted to him. See DICTUM as to opinions expressed by judges which are not strictly relevant to the issue before them.

Opposer, an officer formerly belonging to the Green Wax in the Exchequer. Abolished.

Opposite, an old word for opponent.

Oppression, the trampling upon or bearing down a person, under pretence of law. See also *Harris* v. *Harris Ltd.*, 1936, S. C. 183 (Court of Sess.).

Optima est lex quæ minimum relinquit

* Also termed a "Speech."

arbitrio judicis, optimus judex qui minimum sibi. The best law is that which leaves the least to the discretion of the judge, the best judge is he who leaves the least to himself (his own discretion).

Optimacy, nobility; men of the highest rank.

Optimus interpres rerum usus. 2 *Inst.* 282.—(Custom is the best interpreter of things.) See *Broom's Leg. Max.* Similarly, *Optimus legum interpres consuetudo.* 4 *Inst.* 75.—(Custom is the best interpreter of laws.) *Optima est legis interpres consuetudo.* Lofft, 237; Dig. 1, 3, 37.—(Custom is the best interpreter of the law.) These maxims support Savigny's Theory of the origin of law. *Optimus interpretandi modus est sic leges interpretari ut leges legibus concordant.* 8 Co. 169.—(The best mode of interpretation is so to interpret laws that they may accord with each other.) See ACT OF PARLIAMENT.

Option. 1. When a new suffragan bishop is consecrated by the archbishop of the province, by a customary prerogative, the archbishop claims the collation of the first vacant dignity or benefice in that see, at his own choice, i.e., option. Options are now disused. 2. The word is also used in commercial matters to express a right to effect a certain dealing or not in shares or goods at a stated price at a certain date, at the option of the person bargaining, who pays a premium for the right.

Option of Purchase in a Lease. A clause giving the lessee the option of purchasing the reversion for a fixed sum within a limited number of years, or at any time during the term, is sometimes inserted in leases. A clause giving an option of purchase at any time during a ninety-nine years' lease offends against the law of perpetuities (see that title) and cannot be specifically enforced (*Woodall* v. *Clifton*, 1905, 2 Ch. 257; *Worthing Corporation* v. *Heather*, 1906, 2 Ch. 532). For statement of opinion that the clause 'to be completely valid must be so expressed that the option must necessarily be exercised (if at all) within the limits of the time allowed by the rule against perpetuities,' so that probably not more than twenty-one years could be allowed in a lease independent of life, see article by Mr. T. Cyprian Williams in the *Solicitors' Journal* for July 9, 1898; and for cases on option of purchase generally, see *Woodfall, L. & T.*

Options to purchase a legal estate (including a lease), made or acquired after 1925, must be registered in the Land Registry under ss. 4 and 10 of the Land Charges Act, 1925, as ESTATE CONTRACTS (*q.v.*), or they will be void against a purchaser for value (with or without notice), for money or money's worth. They do not fall behind the curtain and must be abstracted as the person entitled may register at any time before completion of the purchase by the later claimant. A tenant for life may grant an option for purchase or to take a lease exerciseable over any period not exceeding ten years (see Settled Land Act, 1925, s. 51). Attention should be given to the Law of Property Act, 1925, s. 149 (3), which prohibits the granting of a lease as a rent or upon payment of a fine after 1925 to take effect more than twenty-one years from the date of the instrument purporting to create it except in regard to terms or interests under a settlement or under equitable powers for a mortgage indemnity, etc.; and see Law of Property Act, 1922, 15th Sched., par. 7 (2), avoiding any contract to renew a lease for more than sixty years from the expiration of the lease.

Optional Writ, *a praecipe*, so called because it was in the alternative, commanding the defendant to do the thing required, or show the reason wherefore he had not done it.

Ora, a Saxon coin, valued at sixteen pence, and sometimes at twenty pence.—*Domesday.*

Oraculum, a decision by a Roman emperor.

Oral, delivered by the mouth; not written.

Oral Pleading, pleadings by word of mouth in presence of the judges. This was the original mode of pleading; it was, however, except in criminal cases, superseded by written pleadings in the reign of Edward III. See *Odgers on Pleading.*

Orando pro rege et regno, an ancient writ which issued, while there was no standing collect for a sitting Parliament, to pray for peace and good government.

Orangemen, a party in Ireland who adhere to the views of William of Orange.

Oratio obliqua. See OBLIQUA ORATIO.

Orator, a petitioner; a plaintiff in a bill, or information, in Chancery was formerly so called.

Oratrix, or **Oratress,** a female petitioner; a female plaintiff in a bill in Chancery was formerly so called.

Orbation, privation of parents or children; poverty.

Orchards. See GARDENS.

Ordeal [fr. *ordal*, Sax., fr. *or*, great, and *dele*, judgment], an ancient manner of trial

in criminal cases practised amongst our Saxon ancestors, who affected to believe that God would actively interpose to establish an earthly right. There were four sorts: (1) campfight, *duellum*, or combat; (2) fire ordeal; (3) hot water ordeal; (4) cold water ordeal. See *Verstegan's Restitution of Decayed Intelligence*, 64; *Turner's Ang.-Sax.*, vol. ii. 532; 2 *Hallam's Mid. Ages*, 466.

Ordeffe, or **Ordelfe**, a liberty whereby a man claims the ore found in his own land; also, the ore lying under land.

Ordels, the right of administering oaths and adjudging trials by ordeal within a precinct or liberty.

Order, mandate, precept, command; also a class or rank.

General orders are promulgated by courts for the proper regulation of their own proceedings, as the Consolidated 'Rules of the Supreme Court, 1883,' which are divided into orders, and subdivided into rules, which are amended from time to time; and *particular* orders are made to enforce a payment of money, to enforce obedience to justice, and compel that which is right to be performed.

Order and Disposition of goods and chattels; when goods are in the order and disposition of a bankrupt, they go to his trustee, and have gone so since the time of James I. See BILL OF SALE, and Bankruptcy Act, 1914, s. 38; REPUTED OWNER; HIRE-PURCHASE.

Order XIV. See LEAVE TO DEFEND.

Order in Council, an order made by the Sovereign 'by and with the advice of His Majesty's Privy Council.' Such orders are now largely used for the purpose of completing the Administrative part of Acts of Parliament. The Government of the day is responsible for them, and they are usually issued in a complete form from the administrative department concerned, the authorization by the Privy Council being a mere formality. As pointed out by Lord Parker in *The Zamora* (1916, 2 A. C. at p. 90), neither the King in Council nor any branch of the Executive has power to prescribe or alter the law by Order in Council, save when expressly authorized by statute. See STATUTORY RULES.

Order of Course, an order made on an *ex parte* application, and to which a party is entitled as of right on his own statement and at his own risk (R. S. C. 1883, App. N,, No. 195).

Order of Discharge, an order made under the Bankruptcy Act, 1914, s. 26, by a court of bankruptcy, the effect of which is to discharge a bankrupt from all debts, claims, or demands provable under the bankruptcy, except Crown debts, debts incurred by fraud, and certain judgments (s. 28).

Order of Revivor, an order as of course for the continuance of an abated suit. It superseded the bill of revivor. See 15 & 16 Vict. c. 86, s. 52, and Cons. Ord. 1860, XXXII., r. 1, and title ABATEMENT.

Ordering Witnesses out of Court. See WITNESSES.

Orders of the Clergy. See HOLY ORDERS.

Ordinance, law, rule, prescript. The precise distinction between an Ordinance and an Act of Parliament is a subject of controversy between learned authors: see *Co. Litt.* 159 b, and Mr. Hargreaves' note thereto.

The name generally given to laws made by the Governor with the advice and consent of the Legislative Council or Court in Colonies where representative assemblies do not exist. See *Halsb. L. E.*, sub tit. '*Dependencies*,' *etc.*

Ordinance of the Forest. See ORDINATIO FORESTÆ.

Ordinance of Parliament, Act of Parliament during the Commonwealth.

Ordinandi lex, the law of procedure as distinguished from the substantial part of the law.

Ordinarius ita dicitur quia habet ordinariam jurisdictionem, in jure proprio, et non propter deputationem. *Co. Litt.* 96.—(The ordinary is so called because he has an ordinary jurisdiction in his own right, and not a deputed one.)

Ordinary, a judge who has authority to take cognizance of causes in his own right, and not by deputation or delegation.—*Civ. Law.* See NOTARY.

By the Common Law, one who has exempt and immediate jurisdiction in causes ecclesiastical.

Also, a bishop: and an archbishop is the ordinary of the whole province, to visit and receive appeals from inferior jurisdictions. Also, a commissary or official of a bishop or other ecclesiastical judge having judicial power; an archdeacon; officer of the royal household.

Ordinary of Assize and Sessions, a deputy of the bishop of the diocese, anciently appointed to give malefactors their neck-verses, and judge whether they read or not; also to perform divine service for them, and assist in preparing them for death. See NECK-VERSE.

Ordinary Conveyances, those deeds of transfer which are entered into between two

or more persons, without an assurance in a superior court of justice. See DEED.

Ordinary of Newgate, the clergyman who is attendant upon condemned malefactors in that prison to prepare them for death; he records the behaviour of such persons. Formerly, it was the custom of the ordinary to publish a small pamphlet upon the execution of any remarkable criminal.

Ordinatio Forestæ, 33 Edw. 1, stat. 5; 34 Edw. 1, stat. 5, statutes made touching causes and matters of the forest.—2 *Reeves*, c. ix., 104, 106.

Ordinatio pro statu Hiberniæ, 17 Edw. 1.—2 *Reeves*, c. ix. 99.

Ordination, the conferring of holy orders. The first thing necessary on application for holy orders is the possession of a title—that is, a sort of assurance from a rector to the bishop that, provided the latter finds the person fit to be ordained, the former will take him for his curate, with a stated salary. The candidate is then examined by the bishop or his chaplain respecting both his faith and his erudition; and various certificates are necessary, particularly one signed by the clergyman of the parish in which he has resided during a given time. The candidate has to comply with the requirements of the Clerical Subscription Act, 1865 (28 & 29 Vict. c. 122) (see CLERICAL SUBSCRIPTION); and a clerk must have attained his twenty-third year before he can be ordained a deacon; and his twenty-fourth to receive priest's orders.—44 Geo. 3, c. 43; *Canon* 34.

In the Presbyterian and Congregational churches ordination means the act of establishing a licensed preacher over a congregation with pastoral charge and authority, or the act of conferring on a man the powers of a settled minister of the gospel, without the charge of a particular church, but with general powers whenever he may be called upon to officiate.

Ordinatione contra servientes, a writ that lay against a servant for leaving his master, contrary to the ordinance of statute 23 & 24 Edw. 3.—*Reg. Brev.* 189.

Ordines, a general chapter or other solemn convention of the religious of a particular order.

Ordines majores et minores. The holy orders of priest, deacon, and sub-deacon, any of which qualified for presentation and admission to an ecclesiastical dignity or cure, were called *ordines majores;* and the inferior orders of chanters, psalmists, ostiary, reader, exorcist, and acolyte, were called *ordines minores;* persons ordained to the *ordines minores* had their *prima tonsura* different from the *tonsura clericalis.*—*Cowel.*

Ordinum fugitivi, those of the religious who deserted their houses, and, throwing off the habits, renounced their particular order in contempt of their oath and other obligations.—*Par. Antiq.* 388.

Ordnance Debentures, bills which were issued by the Board of Ordnance on the Treasurer of that office for the payment of stores, etc.

Ordnance Office, or **Board of Ordnance,** an office which was kept within the Tower of London, and which superintended and disposed of all the arms, instruments, and utensils of war, both by sea and land, in all the magazines, garrisons, and forts of Great Britain. It was divided into two distinct branches, the civil and the military, by 4 & 5 Wm. 4, c. 24; but by 18 & 19 Vict. c. 117, the powers, etc., of the Board were transferred to the Secretary of State for War.

Ordnance Survey. This 'survey of Great Britain and the Isle of Man' was first authorized in 1841 by 4 & 5 Vict. c. 30, an Act which expired in 1846, but was continued by successive Expiring Laws Continuance Acts until made permanent by 12 & 13 Geo. 5, c. 50. The work is carried out under the Ministry of Agriculture and Fisheries Acts, 1889 to 1919.

For statutory determination of distance by ordnance map, see Municipal Corporations Act, 1882, s. 231, and for definition of 'ordnance map, see Interpretation Act, 1889, s. 25. For the use of the Ordnance Survey Maps in the Land Registry, see Land Registration Act, 1925, s. 76, and *Tratman,* '*The Land Registry General Map.*'

Ordo, that rule which monks were obliged to observe.

Ordo Albus, the white friars or Augustines. The Cistercians also wore white.

Ordo Niger, the black friars. The Cluniacs likewise wore black.

Ore tenus (by word of mouth).

Orfgild [fr. *orf,* Sax., cattle, and *gild,* recompense], a delivery or restitution of cattle. But Lambarde says it is a restitution made by the hundred or county for any wrong done by one who was in pledge, or rather a penalty for taking away cattle.—*Lamb. Arch.* 125.

Orgild, without recompense; as where no satisfaction was to be made for the death of a man killed, so that he was judged lawfully slain.—*Spelm.*

Origo. See ORWIGE.

Original and Derivative Estates. An

original is the first of several estates, bearing to each other the relation of a particular estate and a reversion. An original estate is contrasted with a derivative estate; and a derivative estate is a particular interest carved out of another estate of larger extent. —*Prest. on Est.* 125.

Original Bills in Equity. See BILL IN CHANCERY.

Original Charter is one by which the first grant of land is made. On the other hand, a charter by progress is one renewing the grant in favour of the heir or singular successor of the first or succeeding vassals.—*Bell's Scots Law Dict.*

Original Writ, or **Original** [*breve originale*, Lat.], was the beginning or foundation of a real action at Common Law. It is also applied to processes for some other purposes.

It was a mandatory letter issuing out of the Common Law, or ordinary jurisdiction of the Court of Chancery (see now CHANCERY), under the Great Seal, and in the sovereign's name, addressed to the sheriff of the county where the injury was committed, containing a summary statement of the cause of complaint, and requiring him to command the defendant to satisfy the claim, and, on his failure to comply, then to summon him to appear in one of the superior Courts of Common Law. In some cases it simply required the sheriff to enforce the appearance. Original writs differed from each other in their tenor, according to the nature of the plaintiff's complaint, and were conceived in fixed and certain forms. Many of these are of a remote antiquity; others are of later origin, and their history is as follows:— The ancient writs had provided for the most obvious kinds of wrong; but, in the progress of society, cases of injury arose new in their circumstances, so as not to be reached by any of the writs then known in practice; and it seems that either the clerks of the Chancery (who prepared the original writ) had no authority to devise new forms for such cases, or they were remiss in its exercise. Therefore, by the statute of West. 2, 13 Edw. 1, c. 24, it was provided, 'That as often as it shall happen in the Chancery that in one case a writ is found, and in a like case, falling under the same right, and requiring like remedy, no writ is to be found, the clerks of the Chancery shall agree in making a writ or adjourn the complaint till the next Parliament, and write the case in which they cannot agree, and refer them to the next Parliament,' etc.—*Steph. on Plead.* app. n. 2. See CASE.

The following original writs were issued, not *ex debito justitiæ*, but *ex merâ gratiâ*, and were sometimes denominated discretionary writs: *De ventre inspiciendo; supplicavit; certiorari;* prohibition; writs of error in criminal cases: *ad quod damnum; scire facias*, to repeal letters-patent, etc. See 1 *Mad. Eq.* b. 8.

As to the mode of commencing actions in the Supreme Court, see ACTION and SUMMONS.

Originalia, transcripts sent to the Remembrancer's Office in the Exchequer out of the Chancery, distinguished from *records*, which contain the judgments and pleadings in actions tried before the barons.

Originating Summons, a summons without writ, returnable in the chambers of a judge of the High Court. Summonses of this description are very frequently issued in the Chancery Division for the determination of particular questions arising in the administration of an estate or trust, without the administration of the whole estate or trust; for settling questions between vendors and purchasers (see VENDOR AND PURCHASER SUMMONS); for foreclosure or redemption of mortgages; for determining questions of construction of a written instrument, and for numerous other purposes; see R. S. C. 1883, Ords. LIV. LIVA., LIVB., LIVC., and LV. *et seq.* If the question raised is one requiring argument it is generally adjourned into Court; if it is a simple matter the judge will determine it in Chambers. The summons may be taken out by any person interested, and is served on the persons whose rights are sought to be affected. This procedure was first established in 1883 by the Rules of that year, and has been found to be of great practical utility.

Origine propriâ neminem posse voluntate suâ eximi manifestum est. *Cod.* 10, 38, 4.—(It is evident that no one is able, of his own pleasure, to do away with his proper origin.) For the application of this maxim, see *Broom's Legal Maxims.*

Ornamental Grounds. The Town Gardens Protection Act, 1863, provides for the protection of gardens and ornamental grounds in cities and boroughs. See GARDENS; OPEN SPACES.

Ornamental timber, cutting down, by the tenant for life is a species of equitable waste (*q.v.*) (*Micklethwaite* v. *Micklethwaite*, (1857) 1 De G. & J. 504).

Ornaments Rubric, that rubric of the Prayer Book which directs just before the Order for Morning Prayer that—

Such Ornaments of the Church, and of the Ministers thereof, at all times of their Ministration shall be retained, and be in use, as were in this Church of England by the Authority of Parliament in the Second Year of the reign of King Edward the Sixth.

The meaning of this rubric has been declared by the Judicial Committee of the Privy Council to be that 'vestments' of ministers as celebrants cannot be worn, though prescribed by the First Prayer Book of Edward the Sixth, which had the authority of the First Act of Uniformity (2 & 3 Edw. 6, c. 1: see *Clifton* v. *Ridsdale*, (1877) 2 P. D. 276; but that judgment has been the subject of much controversy. See *Whitehead's Church Law*, tit. '*Vestments*'; *Talbot on Ritual*; *Encyclopædia of the Laws of England*, tit. '*Vestments*'; *Lely on the Church of England Position*, p. 148.

Ornest, the trial by battle, which does not seem to have been used in England before the time of the Conqueror, though originating in the kingdoms of the North, where it was practised under the name of *holmgang*, from the custom of fighting duels on a small island or *holm*.—*Anc. Inst. Eng.*

Orphan, a fatherless child or minor, or one deprived of both father and mother.

The Lord Chancellor is the general guardian of all orphans and minors throughout the realm. See GUARDIANSHIP; WARD OF COURT.

By the Poor Law Act, 1930 (20 & 21 Geo. 5, c. 17), local county or borough councils may assist the emigration of poor orphans (see s. 68, *ibid.*).

The Widows, Orphans and Old Age Contributory Pensions Acts, 1925–1935, provide for pensions for orphans of persons insured under the National Health Insurance Acts Under these Acts, 'orphan' means a child, both of whose parents are dead (15 & 16 Geo. 5, c. 70, s. 44).

In London the Lord Mayor and Aldermen have in their Court of Orphans the custody of the orphans of deceased freemen, and also the keeping of their land and goods; accordingly the executors and administrators of freemen leaving such orphans are to exhibit inventories of the estate of the deceased, and give security to the Chamberlain for the orphan's part or share. Consult *Williams on Executors*.

Orphanotrophi, managers of houses for orphans.—*Civ. Law.*

Ortelli, the claws of a dog's foot.—*Kitch.*

Ortolagium, a garden plot or hortilage.

Orwige—sine wita, without war or feud, such security being provided by the laws, for homicides under certain circumstances, against the *fæhth*, or deadly feud, on the part of the family of the slain.—*Anc. Inst. Eng.*

Osborne Estate. See Osborne Estate Acts, 1902 and 1914.

Ostensio, a tax anciently paid by merchants, etc., for leave to show or expose their goods for sale in markets.—*Du Cange*; *Anc. Inst. Eng.*

Ostium ecclesiæ, Dower ad. See AD OSTIUM ECCLESIÆ.

Oswald's Law, the law by which was effected the ejection of married priests, and the introduction of monks into churches, by Oswald, Bishop of Worcester, about A.D. 964.

Oswald's Law Hundred, an ancient hundred in Worcestershire, so called from Bishop Oswald, who obtained it from King Edgar to be given to St. Mary's Church in Worcester. It was exempt from the sheriff's jurisdiction, and comprehends 300 hides of land.—*Camd. Brit.*

Otter, a poaching device, the use of which for catching salmon, trout, or fresh-water fish is prohibited by the Salmon and Freshwater Fisheries Act, 1923 (13 & 14 Geo. 5, c. 16), s. 1.

Ourlop, the lierwite or fine paid to the lord by the inferior tenant when his daughter was debauched.

Oust, to dispossess.

Ouster, dispossession.

A wrong or injury that may be sustained in respect of hereditaments, corporeal or incorporeal, carrying with it the deprivation of possession; for thereby the wrongdoer gets into the actual occupation of the land or hereditament, and obliges him that has a right to seek his legal remedy in order to gain possession and damage for the injury sustained. Such dispossession may be either of the freehold or of chattels real.

Ouster of the freehold was effected by various methods: 1, abatement; 2, intrusion; 3, disseisin; 4, discontinuance; and 5, deforcement.

Ouster of chattels real consists: 1st, of a motion of possession from estates held by statute, recognizance, or *elegit*, which happens by a species of disseisin or turning out of the legal proprietor before his estate is determined, by raising the sum for which it is given to him in pledge; and 2nd, of amotion of possession from an estate of years, which takes place by a like kind of disseisin, ejection, or turning out of the tenant from the occupation of the land during the continuance of his term.—3 *Bl. Com.* 167, 198.

For remedies for ouster, see EJECTMENT and FORCIBLE ENTRY.

For ouster, removal of members or officers of a corporation, see *Halsb. L. E.*, sub tit. '*Corporation*'; and upon forfeiture of a franchise for a market or fair (*ibid.*), sub tit. '*Markets and Fairs.*'

Ousterlemain [*amovere manum*, Lat.], the delivery of the lands out of the guardian's hands, upon the heir attaining twenty-one, or the heiress sixteen years of age. Abolished by 12 Car. 2, c. 24.

Also a livery of land out of the sovereign's hands on a judgment given for him that sued out a *monstrans de droit.*—*Staunf. Prærog.* c. 24.

Ouster le Mer, beyond the sea; a cause of excuse, if a person, being summoned, did not appear in court. See SEAS, BEYOND.

Outer House. See SESSION, COURT OF.

Outfangthef, a liberty in the ancient Common law, whereby a lord was enabled to call any man dwelling in his manor, and taken for felony in another place out of his fee, to judgment in his own court.—*Du Cange.*

Outgoing. 1. Payments which have to be made out of the gross returns of a property or business before its net proceeds can reach the owner, as a drainage rate on land, or the salaries of clerks in the management of a business.

2. A most comprehensive general expression in a lessee's covenant to pay taxes and other charges, which no prudent lessee should accept; as to the meaning of the word, see *Stockdale* v. *Ascherberg*, 1904, 1 K. B. 447; *Greaves* v. *Whitmarsh*, 1906, 2 K. B. 340; also *Howe* v. *Botwood*, 1913, 2 K. B. 387; and *Henman* v. *Berliner*, 1918, 2 K. B. 236, where the Court found ground for restricting the full meaning of the term. As to head landlord's indemnity, *Dependable Upholstery Ltd.* v. *Brasted*, 1932, 1 K. B. 291. Under the Agricultural Holdings Act, 1923, s. 16 (making up a road, etc.), *Lowther* v. *Clifford*, 1927, 1 K. B. 130 (yearly tenant).

Outhest, or **Outhorn,** a calling men out to the army by sound of horn.—*Jac. Law Dict.*

Outhouses, buildings belonging to and adjoining dwelling-houses.

Outland, land lying beyond the demesnes, and granted out to husbandmen and tenants. —*Spelm.*

Outlaw [fr. *utlaghe*, Sax.; *utlagatus*, Lat.], a person put out of the law, or deprived of its benefits (see next title).

Outlawry [fr. *utlagaria*, Lat.], the being put out of the law for contempt in wilfully avoiding the execution of the process of the King's Court.

Outlawry has long been obsolete in civil proceedings, and is formally abolished by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), in civil proceedings. In criminal proceedings it is practically disused, but is formally kept alive by the Forfeiture Act, 1870 (33 & 34 Vict. c. 23), which Act, while abolishing forfeiture for felony, expressly provides that nothing therein shall affect the law of forfeiture consequent on outlawry; and the procedure in and for reversal of outlawry is given in Rules 88–110 of the Crown Office Rules of 1906.

The maxim applicable to outlaws is, 'Let them be answerable to all, and none to them.' *Utlagatus est quasi extra legem positus; caput gerit lupinum.* 7 *Co.* 14.—(An outlaw is, as it were, placed outside the law; he bears the head of a wolf.) Accordingly, any person outlawed is *civiliter mortuus.* He can hold no property given or devised to him; and all the property which he held before is forfeited. He can neither sue on his contracts, nor has he any legal rights which can be enforced; while, at the same time, he is personally liable upon all causes of action. He can, however, bring actions *in autre droit*, as executor, administrator, etc., because in such actions he only represents persons capable of contracting, and under the protection of the law.—See *Ex parte Franks*, (1831) 7 Bing. at p. 767.

Out of Court, deprived of all right to have one's case so much as considered by the Court. A plaintiff in an action at Common Law must have declared within one year after the service of a writ of summons, otherwise he was out of Court, unless the Court had, by special order, enlarged the time for declaring.

Outparters, stealers of cattle; see 9 Hen. 5, st. 1, c. 7.

Outputers, such as set watches for the robbing of any manor-house. Perhaps the same as outparters.—*Cowel.*

Outriders, bailiffs-errant employed by sheriffs or their deputies to ride to the extremities of their counties or hundreds to summon men to the county or hundred Court.

Outstanding Term, a term in gross at law, which, in equity, may be made attendant upon the inheritance, either by express declaration or by implication. See the Satisfied Terms Act, 1845, extended by the Law of Property Act, 1925, s. 5, and 1st Sched., Part II., par. (1), to outstanding

terms out of leaseholds and vesting the outstanding terms in the immediate reversion; for the law before 1926, see *Re Moore and Helm*, 1912, 2 Ch. 105, and for conditions of sale, see Law of Property Act, 1925, s. 42 (3).

Outsucken Multures, quantities of corn paid by persons voluntarily grinding corn at any mill to which they are not thirled or bound by tenure. See INSUCKEN MULTURES.

Ovelty, a kind of equality of service in subordinate tenures.—*Fitz. N. B.* 36.

Overcrowding. By Part IV. of the Housing Act, 1936 (26 Geo. 5 and 1 Edw. 8), s. 58, it is provided that a dwelling-house shall (subject to the provisions of the Act) be deemed for the purposes of the Act to be overcrowded at any time when the number of persons sleeping in the house either

(*a*) is such that any two of those persons being 10 years old or more of opposite sexes and not living together as husband and wife sleep in the same room, or

(*b*) is in relation to the number and floor area of the rooms of which the house consists, in excess of the permitted number as defined in the 5th Sched. to the Act, i.e., in effect—

TABLE I

Rooms.	*Persons.*
(*a*) 1	2
(*b*) 2	3
(*c*) 3	5
(*d*) 4	7½
(*e*) 5	10

and

TABLE II (*in the aggregate*)

Square feet.	*Persons.*
110	2
90 to 110	1½
70 to 90	1
50 to 70	½
under 50	none

Children under 1 year old do not count; from 1 to under 10 are reckoned as half.

After the appointed day overcrowding is made an offence on the part of the occupier as well as (subject to statutory provisions) the landlord. Local authorities are under a duty to cause inspections to be made for the purpose.

Licences to exceed the permitted numbers may be granted, and for other offences and provisions relating to overcrowding, see the Act, ss. 57 to 70.

Overcyted, or **Overcyhsed,** proved guilty, or convicted.—*Blount.*

Overdue, past the time of payment.

By s. 36 (2), (3), and (4) of the Bills of Exchange Act, 1882:—

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *primâ facie* deemed to have been effected before the bill was overdue.

Overhernissa, contumacy or contempt of Court.—*Leg. Æthel.* c. 25.

Over-riding Interests. See REGISTRATION OF TITLE TO LAND, and s. 70 of the Land Registration Act, 1925.

Overrule, to set aside the authority of a former decision.

Oversamessa, *semble;* a forfeiture for contempt or neglect in not pursuing a malefactor, see *Jac. Law Dic.*—3 *Inst.* 116.

Overseas Trade. See TRADE FACILITIES.

Overseers of the Poor (now abolished by Rating and Valuation Act, 1925 (c. 90), ss. 1, 64), formerly public officers created by the Poor Relief Act, 1601 (43 Eliz. c. 2), to provide for the poor of every parish. There were two or more according to the extent of the parish. Churchwardens were, by Poor Law Amendment Act, 1866 (c. 113), s. 12 (repealed) (except in rural parishes, in which case their jurisdiction ceased by virtue of the Local Government Act, 1894), overseers of the poor, and they joined with the overseers in making poor rates; but the churchwardens, having distinct business of their own, usually left the care of the poor to the overseers, though anciently they were the sole overseers of the poor.—*Wood's Inst.* 98. The overseers originally not only levied the poor rate, but also expended it. Their duties regarding rating were transferred to the rating authority by Overseers Order, 1927, No. 55.

Assistant overseers could be appointed with a salary, by 59 Geo. 3, c. 12, s. 7. See *Burn's Justice*, tit. '*Poor*.' But now abolished by Rating and Valuation Act, 1925 (c. 90), s. 1, and they were transferred to the employment of the rating authority by s. 48.

Oversewenesse. See OVERHERNISSA.

Oversman, an umpire.—*Scots term.*

Overt, open. The expression *overt act* means an act which shows the intention of the party doing it. It is used principally in connection with treason and conspiracy. A treasonable intention is not punishable unless it is manifested by an overt act. In the

same way conspirators may make their criminal purpose clear by some overt act, such as an agreement to further their common design. *Overt word* means a word the meaning of which is clear and beyond doubt, and see MARKET OVERT.

Overture, an opening ; a proposal.

Ovrages, or **Ouvrages,** day's work.

Ovres, acts, deeds, or works.—8 *Rep.* 131.

Owel, equal.

Owelty, equality.—*Co. Litt.* 169.

Owlers, persons who carried wool, etc., to the seaside by night, in order that it might be shipped off contrary to law.—*Jac. Law Dict.*

Owling, the offence of transporting wool or sheep out of the kingdom. Abolished by 5 Geo. 4, c. 107.

Owner, for the purposes of the Public Health Act, 1936, s. 343, replacing s. 4 of the Public Health Act, 1875, the Factory and Workshop Act, 1901, and the London Building Acts (Amendment) Act (5 Edw. 7, c. ccix.), 'the person for the time being receiving the rack-rent of the premises in connection with which the word is used, whether on his own account or as agent or trustee, or who would so receive the same if the same were let at a rack-rent' (*see that title*), and *Kensington Corporation* v. *Allen*, 1926, 1 K. B. 576.

Owner (Estate Owner), defined by s. 205 (1) (ix.), Law of Property Act, 1925, as 'the owner of a legal estate, but an infant is not capable of being an estate owner.' Estate owners for the purposes of the land legislation of 1925 include an owner of full age (including a corporation) who is the person designated by the land legislation of 1925 as the person having the power to give a legal title to the whole of the estate (see LEGAL ESTATE) for the purposes of sale, mortgage, lease or otherwise. This includes the absolute beneficial owner, tenants for life, statutory owners (*q.v.*), trustees for sale, and personal representatives and mortgagees in exercise of their paramount powers. The legal title so disposed of is subject to all such equities, liabilities and charges and obligations (if any) attaching to the estate as may be binding on the transferee and the estate after it has been disposed of under the provisions of the Acts.

Oxfild, a restitution anciently made by a hundred or county for any wrong done by one that was within the same.—*Lamb. Arch.* 125.

Oxgang, or **Oxgate,** fifteen acres of land. Corrupted, in the north, to *osken.*—*Kelm. Domes. Illustr.*

Oyer (to hear), the ancient word for assizes ; oyer of a deed, i.e., the right of a defendant to have a deed read to him, is abolished by C. L. P. Act, 1852, s. 55.

Oyer de Record, a petition made in court that the judges, for better proof's sake, will hear or look upon any record.

Oyer and Terminer, a commission directed to the judges and other gentlemen of the county to which it is issued, by virtue whereof they have power to *hear* and *determine* treasons, and all manner of felonies and trespasses. *Terminer* is sometimes written *determiner.*

When any sudden insurrection takes place, or any public outrage is committed which requires speedy reformation, or there is a press of business, then a special commission is immediately granted.

Oyer and Terminer, Courts of, and General Gaol Delivery. See ASSIZES.

Oyez (hear ye), the introduction to any proclamation or advertisement given by the public criers both in England and Scotland. It is pronounced *oh ! yes !* See NORMAN-FRENCH.

Oysters. Stealing oysters from oyster beds properly marked out is felony and punishable as simple larceny, i.e., by penal servitude up to three years, or imprisonment up to three years, and, if a male under 16, with or without whipping. Dredging or netting for oysters in a bed is a misdemeanour punishable by imprisonment up to three months, with or without hard labour. See Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 26.

Oyster beds are protected by Part III. of the Sea Fisheries Act, 1868 (31 & 32 Vict. c. 45), and a close time for oysters is provided by the Sea Fisheries (Oyster, Crab, and Lobster) Act, 1877 (40 & 41 Vict. c. 42), being between 15th June and 4th August for 'deep sea oysters,' and between 14th May and 4th August for other oysters. See *Chitty's Statutes,* tit. '*Fish (Sea).*'

Oysters are included in the term sea-fish ; see Sea-Fishing Industry Act, 1933 (23 & 24 Geo. 5, c. 45).

An action *in rem* will lie for damage caused by the negligent grounding of a ship on an oyster bed (*The Swift,* 1901, P. 168), and a claim will lie for damage caused by the discharge of a sewer causing contamination (*Foster* v. *Warblington U. D. C.,* 1906, 1 K. B. 648).

P.

Paage [Old Fr., fr. *paagium*, Low Lat.], a toll for passage through another's land. Obsolete.

Pacare, to pay.

Pacatio, payment.—*Mat. Par.*, A.D. 1248.

Pace, a measure of length containing two feet and a half. The geometrical pace is five feet long; the common pace is the length of a step, the geometrical is the length of two steps, or the whole space passed over by the same foot from one step to another.

Paceatur (let him be freed or discharged).

Pack of Wool, a horse load, which consists of 17 stone and 2 pounds, or 240 pounds weight.—*Fleta, I.* lib. 2, c. xii.

Package, Scavage, Ballage, and **Portage,** duties anciently charged in the port of London on the goods imported and exported by aliens, or by denizens being the sons of aliens.

The Act 3 & 4 Wm. 4, c. 66, authorized the Lords of the Treasury to purchase these duties from the city. This was done at an expense of about 140,000*l.*, and the duties were abolished.—*McCull. Com. Dict.*

Packed Parcels, the name for a consignment of goods, consisting of one large parcel made up of several small ones (each bearing a different address) collected from different persons by the immediate consignor (a carrier), who unites them into one for his own profit at the expense of the railway by which they are sent, since the railway company would have been paid more for the carriage of the parcels singly than together. The charging by a railway company of a higher rate for 'packed' than other parcels has been determined frequently to be illegal; see *G. W. Ry. Co.* v. *Sutton*, (1869) L. R. 4 H. L. 226.

Packing. False packing of hay and straw in the metropolis is penal under the Hay and Straw Act, 1856 (19 & 20 Vict. c. 114), which inflicts a penalty of 10*l.* It only applies to the County of London. See *Chitty's Statutes*, tit. '*Hay.*'

Pact, or **Pactio** [fr. *pacte*, Fr.; *pactum*, Lat.], a contract, bargain, covenant.

Pacta privata juri publico derogare non possunt. 7 *Co.* 23.—(Private compacts cannot derogate from public right.)

Pacta quæ contra leges constitutionesque vel contra bonos mores fiunt nullam vim habere, indubitati juris est.—(It is undoubted law that agreements have no force which are contrary to law or the constitutions, or to good morals.)

Pacta quæ turpem causam continent non sunt observanda. *Dig.* 2, 14, 27, s. 4.—(Agreements founded on an immoral consideration are not to be observed.) See ILLEGAL CONTRACT.

Pacto aliquid licitum est, quod sine pacto non admittitur. *Co. Litt.* 166 *a.*—(By special agreement things are allowed which are not otherwise permitted.)

Pactum constitutæ pecuniæ, an agreement by which a person appointed to his creditor a certain day, or a certain time, at which he promised to pay; or an agreement by which a person promises to pay a creditor.—*Civ. Law.*

Pactum de non petendo, an agreement made between a creditor and his debtor that the former will not demand from the latter the debt due. By this agreement the debtor is freed from his obligation.—*Civ. Law.* This is not unlike the *covenant not to sue* of our Common Law.

Pactum de quotâ litis, an agreement by which a creditor promised to pay a portion of a debt difficult to recover, to a person who undertook to recover it.—*Civ. Law.*

Padder, a robber, a foot highwayman or foot-pad.

Paddock [fr. *panne*, Sax., a park], a small inclosure for deer or other animals.

Pagoda, a temple; also a gold coin in the south of India valued at 8*s.*—*Indian.*

Pagus, a county.—*Jac. Law Dict.*

Pains and Penalties, Bills of, Acts of Parliament to condemn particular persons for treason or felony, or to inflict pains and penalties beyond or contrary to the Common Law, to serve a special purpose. They are in fact new laws, made *pro re natâ*. It is an incident of such bills that persons who are to be affected by them are entitled by custom to be heard at the Bar of the House in person or by counsel. But on a bill to disfranchise the borough of St. Albans, this claim was disallowed.

Paintings. Works of painting are included in 'artistic work' for the purposes of the Copyright Act, 1911 (s. 35). See COPYRIGHT.

Pairing-off, a practice which is said to have originated in the time of Cromwell, whereby two members of the House of Commons, or other deliberative assembly, of opposite opinions, agree to absent themselves from voting on a particular division or during a given period.

Pais, or **Pays,** the people out of whom a jury is taken; a corruption of *pagus*.

Pais, Conveyances in, ordinary conveyances between two or more persons *in the country*

—i.e., upon the land to be transferred.—*Obs.*

Pais, Estoppel in. See ESTOPPEL.

Pais, Trial by, a trial by the country—i.e., a jury.—3 *Steph. Com.*

Palace. A palace, which is a royal residence, is privileged from the execution of legal process within its precints; but the privilege does not, it seems, extend to a royal palace, e.g., Hampton Court, which is not a royal residence: see *A.-G.* v. *Dakin*, (1869–70) L. R. 4 H. L. 338, where there was a remarkable difference of opinion amongst the judges; *Combe* v. *De la Bere*, (1881) 22 Ch. D. 316.

Palace Court. An inferior court of the sovereign at Westminster. Abolished by 12 & 13 Vict. c. 101. See MARSHALSEA, COURT OF.

Palace of Westminster, the official name for the buildings which contain the Houses of Parliament (28 Hen. 8, c. 12).

Palagium, a duty to lords of manors for exporting and importing vessels of wine at any of their ports.—*Jac. Law Dict.*

Palatine, possessing royal privileges. See COUNTY PALATINE.

Palfridus, a palfrey, a horse to travel on.

Paling-man, a merchant denizen, or one born within the English pale.

Pallio cooperire. It was anciently a custom where children were born out of wedlock and their parents afterwards intermarried, that the children, together with the father and mother, stood under a cloth extended while the marriage was solemnized. It was in the nature of adoption. The children were legitimate by the Civil, but not by the Common, Law.—*Jac. Law Dict.* See BASTARD.

Palmer's Act, the Central Criminal Court Act, 1856 (18 & 19 Vict. c. 16), enabling a person accused of a crime committed out of the jurisdiction of the Central Criminal Court to be tried in that Court, in order to give him a trial free from local prejudice. So called from the poisoner William Palmer, of Rugeley, in Staffordshire, who was tried and convicted at the Central Criminal Court in 1856. See *Trial of William Palmer*, 1912, ed. by George H. Knott.

And see HINDE PALMER'S ACT.

Palmistry, the practice of telling the character, and assuming to foretell the future, by inspection of the hands. Pretending to tell fortunes or deceiving 'by palmistry or otherwise' renders the palmist liable to conviction as a rogue and vagabond. See *R.* v. *Entwistle* 1899, 1 Q. B. 846, and VAGRANT.

Pamphlet [fr. *par un filet*, Fr., by a thread], a small book, usually printed in the octavo form, and stitched.—The Act 10 Anne, c. 19, s. 113, as to the printers of pamphlets, was repealed by 33 & 34 Vict. c. 99. See now PRINTERS.

Pandectæ, or Digesta. In the last month of the year A.D. 530, Justinian, by a constitution addressed to Tribonian, empowered him to name a commission for the purpose of forming a code out of the writings of those jurists who had enjoyed the *Jus respondendi*, or, as it is expressed by the emperor, '*antiquorum prudentium quibus auctoritatem conscribendarum interpretandarumque legum sacratissimi principes præbuerunt.*' The compilation, however, comprises extracts from some writers of the republican period.—*Const. Deo Auctore.* Ten years were allowed for the completion of the work. The instructions of the emperor were, to select what was useful, to omit what was antiquated or superfluous, to avoid unnecessary repetitions, to get rid of contradictions, and to make such other changes as should produce out of the mass of ancient juristical writings a useful and complete body of law (*jus Antiquum*);—the work was to be named *Digesta*, a Latin term indicating an arrangement of materials; or *Pandectæ*, a Greek word expressive of the comprehensiveness of the work. It was also declared that no commentaries should be written on this compilation, but permission was given to make *paratitla*, or references to parallel passages, with a short statement of their contents (*Const. Deo Auctore*, s. 12). It was also declared that abbreviations (*sigla*) should not be used for forming the text of the Digest. The work was completed in three years (17 *Cal. Jan.* A.D. 533), as appears by a constitution, both in Greek and Latin, which confirmed the work, and gave to it legal authority.—*Smith's Dict. of Antiq.*

The number of writers from whose works extracts were made is thirty-nine.

Justinian's plan embraced two principal works, one of which was to be a selection from the jurists, and the other from the Constitutiones. The first, the Pandects, was very appropriately intended to contain the foundation of the law; it was the first work since the date of the Twelve Tables, which in itself, and without supposing the existence of any other, might serve as a central point of the whole body of the law. It may be properly called a code, and the first complete code since the time of the Twelve Tables,

though a large part of its contents is not law, but is dogmatic, or is taken up with the investigation of particular cases. Instead of the insufficient rules of Valentinian III., the excerpts in the Pandects are taken immediately from the writings of the jurists in great numbers, and arranged according to their matter. The code also has a more comprehensive plan than the earlier codes, since it comprises both rescripts and edicts. These two works, the Pandects and the Code, ought properly to be considered as the completion of Justinian's designs. The *Institutiones* cannot be viewed as a third work; independent of both, it serves as an introduction to them, or as a manual. Lastly, the *Novellæ* are single and subsequent additions or alterations, and it is merely an accidental circumstance that a third edition of the code was not made at the end of Justinian's reign, which would have comprised the *Novellæ* that had a permanent application.—*Savigny*, as quoted in *Smith's Dict. of Antiq., voce* '*Pandectæ*.'

The Pandects are divided into fifty Books, each book containing several Titles, divided into Laws, and the Laws generally into several Parts or Paragraphs.

In order to prevent the circulation of incorrect editions, three Ultramontane and three Citramontane scholars were chosen every year in the University of Bologna, and termed PECIARII; they were excused from all other *munera publica*, and held their sessions once a week for the purpose of correcting imperfect copies in possession of circulating libraries; a fine of five soldi was imposed on all possessors of defective books, together with the expenses of correction, for which purpose every doctor or scholar was obliged to lend his own perfect copy, under pain of a fine of five lire; hence the term *exempla correcta et bene emendata*. Books thus corrected were advertised by the bedel. —1 *Colqu. R. C. L.* 67–73.

Pandoxator, a brewer.—*Old Records.*

Pandoxatrix, a woman that brews and sells ale.

Panel [fr. *panellum*, Lat.; *panneau*, Fr., a square or panel]. 1. A little part, or rather a schedule or page, containing the names of such jurors as the sheriff returns to pass upon a trial; and empannelling a jury is nothing but the entering them into the sheriff's roll or book.—*Jac. Law Dict.; Co. Litt.* 158 *b*.

2. In Scots law, the accused person in a criminal trial after appearance in Court.

3. *Panel of Arbitrators*, the name given to the permanent Court or Tribunal established under the Hague Arbitration Convention.

The term is often applied to the list of such medical practitioners as have agreed to administer the Medical Benefit under the National Health Insurance Acts. Those entitled to be treated by such a medical practitioner are popularly called 'panel-patients,' and the word is used to denote a list of any authoritative persons or consultants where determination or advice is require by statute, e.g., arbitrators under the Acquisition of Land (Assessment of Compensation) Act, 1919; and Rules of 1925 under s. 84 of the Law of Property Act, S. R. & O., 1925, No. 1182/L. 36 (Restrictive Covenants); Housing and Town Planning Act, etc. See REFEREE.

Pannage [fr. *pannagium*, Low Lat.; *panage*, Fr.]. 1. Food that swine feed on in the woods, as mast of beech, acorns, etc., which some have called *pawnes*. 2. The money taken by the agisters for the food of hogs fed with mast of the royal forests. See *Williams on Rights of Common*, p. 168; *Manwood*, ch. xii.

Pannagium est pastus porcorum, in nemoribus et in silvis, de glandibus, etc. 1 *Buls.* 7.—(A pannagium is a pasture of hogs, in woods and forests, upon acorns, and so forth.)

Pannel. See PANEL.

Pannellation, act of empannelling a jury.

Pannier-man, one who called the members in the Inns of Court to dinner, etc., and provided mustard, pepper, and vinegar for the hall: whence those who wait at table at the Inns are called 'panniers.'

Pannus, a garment made with skins.—*Fleta*, lib. 2, c. xiv.

Pantomime, a dramatic performance in which gestures take the place of words. See *Lee* v. *Simpson*, (1847) 3 C. B. 871.

Papal Bull. 1. The seal affixed to certain documents issued by the Pope. 2. Such a document itself. The bringing of papal bulls into the United Kingdom was at one time treason; but see the Religious Disabilities Act, 1846 (9 & 10 Vict. c. 59).

Paper. As to the paper on which proceedings in the Supreme Court must be printed, see PRINTING.

Paper Blockade. The state of a line of coast proclaimed to be under blockade in time of war, when the naval force on watch is not sufficient to repel a real attempt to enter. See BLOCKADE.

Paper Book, the issues in law, etc., upon

special pleadings, formerly made up by the clerk of the papers, who was an officer for that purpose, but latterly by the plaintiff's attorney or agent. See *Jac. Law Dict.*; 3 *Bl. Com.* 317.

Any party who enters an action for trial must deliver to the officer of the Court two copies of the whole of the pleadings, one for the use of the judge at the trial (R. S. C. 1883, Ord. XXXVI., r. 30).

Paper-credit, credit given on the security of any written obligation purporting to represent property.

Paper-days. In each of the Common Law Courts certain days were appointed in each term, called *Special Paper Days*, because the Court on those days proposed to hear the cases entered in the Special Paper for argument. There were also fixed in the Queen's Bench, Crown Paper-days for disposing of business on the Crown side of the Court. On these days no motions were heard. Since the coming into force of the Judicature Acts, arrangements similar to those above mentioned continue to be made.

Paper Duty Repeal. This was effected by 24 & 25 Vict. c. 20.

Paper Money, bank notes, bills of exchange, and promissory notes. On the outbreak of the war with Germany in August, 1914, the Government issued Currency notes for 1*l.* and 10*s.* respectively to a considerable amount. The first issued were soon called in, others of better design and less easy to imitate being substituted. Currency notes were commonly called 'Treasury notes,' and were legal tender for the payment of any amount. See Currency and Bank Notes Act, 1914 (4 & 5 Geo. 5, c. 14), and (the Amendment Act), c. 72. These Acts have been repealed (except penal and formal provisions) by the Currency and Bank Notes Act, 1928 (18 & 19 Geo. 5, c. 13), which authorizes the Bank of England to issue Bank notes for 1*l.* and 10*s.*, payable only at the head office in London but to be legal tender in Scotland and Northern Ireland for any amount, as the 1914 currency notes are to be deemed bank notes.

Paper Office (in the Palace of Whitehall), an ancient office where all the public writings, matters of state and council, proclamations, letters, intelligences, negotiations of the King's ministers abroad, and, generally, all the papers and dispatches that passed through the offices of the Secretaries of State, were deposited. Now merged in the Public Record Office.

Also an office or room in the Court of King's Bench where the records belonging to that Court are deposited; sometimes called *Paper-mill.*

Papist [fr. *papa*, Lat., a pope], one who, adhering to the communion of the Church of Rome, maintains the supreme ecclesiastical power of the Pope, as contradistinguished from English Protestants who in Statutes, Canons, and the 36th Article of Religion maintain the supreme ecclesiastical power of the sovereign. From the date of the Reformation Papists, either under that title or under the title of persons professing the Popish religion, or of Popish recusants convict, were subjected, by one statute after another, to various civil and religious disabilities, the removal of which began in 1788, and was to a great extent completed by the Roman Catholic Emancipation Act, 1829, which Act and other Acts, the earliest being an Act of 1791, speak of them as Roman Catholics. See ROMAN CATHOLICS, and consult *Lilly and Wallis's Manual of the Law specially affecting Catholics* (1893).

Par, state of equality; equal value. *Par value*, the face value of a security or share as contrasted with its market price or selling value. See EXCHANGE.

Paracium, the tenure between parceners, viz., that which the youngest owes to the eldest without homage or service.—*Domesday.*

Parage, or **Paragium,** an equality of blood or dignity; but more especially of land, in the partition of an inheritance between coheirs; more properly, however, an equality of condition among nobles, or persons holding by a noble tenure. Thus, when a fief is divided among brothers, the younger hold their part of the elder by parage, i.e., without any homage or service. Also the portion which a woman may obtain on her marriage.

Paragraph, a part or section of a statute, pleading, affidavit, etc., which contains one article, the sense of which is complete. Modern deeds and wills are frequently drawn in paragraphs.

Paramount, superior; having the highest jurisdiction, as lord paramount, the supreme lord of the fee; the sovereign.

Paraphernalia [fr. *παρά*, Gk., beyond; and *φερνή*, dower], jewellery and ornaments which a husband has given to his wife before or during marriage. Whether these were meant to be absolute gifts or were merely paraphernalia for her adornment as a spouse is a question of fact (*Tasker* v. *Tasker*, 1895, P. 1). At law, before the Married

Women's Property Act (see MARRIED WOMEN'S PROPERTY), the husband, in his lifetime, might dispose of his wife's paraphernalia; excepting, indeed, her necessary apparel; and they were liable to the claims of the husband's creditors, with the like exception. But the wife was entitled to her paraphernalia against his representatives; for the husband could not, by will, dispose of them, or leave them to his representatives. Paraphernalia were deemed gifts *sub modo* only, i.e., for the purpose of being worn by the wife as ornaments of her person, and it is otherwise in the case of wearing apparel purchased by the wife with money supplied by the husband (*Masson, Templier & Co.* v. *De Fries*, 1909, 2 K. B. 831). But if the like articles were bestowed upon her by her father, or by a relative, or even by a stranger, before or after marriage, they would be deemed absolute gifts to her separate use; and then, if received with the husband's consent, he could not, nor could his creditors, dispose of them, any more than they could of any other property received and held to her separate use. See HUSBAND AND WIFE.

Parasceve, the sixth day of the last week in Lent, particularly called Good Friday. It is a *dies non juridicus*.

Parasitus, a domestic servant.—*Blount.*

Parasynexis, a conventicle, or unlawful meeting.—*Civ. Law.*

Paratitla, an abbreviated explanation of some titles or books of the Code or Digest.—*Civ. Law.* See PANDECTÆ.

Paravail [fr. *par*, Fr., and *avayler*, to dismiss], the lowest tenant of a fee; or he who is immediate tenant to one who holds of another.

Parcel, the legal term for a part of land, defined for the purposes of a search under the Land Charges Act, 1925, by rule 16 of the Local Land Charges Rules, 1927, S. R. & O., 1927, No. 869 L. 33, as land or buildings in separate occupation or separately rated at the time of search (see the Rules).

Parcella terræ (a parcel of land).

Parcel Makers, two officers in the Exchequer who formerly made the parcels of the escheators' accounts, wherein they charged them with everything they had levied for the sovereign's use within the time of their being in office, and delivered the same to the auditors, to make up their accounts therewith.—*Prac. Exch.*

Parcels, the technical term for the description of the property dealt with by a conveyance, mortgage, or other assurance. The description may be express and independent, or by reference to the recitals in the deed, or to the subsequent parts of the instrument, or to some other instrument (*Dav. Prec. Conv.*, vol. i.). In modern practice a description of the property is often set out in a schedule to the deed coupled with a reference to a plan drawn on the deed. If a plan is used, great care should be taken (which it very often is not) to ensure that the plan is accurate. As to a purchaser's right to have the property conveyed to him by reference to a plan, see *Re Sansom*, 1910, 1 Ch. 741; *Re Sparrow*, 1910, 2 Ch. 60. See also REGISTRATION OF TITLE TO LAND.

Parcels, Bill of, an account of the items composing a parcel or package of goods, transmitted with them to the purchaser.

Parcenary, the tenure of lands by parceners. See COPARCENERS.

Parchment, skins of sheep dressed for writing [fr. *pergamena*, Lat.], so called because invented at Pergamus, in Asia Minor, by King Eumenes, when paper, which was in use in Egypt only, was prohibited by Ptolemy to be transported into Asia. It is used for deeds; and was used for writs of summons previously to November 1, 1875. See Judicature Act, 1875, R. S. C. Ord. V., r. 10; Ord. LXVI., r. 3. As to repeal of provision in Coroners Act, 1887, which maintained the use of parchment in the case of inquisitions by coroners of murder and manslaughter till 1916, see Indictments Act, 1915, Sched. II. Indictments may be on durable paper (*ibid.*, Sched. I.).

Parco fracto, a writ against him who violently broke a pound, and took away beasts lawfully impounded.—*Reg. Brev.* 166.

Pardon, forgiveness of a crime; remission of punishment.

The pardoning of criminals is the peculiar prerogative of the sovereign. See 4 *Steph. Com.*, 7th ed. 466–477.

The sovereign may pardon all offences merely against the Crown and the public, excepting: (1) That to preserve the liberty of the subject, the committing any man to prison out of the realm is, by the Habeas Corpus Act (31 Car. 2, c. 2), made a *præmunire* (see that title), unpardonable even by the Crown; and (2) that the sovereign cannot pardon where private justice is principally concerned in the prosecution of offenders—'*non potest rex gratiam facere cum injuriâ et damno aliorum.*'

Neither at Common Law could the sovereign pardon an offence against a penal

statute after information brought; for thereby the informer had acquired a private property in his part of the penalty. But the Remission of Penalties Act, 1859, enables the Crown to remit penalties for offences, although payable to parties other than the Crown; and a special power of a similar character, limited to offences against the Sunday Observance Act, 1781, is conferred by the Remission of Penalties Act, 1875. By the Act of Settlement (12 & 13 Wm. 3, c. 2), no pardon under the Great Seal of England is pleadable to an impeachment by the Commons in Parliament. But after the impeachment has been solemnly heard and determined, the prerogative of pardon may be extended to the person impeached.

A pardon may be conditional; see Criminal Justice Act, 1827, s. 13.

The effect of a pardon is to make the offender a new man (*novus homo*), to acquit him of all corporal penalties and forfeitures annexed to the offence pardoned, and not so much to restore his former as to give him new credit and capacity. Nevertheless the judgment remains formally unreversed, and therefore it was proposed by Sir F. Pollock, A.-G., that when the Crown pardons any adjudged guilty on the ground that the evidence rightly viewed does not warrant the judgment, the prisoner should assign and the Attorney-General should confess error on the record, whereby the judgment would be reversed, and a similar suggestion was made by the Committee appointed in 1904 by Mr. Secretary Akers-Douglas to inquire into the circumstances of the two convictions of offences (for which he had been doubly pardoned) of Mr. Adolf Beck, a remarkable case of mistaken identity. The Committee suggested quashing the conviction on motion by the Attorney-General and entering an acquittal as of record. In the Beck case the first of the two 'pardons' granted was in the following form:—

Edward R. & I.

Whereas Adolf Beck was at the Sessions of the Central Criminal Court commencing on the 24th day of February, 1896, convicted on certain charges of obtaining rings and other articles by false pretences with intent to defraud, and was sentenced to seven years penal servitude;

We in consideration of some circumstances humbly represented unto us, are Graciously pleased to extend our Grace and Mercy unto him, and to grant him our Free Pardon for the offences of which he stands convicted;

* Our Will and Pleasure, therefore, is that you do take due notice hereof.

And for so doing this shall be your warrant. Given at our Court at St. James's, the twenty-sixth day of July, 1904, in the fourth year of our Reign.

Signed A. Akers-Douglas.

To our Trusty and Well-Beloved The Justices of the Central Criminal Court, The Clerk of the said Court, and all others whom it may concern. } By His Majesty's Commons.

In modern times pardons have only been granted upon the advice of a Secretary of State. The Home Secretary in effect grants the pardon. As to consulting the Court of Criminal Appeal, see Criminal Appeal Act, 1907, s. 19. See PREROGATIVE OF MERCY.

Pardoners, persons who carried about the Pope's indulgences, and sold them to any who would buy them.

Parens est nomen generale ad omne genus cognationis. *Co. Litt.* 80.—(Parent is a general name for every kind of relationship.)

Parens Patriæ, the sovereign, as *parens patriæ*, has a kind of guardianship over various classes of persons, who, from their legal disability, stand in need of protection, such as infants, idiots, and lunatics.

Parent includes, for the purpose of the Education Act, 1921 (s. 170 (12)), 'guardian and every person who is liable to maintain or has the actual custody of the child or young person'; and for the purpose of vaccination, the father and mother of a legitimate child, the mother of an illegitimate child, and any person having its custody.—Vaccination Act of 1867, s. 35, and of 1871, s. 4.

Parentela, or *de parentelâ se tollere*, signified a renunciation of one's kindred and family. This was, according to ancient custom, done in open court, before the judge, and in the presence of twelve men, who made oath that they believed it was done for a just cause. We read of it in the laws of Henry I. After such abjuration, the person was incapable of inheriting anything from any of his relations, etc.

Parenthesis, part of a sentence occurring in the middle thereof, and usually enclosed between marks like ( ), the omission of which part would not injure the *grammatical* construction of the rest of the sentence.

Parenticide [fr. *parens*, Lat., a father, and *cædo*, to kill], one who murders a parent.

Parentis, in loco, person undertaking the office and duty of a father to make provision for a child of another (*Powys* v. *Mansfield*, (1837) 3 My. & Cr. 359).

Parergon. 1. One work executed in the intervals of another; a subordinate task. 2. The title of a work on the Canons, in great repute, by Ayliffe.

Pares, a person's peers or equals; as the jury for trial of causes, who were originally the vassals or tenants of the lord, being the equals or peers of the parties litigant. Magna Charta (see that title) provides against the condemnation of a freeman *nisi per legale judicium parium suorum, vel per legem terræ.*

Pariar, Pariah, an outcast or lowest caste (numbering some sixty millions) of the Hindoos.—*Indian.*

Pari passu [Lat.], with equal step, equally, without preference.

Parish [fr. *parochia,* Low Lat.; *paroisse* Fr., fr. *παροικία* Gk., habitation], the particular charge of a secular priest. *Parochia est locus quo degit populus alicujus ecclesiæ.* 5 Co.—(A parish is a place in which the people of a particular church reside.) It is that circuit of ground which is committed to the care of one parson or vicar, or other minister having cure of souls therein.—1 *Bl. Com.* 111. An extended definition of 'parish' for ecclesiastical purposes is given in para. 1 of the Schedule to the Representation of the Laity Measure, 1929 (19 & 20 Geo. 5, No. 2). As to the origin of parishes, see *ibid.*; 2 *Hallam's Mid. Ages,* c. vii, pt. 1, p. 144.

The Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 68 (4), defines a parish 'a place for which immediately before the 1st April, 1927, a separate poor rate was or could be made, or a separate overseer was or could be appointed.

Parish Apprentices, persons who were bound out by the overseers of parishes, or by the guardians of the poor. The children of poor persons could be apprenticed out by the overseers, with consent of two justices, and by the guardians without such consent, till twenty-one years of age, to such persons as were thought fitting; who were no longer, however, compellable to take them.—Poor Law Amendment Act, 1844, s. 13. This was repealed by the Poor Law Act, 1927, now repealed. For the present law, see Poor Law Act, 1930 (19 & 20 Geo. 5, c. 17), ss. 59 to 66, also s. 69 (naval service for boys), and the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), s. 393 (merchant service); and see *Chitty's Statutes,* tit. '*Poor (Apprentices).*'

Parish Boundaries, see 1 Vict. c. 69, s. 2; 2 & 3 Vict. c. 62, ss. 34–6; 3 & 4 Vict. c. 15, s. 28; 8 & 9 Vict. c. 118, ss. 39–45; and 12 & 13 Vict. c. 83, ss. 1, 9. See also 38 & 39 Vict. c. 55, s. 278; and as to the better arrangement of divided parishes, see 39 & 40 Vict. c. 61. In order to perpetuate the memory of parish boundaries it was anciently the custom for the parishioners to walk round or perambulate the parish generally during Rogation Week. This was called 'beating the bounds.' Although the fixing of parish boundaries by Act of Parliament and the more general use of maps has done away with this necessity, perambulations still take place in many parishes. As to alteration of parish boundaries, see Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 141.

Parish Clerk. This office is of extreme antiquity—next in dignity to the clergy, says Leland; but it is a temporal office (*Lawrence* v. *Edwards,* 1891, 2 Ch. 72). He is now appointed by the incumbent and the parochial church council jointly. The remuneration and terms depended on the custom of the particular parish and on the agreement made with him—58 Geo. 3, c. 45; 59 Geo. 3, c. 134; 19 & 20 Vict. c. 104; 11 & 12 Geo. 5, No. 1. See note *Key and Elph. Prec.,* 12th ed., vol. i, p. 118. The Company of Parish Clerks is the most ancient in the City of London; yet they stand at the bottom of the list, and have neither livery nor the privilege of making their members free of the City. See 2 *Steph. Com.,* 7th ed. 700.

For the appointment of the clerk of the parish council under the Local Government Act, 1933 (23 & 24 Geo. 5. c. 51), see s. 114, *ibid.*

Parish Constables. See CONSTABLES, and 35 & 36 Vict. c. 92, by which provision is made for their abolition.

Parish Council. Established by the Local Government Act, 1894, s. 1 (see now Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), ss. 43–55), for every rural parish (i.e., every parish in a rural sanitary district) having a population of 300 or upwards, the county council having also power to group parishes under a common parish council, and being bound to establish a parish council if the parish meeting of a parish having a population of 100 or upwards so resolve, and having power to establish one with the consent of the parish meeting if the population be less than 100.

The parish council is elected from among the parochial electors, or persons who have resided for twelve months in the parish or within three miles of it. The number of councillors is fixed by each county council within the limits of five and fifteen members. The term of office, which was by the Act of 1894 one year, was altered to three years by the Parish Councillors (Tenure of Office) Act,

1899, by which the councillors go out of office on the 15th of April in every third year, after the 15th of April, 1901, and by the 1933 Act, likewise.

The main duty of parish councils is to manage parish property. They are bodies corporate, having power to hold land without any license in mortmain, and to acquire by agreement land for recreation grounds and other parish purposes, and to acquire land compulsorily for allotments. They may also utilize wells, cover ponds, acquire rights of way, and accept and hold any gifts of property, real or personal, for the benefit of the inhabitants of the parish or any part thereof; see the 1933 Act, Sched. III., Part IV.

The Local Government (Scotland) Act, 1929 (19 & 20 Geo. 5, c. 25), transferred the duties of the parish council in Scotland to various other local bodies, and the parish council as such is now non-existent.

Parish Meeting. Established for every rural parish by the Local Government Act, 1894 (see now Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), ss. 43–55, 77, and Sched. III., Part VI.), and consisting of the registered parliamentary electors and county council electors of the parish, each having one vote and no more on any question, or in the case of an election for each of any number of persons not exceeding the number to be elected; bound to assemble annually, or if there be no parish council, at least twice a year. The proceedings must not begin earlier than 6 p.m. Every question is decided by a majority of those present at a meeting, and voting, the decision of the chairman being final unless a poll, which is taken by ballot, be demanded. On the question of the appointment of chairman for a year, or of the adoption of any 'adoptive Act' (see below) and other questions, any one elector may demand a poll. The chairman of the parish council, or any two parish councillors, or any six registered electors, may, by the 1933 Act, Sched. III., Part VI., para. 2, convene a parish meeting.

The main business of a parish meeting is to elect the parish council. But whether the parish has a parish council or not, the parish meeting had the exclusive power of adopting the Baths and Wash-houses Acts, the Public Libraries Act, and other 'adoptive Acts.' See that title; PUBLIC HEALTH.

If the population of a parish be below 300, the county council may by order establish a parish council for that parish.

The annual assembly of the parish meeting is on some day between 1st March and 1st April.

Parishes (New) Acts (6 & 7 Vict. c. 37), and other Acts. See NEW PARISHES ACTS.

Parish Officers, churchwardens, formerly overseers, and constables.

Parish Priest, the parson; a minister who holds a parish as a benefice. If the predial tithes are unappropriated, he is called *rector*; if appropriated, *vicar*.

Parish Registers, of baptisms, marriages, and burials directed to be kept by Canon 70, and by the Parochial Registers Act, 1812 (52 Geo. 3, c. 146), repealed as to marriages by the Births and Deaths Registration Act, 1836 (6 & 7 Wm. 4, c. 86). The Parochial Registers and Records Measure, 1929 (19 & 20 Geo. 5, No. 1), provides for the care and custody of parochial registers. See *Hubback on Succession*, p. 469.

Paritor [fr. *apparitor*, Lat.], a beadle; a summoner to the Courts of civil law.

Park [fr. *parcus*, Lat., fr. *parco*, to spare], a place of privilege for wild beasts of venery, and other wild beasts of the forest and chase; who are to have a firm place and protection there, so that no man may hurt or chase them without licence of the owner. A park differs from a forest, in that, as Compton observes, a subject may hold a park by presciption or royal grant. It differs from a chase because a park must be enclosed; if it lie open, it is a good cause of seizing it into the sovereign's hands, as a free chase may be if it lie enclosed. To a park three things are required—1st, a grant thereof; 2nd, enclosure by pale, wall, or hedge; 3rd, beasts of a park, such as buck, does, etc.; see *Sir Charles Howard's case*, (1626) Cro. Car. 59; *Pease* v. *Courtney*, 1904, 2 Ch. p. 509. The word 'park,' as used in the Settled Land Acts, is not confined to an ancient legal park, but includes an ordinary private park (*Pease* v. *Courtney*).

Royal Parks.—As to the management of the royal parks, see the Parks Regulation Act, 1872; London Parks and Works Act, 1887; and Parks Regulation (Amendment) Act, 1926 (16 & 17 Geo. 5. c. 36); also Housing, Town and Country Planning, and Restrictions on Ribbon Development Acts; *Chit. Stat.* tit. '*Crown*,' and *Bailey* v. *Williamson*, (1872) L. R. 8 Q. B. 118.

Gifts for Parks.—By 34 Vict. c. 13, repealed and re-enacted by the Mortmain and Charitable Trusts Act, 1888, proceeding on the preamble that it is expedient to facilitate gifts of land for the purpose of forming public parks, schools, and museums, it is provided

that all gifts and assurances of land, up to a limited acreage, and whether made by deed, or by will or codicil, for such purposes, and all bequests of personal estate to be applied in or towards the purchase of land for such purposes, shall be valid, notwithstanding the Statutes of Mortmain; and see OPEN SPACES.

Park-bote (to be quit of inclosing a park or any part thereof).—4 *Inst.* 308.

Parker, a park-keeper.

Parkhurst Prison, established in the Isle of Wight for the confinement and correction of young offenders, male or female; now used for male prisoners under sentence of penal servitude.

Parliament, the Imperial. Formerly the Legislature of the United Kingdom of Great Britain and Ireland, now, by the Royal and Parliamentary Titles Act, 1927 (17 Geo. 5, c. 4), s. 2, styled the Parliament of the United Kingdom of Great Britain and Northern Ireland, (Southern Ireland or the Irish Free State having gotten the status of a 'Dominion,' see IRELAND), consisting of the King, and the three estates of the Realm, i.e., the lords spiritual and temporal (called the House of Lords or Upper House of Parliament), and the persons elected by the people (called the House of Commons, or Lower, or Nether House of Parliament). Under the Government of Ireland Act, 1920 (10 & 11 Geo. 5, c. 67), s. 19 (*a*), and Sched. 5, Part II., as amended by 13 Geo. 5, sess. 2, c. 2, s. 1, 13 members are returned to the House of Commons in the Imperial Parliament by Northern Ireland, and the Irish Free State is excluded. Until the reign of Henry the Fourth both Houses sat together. See 4 *Inst.* p. 5.

The word is generally considered to be derived from the French *parler*, to speak. 'It was first applied,' says Blackstone, 'to general assemblies of the state, under Louis VII., in France, about the middle of the twelfth century.' The earliest mention of it in the statutes is in the preamble to the Statute of Westminster 1st, A.D. 1272.

See titles HOUSE OF COMMONS; HOUSE OF LORDS; ACT OF PARLIAMENT; *May's Parliamentary Practice; Rogers on Elections;* and *Chitty's Statutes*, tit. '*Parliament.*'

Parliament of Northern Ireland. See NORTHERN IRELAND.

Parliament Act. See ACT OF PARLIAMENT.

Parliamentary Agents, persons professionally employed in the promotion of or opposition to private Bills, and otherwise in relation to private business in Parliament. A solicitor may act as a parliamentary agent. As to agents entitled to practise before Election Committees, see 31 & 32 Vict. c. 125, s. 57.

Parliamentary Committee, a committee of members of the House of Peers, or of the House of Commons, appointed by either House for the purpose of making inquiries, by the examination of witnesses or otherwise, into matters which could not be conveniently inquired into by the whole House. Not only any Bill, but any subject that is brought under the consideration of either House, may, if the House thinks proper, be referred to a committee; and when the inquiry is ended, the committee, through their chairman, make a report to the House of the result. All private Bills, such as Bills for railways, canals, roads, or other undertakings, in which the public are concerned, are referred to committees of each House before they are sanctioned by that House. Their reports are not absolutely binding upon the House, but the House seldom reverses their decision.

As to the power of such committees to administer oaths to witnesses, see the Parliamentary Witnesses Oaths Act, 1871.

As to the powers of a Committee of Ways and Means of the House of Commons in respect of resolutions varying or renewing taxation, see Provisional Collection of Taxes Act, 1913 (3 & 4 Geo. 3, c. 5).

Parliamentary Committees are of four kinds: (1) of the whole House; (2) standing or sessional; (3) select; and (4) joint, i.e., composed of equal numbers of members of each House. Consult *May's Parliamentary Practice.*

Parliamentary Grants for Education. See EDUCATION.

Parliament House. The buildings comprising the courts, etc., of the Court of Session in Edinburgh.

Parliamentum indoctum (the unlearned Parliament). The Parliament of 6 Hen. 4, which assembled in 1404, into which no lawyer was admitted as a knight of the shire, through the insertion of a prohibition to that effect in the writ of summons framed by Lord Chancellor Beaufort.

Paroche, Parochia, a parish.

Parochial Assessment Act, 1836 (6 & 7 Wm. 4, c. 96), whereby poor-rates were made on the net annual value of the rateable property, is now repealed and the net annual rateable value is defined for the purposes of the Rating and Valuation Act, 1925, in s. 22 of the Act.

Parochial Chapels, places of public worship in which the rites of sacrament and sepulture are performed. See CHAPEL.

Parochial Church Councils (Powers) Measure, 1921 (11 & 12 Geo. 5 (No. 1)), a measure passed by the National Assembly of the Church of England to amend the law relating to parochial organization of the Church of England. It lays down that the primary duty of Parochial Church Councils is to co-operate with incumbents in the initiation, conduct, and development of church work, both within the parish and outside. Certain powers, duties, and liabilities of the vestry and of the churchwardens are transferred to the Parochial Church Council.

Parochial Electors, the persons entitled to vote at an election of parish councillors shall be the persons entitled to vote by the Representation of the People Acts: see Local Government Act, 1933, s. 53, i.e., the local government electors whose names are on the register of electors: see the R. P. Acts of 1918 (7 & 8 Geo. 5, c. 64), s. 4 (3), and 1928 (18 & 19 Geo. 5, c. 12), s. 1.

Parochian, a parishioner.

Parol, or **Parole** [fr. *parole*, Fr.], by word of mouth; but the expression is also made use of to denote writings not under seal.

The pleadings in an action were, when they were given *vivâ voce* in court, frequently termed the *parol*.

Parol Agreements, such as are either by word of mouth or are committed to writing, but are not under seal. The Common Law draws only one great distinction, viz., between instruments under seal and instruments not under seal. See *Leake* or *Chitty on Contracts*.

Parol Arrest. Any justice of the peace may, by word of mouth, authorize any one to arrest another who is guilty of a breach of the peace in his presence.

Parol Demurrer, abolished by 11 Geo. 4 & 1 Wm. 4, c. 74, s. 10.

Parol Evidence, testimony by the mouth of a witness. It is a general rule that oral evidence cannot be substituted for a written instrument, where the latter is required by law, or to give effect to a written instrument, defective in any particular essential to its validity; nor contradict, alter, or vary a written instrument, required by law, or agreed upon by the parties, as the authentic memorial of the facts which it recites. But parol evidence is admissible to defeat a written instrument on the ground of fraud, mistake, etc., or to apply it to its proper subject, or, in some instances, as ancillary to such application to explain the meaning of doubtful terms, or to rebut presumptions arising extrinsically. In these cases the parol evidence does not usurp the place of written evidence, but either shows that the instrument ought not to be allowed to operate at all, or is essential in order to give to the instrument its legal effect.

The general rule with regard to the admission of parol evidence to explain the meaning of, or to add to, vary, or alter the express terms of a deed, is, that it shall not be admitted (*Henderson* v. *Arthur*, 1907, 1 K. B. 10), except: (1) where, although the deed is clearly enough expressed, some ambiguity arises from extrinsic circumstances; (2) where the language of a charter or deed has become obscure from antiquity; (3) where the grant is uncertain owing to a want of acquaintance with the grantor's estate; (4) where it is important to show a consideration or a different consideration consistent with, and not repugnant to, that stated in the deed itself; (5) where it becomes necessary to show a different time of delivery from that at which the deed purports to have been made; (6) where it is sought to prove a customary right not expressed in the deed, but not inconsistent with any of its stipulations; or, lastly, where fraud or illegality in the formation of the deed is relied on to avoid it. If a clause in a deed be so ambiguously or defectively expressed that a court of justice cannot, even by reference to the context, collect the meaning of the parties, it would be void on account of uncertainty. Consult *Chitty* or *Addison* or *Leake on Contracts*; *Best*, *Roscoe*, or *Taylor on Evidence*; *Wigram on Wills*; *Norton on Deeds*.

Parole, the promise made by a prisoner of war, when he has leave to go anywhere, to return at a time appointed, or not to take up arms till exchanged.

Parricide, same as patricide (*q.v.*).

Parson [fr. *persona*, Lat., because the parson *omnium personam in ecclesiâ sustinet*; or from *parochianus*, the parish-priest.—*Johnson*; anciently written *persone.—Todd*], 'the rector of a church parochiall' (*Co. Litt.* 300 *a*); one that has a parochial charge or cure of souls. 'The most legal, most beneficial, and most honourable title that a parish priest can enjoy,' says Sir W. Blackstone.

A parson has the freehold for life of the parsonage-house, the glebe, the tithes, and other dues. But these are sometimes *appropriated*, that is to say, the benefice is perpetually annexed to some spiritual corpora-

tion, either sole or aggregate, being the patron of the living; which the law esteems equally capable of providing for the service of the church as any single private clergyman: see 1 *Bl. Com.* 384. Many appropriations, however, are now in the hands of lay persons, who are usually styled, by way of distinction, lay impropriators. In all appropriations there is generally a spiritual person attached to the church, under the name of *vicar*, to whom the spiritual duty or cure of souls belongs, in the same manner as to the rector in parsonages not appropriate or rectories, and to whom a portion of the tithes, etc., is assigned.

The method of becoming a parson or vicar is much the same. There are four requisites: holy orders, presentation, institution, and induction. A parson or vicar may cease to be so by death; by cession, in taking another benefice, by consecration to a bishopric, by resignation, or by deprivation.—1 *Bl. Com.* 388, 392.

Parsonage. 1. The benefice of a parish. 2. The parson's house. As to borrowing money for building, rebuilding, or repairing a parsonage, see 'Gilbert Act' (16 Geo. 3, c. 53), the Clergy Residences Repair Act, 1776, the Parsonages Act, 1865, and the Parsonages Measure, 1930; and as to dilapidations, see the Ecclesiastical Dilapidations Acts, 1871 and 1872, and the Ecclesiastical Dilapidations Measures, 1923–1929. *Chitty's Statutes*, tit. '*Church and Clergy.*'

Parson imparsonee [fr. *persona impersonata*, Lat.], a clerk presented, instituted, and inducted into a rectory, and thus in full and complete possession of the church.—1 *Bl Com.* 391; *Co. Litt.* 300 *a.*

Parson Mortal [fr. *persona mortalis*, Lat.], a rector instituted and inducted for his own life. But any collegiate or conventual body, to whom a church was for ever appropriated, was termed *persona immortalis.*—*Jac. Law Dict.*

Pars pro toto, the name of a part used to represent the whole; as the roof for the house, ten spears for ten armed men, etc.

Pars rationabilis. See REASONABLE PARTS.

Partial Insanity, mental unsoundness always existing, although only occasionally manifest; such as monomania.—See *Smith* v. *Tebbitt*, (1867) L. R. 1 P. & D. 398.

Partial Loss. See ABANDONMENT.

Particata terræ, a rood.—*Spelm.*

Particeps criminis, or **fraudis** (a partner in crime, or fraud).

Particula, a small piece of land

Particular Average. See AVERAGE (2) (*b*).

Particular Estate, that interest which is granted or carved out of a larger estate, which then becomes an expectancy either in reversion or remainder. See 3 *Prest. Conv.* 169.

Particular Lien. See LIEN.

Particular Tenants, Alienation by, when they conveyed by a feoffment, fine, or recovery, a greater estate than the law entitled them to make, a forfeiture ensued to the person in immediate remainder or reversion. As if a tenant for his own life alienated by feoffment for the life of another or in tail or in fee, these being estates which either must or may last longer than his own, his creating them was not only beyond his power, and inconsistent with the nature of his interest, but was also a forfeiture of his own particular estate to him in remainder or reversion, who was entitled to enter immediately.

Fines and recoveries having been abolished and a feoffment having no longer a tortious operation (Real Property Act, 1845, s. 4), a tenant, by creating a larger interest than he has in the property, did not after the passing of that Act incur a forfeiture, for such a creation was then void as to the excess, and good for his own interest.—1 *Steph. Com.*, 7th ed. 463. The R. P. Act, 1845, has been repealed by the Law of Property Act, 1925, and conveyance by feoffments has been abolished by s. 51 of the L. P. Act, 1925.

Particulars. The courts have a general jurisdiction, independently of statute, to order a detailed statement of the demand in *any* litigation, or of *any* defence, to be given that surprise may be avoided, and substantial justice promoted.—2 *Chit. Arch. Prac.* The necessity for application for particulars has become less frequent since the Judicature Acts, as the Rules of Court under those Acts have substituted a statement of claim containing the material facts on which the plaintiff relied for the declaration under the old practice, which only contained a legal statement of the plaintiff's cause of action.

It is provided, however, by R. S. C., Ord. XIX., r. 7, that:—

> A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just;

and see the Index to the *Annual Practice* of the Supreme Court, tit. '*Particulars*'; see

also County Court Rules, Orders VI. and XV.

Particulars of Sale, description of property offered for sale by auction. The property should be described with as much minuteness and accuracy as possible. It is the duty of a vendor to make himself duly acquainted with the peculiarities and incidents of the property he is going to sell; and when he describes it for the information of the purchaser to describe everything material to be known in order to judge of its nature and value, and on the sale of a partial interest, any substantial variation from the description will even at law render the contract voidable; see *Flight* v. *Booth*, (1834) 1 Bing. N. C. 77, per Tindal, C.J. If there be anything connected with the property important to be known which cannot be discerned or may be misapprehended by ocular inspection, it ought to be stated in the particulars: see *Dav. Prec. Conv.* vol. i. On the sale of property of any considerable size the particulars are usually accompanied by a plan. In sales by auction the conditions of sale are generally printed at the end of the particulars and followed by a short printed form of contract. See CONDITIONS OF SALE.

Parties, persons jointly concerned in any deed or act; litigants.

The Rules of the Supreme Court, 1883, Ord. XVI., make very full provision as to the joinder of parties and the consequences of misjoinder and non-joinder. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. Two or more defendants may be joined, in case the plaintiff is in doubt as to the person from whom he is entitled to redress. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are the trustees or representatives, without joining any of the parties beneficially interested in the trust or estate. Where there are numerous parties having the same interest in one action, one or more of such parties may sue or be sued, or may be authorized by the Court to defend in such action, on behalf of or for the benefit of all parties so interested. 'No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy, so far as regards the rights and interests of the parties actually before it. The Court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a judge to be just, order that the names of any parties, whether as plaintiffs or as defendants, improperly joined, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action, be added' (r. 11).

The same Order, XVI., by rr. 48–55, allows the introduction of 'third parties' in cases where the defendant claims any remedy over against any other person. See THIRD PARTY.

By the Judicature Act, 1925, s. 225, replacing the Judicature Act, 1873, s. 100, the word 'party' includes every person served with notice of or attending any proceeding, although not named on the record.

As to change of parties by death, etc., see ABATEMENT; and as to who ought to be made parties, see *Dicey on Parties*.

The order in which the parties to a conveyance are set out is as follows: (1) The owner of the legal inheritance; (2) Persons having equitable or beneficial interests in the inheritance; (3) Persons possessed of chattel interests; (4) The grantee or releasee; (5) Trustees for the grantee or releasee.

In criminal cases the parties are the prosecutor and the prisoner or defendant.

Parties to a cause, civil or criminal, have a right to be present, in any case, throughout the trial. See WITNESSES.

Partition, the act of dividing.

Before 1926 all co-owners of land might make partition, and coparceners were compellable to do so by Common Law. Co-owners, other than coparceners or copyholders, were compellable to make partition by 31 Hen. 8, c. 1 (the preamble of which sets forth the disadvantages of co-ownership), and 32 Hen. 8, c. 32, the latter Act applying to joint tenants and tenants in common holding for life or years.

Co-owners of copyhold were first enabled to make partition by s. 85 of the Copyhold Act, 1841, since re-enacted by s. 87 of the Copyhold Act, 1894.

With a view to the more convenient and perfect partition or allotment of the premises, equity frequently decreed a pecuniary compensation to one of the parties for 'owelty,' i.e., equality of partition, so as to prevent any injustice or unavoidable in-

equality, as where one party has laid out large sums in improvements on the estate.

On a partition, not every part of the estate need be divided. If there be three houses, it would not be right to divide every house, for that would be to spoil them; but some recompense is to be made, either by a sum of money or rent for owelty of partition, to those that have the houses of least value.

For an order for partition of a wall separating the gardens of two adjoining houses, see *Mayfair Property Co.* v. *Johnson*, 1894, 1 Ch. 508.

By the Partition Act, 1868, now repealed, it was provided (s. 3) that in a suit for partition where, if this Act had not been passed, a decree for partition might have been made, then if it appear to the Court that, by reason of the nature of the property to which the suit relates, or the number of the parties interested, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property, the Court might, on the request of any of the parties interested, and notwithstanding the dissent or disability of any other of them, direct a sale of the property accordingly; and see also ss. 4, 5. The Partition Act, 1876, further amended the law. After 1925, co-owners, coparceners and all others entitled to undivided shares in land having been deprived of their legal title to a legal estate by the Law of Property Act, ss. 1 (6), 34, and Settled Land Act, s. 36, the entirety becoming vested in trustees for sale, the Partition Acts, 1868 and 1876, were repealed by the Law of Property Act, 3rd Sched., s. 1 (10). Sect. 28 (3) of that Act provides that where the net proceeds of sale have under the trusts affecting the same become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may partition the land remaining unsold or any part thereof or provide for payment of any equality money subject to the consents in the section provided for. Derivative trustees not having power to invest in land may obtain the requisite power under s. 57 of the Trustee Act, 1925. See *Chitty's Statutes*, tit. '*Partition*'; *Seton on Judgments*.

A party asking for a sale was not compellable to part with his share to his coowners at a valuation (*Pitt* v. *Jones*, (1880) 5 App. Cas. 651).

Partition was one of the matters assigned to the Chancery Division of the High Court of Justice (Jud. Act, 1873, s. 34).

Partition, Deed of, a primary or original conveyance. When an estate was held in community by joint tenants, tenants in common, coparceners, or joint heirs in gavelkind, and they were desirous of dividing it into distinct portions, to be exclusively enjoyed by each, and were not under legal disability, they could accomplish their object by this deed, and by s. 3 of the Real Property Act, 1845 (now repealed), the partition of any tenements except copyhold is void unless made by deed. Sometimes, instead of agreeing as to their several allotments, a reference was made to a person to divide the estate into the required portions, and one mode of effecting this division was to convey the whole estate to the proposed referee upon trust to convey the several allotments to the respective parties according to his award.

In Kent, where the land was of gavelkind tenure, they called these partitions *shifting*, from the Saxon, *shiftan*, to divide. For the present practice, see PARTITION.

Partition of Chattels. The Court may order partition of chattels owned in undivided shares upon application by the persons interested in a moiety or upwards (Law of Property Act, 1925, s. 188).

Partition, Writ of, abolished by 3 & 4 Wm. 4, c. 27, s. 36.

Partnership, the relation which subsists between persons carrying on a business with a view to profit—so defined by s. 1, sub-s. 1, of the Partnership Act, 1890 (53 & 54 Vict. c. 39), a codifying Act of fifty sections, 'to declare and amend the law of partnership,' which, in effect, transfers the law of the subject from the region of reported cases to that of the statute; 'Bovill's Act' (see that title) of 1865 (28 & 29 Vict. c. 86), and a small part of the Mercantile Law Amendment Act of 1856, being the only previous statutory enactments on the subject.

Rules, which, however, are subject to any agreement express or implied between the partners, are laid down by s. 24 for determining the interest of partners in the partnership property and their rights and duties in relation to the partnership. They provide, amongst other things, for equal shares in profits and equal contributions to losses; for indemnification of every partner by the firm in respect of payments properly made for the firm; that every partner may take part in the business; that no partner is to be entitled to remuneration; that 'no person

may be introduced as a partner without the consent of all existing partners'; that differences as to ordinary matters may be decided by a majority, but that 'no change may be made in the nature of the business without the consent of all existing partners'; and that the partnership books are to be kept at the place of business of the partnership where every partner may have access to them.

The Act of 1890 is mainly declaratory. The chief amendment is that of the 23rd section, by which the judgment creditor of a partner, instead of being able to execute not only against his debtor's separate property but also against the property of the firm, may obtain only an order charging the partner's interest in the partnership property, and appointing a receiver of his share of profits.

The dissolution of partnerships and the taking of partnership accounts are matters assigned to the Chancery Division (Jud. Act, 1925, s. 56 (1) (*b*), replacing Jud. Act, 1873, s. 34). The County Court has jurisdiction if the assets do not exceed 500*l*. (County Courts Act, 1934, s. 52 (*f*)).

Limited Partnership.—The Limited Partnerships Act, 1907 (7 Edw. 7, c. 24), purposes to put the law relating to limited partners upon a definite and systematic footing so that an investor may utilize his capital in a trading concern, which has not been converted into a limited liability company, without taking upon himself too heavy a burden, and at the same time retain the right of reasonable investigation into the manner in which his money is being applied.

The principle of limited partnership is very similar to what is known in France as *en commandite* (see that title), the limited partners themselves being termed *commanditaires*.

A 'limited partner' is a person (including in this word a company (s. 4 (4)) who, at the time of entering into the partnership, *contributes* thereto a sum or sums as capital or property valued at a stated amount, and who is not liable for the debts or obligations of the firm beyond the amount so contributed.

Any partner who is not a limited partner is a 'general partner,' and there must be in the partnership at least one general partner who is liable for all debts and obligations of the firm (s. 3). The partners will be known and described collectively by a 'firm name' (s. 3). A limited partnership in a banking business must not consist of more than ten, and in any other business, twenty partners (Companies Act, 1929, s. 357).

A limited partner remains a general partner, and does not secure for himself the limitation of liability until the limited partnership is *registered* with the Registrar of Joint Stock Companies, the registration being effected (s. 8) by the delivery of a statement, signed by the partners, containing certain specified particulars, viz., the firm name and the names of the partners, the nature and place of the business, the term of the partnership and the date of its commencement, a statement that the partnership is limited and the description of every limited partner as such, and the sum contributed by each limited partner, and whether paid in cash or how otherwise. If the nature of the partnership is changed in any of these particulars, the registrar must be notified within seven days.

As in an ordinary partnership, so in a limited partnership, the parties are to a great extent free to make whatever terms and conditions they please for controlling their actions *inter se*. But there are certain things which a limited partner must not do; thus, he cannot take part in the management of the business or bind the firm (s. 6), and if he does take part in the management, he becomes for the time being to all intents and purposes a general partner.

Further, a limited partner may not, either directly *or indirectly*, draw out or receive back any part of his contribution, and if he does he in no way lessens his liability (s. 4 (3)).

The limited partner, however, may inspect the books of the firm and examine into the state and prospects of the partnership business, and may also advise with the partners thereon. There are certain other conditions which will bind the partnership unless there is an agreement which provides differently. Thus by s. 6 (5)—

(*a*) Any difference arising as to ordinary matters connected with the business may be decided by a majority of the general partners;

(*b*) A limited partner may, with the consent of the general partners, assign his share, and upon such assignment the assignee becomes a limited partner with all the rights of the assignor;

(*c*) The other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt;

(*d*) A person may be introduced as a

partner without the consent of the existing limited partners;

(*e*) A limited partner shall not be entitled to dissolve the partnership by notice.

A limited partnership is not dissolved by the death of a limited partner, and in the case of his becoming a lunatic the Court will not consider this a ground for dissolution of the partnership unless the lunatic's share cannot be otherwise ascertained and realized (s. 6 (2)). The bankruptcy law applies to limited partnerships as if they were ordinary partnerships, and if all the general partners become bankrupt the assets of the partnership vest in the trustee (Bankruptcy Act, 1914, s. 127). Consult *Pollock* or *Lindley on Partnership; Hemmant on Limited Partnerships.*

Part-owners, or **Co-owners,** joint owners, or tenants in common, who have a distinct, or at least an independent, although an undivided, interest in the property. If the property is in land, by the Law of Property Act, 1925, s. 1 (6), a legal estate is not capable of subsisting or of being created in an undivided share in land and the beneficial interest in the property is merely equitable (*ibid.*, sub-s. (3)). See, further, UNDIVIDED SHARES. Neither of them can transfer or dispose of the whole property, or act for the others as partners can in relation thereto; each can merely deal with his own share, and to the extent of his own several right and interest. It is an entirely different relation from partnership.

Part-owners of ships are tenants in common, with distinct and undivided interest, and each is the agent of the others, as to the ordinary repairs, employment, and business of the ship, in the absence of any known dissent. The property in a ship, is by s. 5 of the Merchant Shipping Act, 1894, divided into 64 shares, the limit having been raised from 32, by which it was fixed by the Act of 1854, to 64 by the Act of 1880. Consult *Lindley on Partnership.*

Partridge. See GAME. There may be larceny of partridges reared by a hen, though uncooped (*R.* v. *Shickle,* (1868) L. R. 1 C. C. R. 158).

Partus sequitur ventrem. Loosely, the offspring is the property of the owner of the dam.

Party-wall, a term which has been used in different senses, may mean (1) a wall of which the two adjoining owners are tenants in common: (2) a wall divided longitudinally into two strips, one belonging to each of the neighbouring owners: (3) a wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements: (4) a wall divided longitudinally into two moieties, each moiety being subject to a cross easement in favour of the owner of the other moiety (*Watson* v. *Gray,* (1880) 14 Ch. D. 192).

The common use of a wall separating adjoining lands of different owners is *primâ facie* evidence that the wall and the land on which it stands belongs to the owners of those adjoining lands, in equal moieties, as tenants in common, or would so belong if tenancy in undivided shares in a legal estate had not been done away with by the land legislation of 1925. Now under s. 38, and 1st Sched., Part 5, of the Law of Property Act, 1925, a party-wall of this class is considered to be severed vertically with cross easements or rights such as in (4), *supra,* corresponding to those which would have subsisted if a valid tenancy in common had been created. If a house be separated from other premises by a wall, and that wall belongs to the owner of the house, he is of common right bound to repair it; and an action will lie against him for not doing it.

As to meaning of 'party-wall,' and its height above roof, etc., in London, see London Building Act, 1930 (20 & 21 Geo. 5, c. clviii.), ss. 5, 64, 65, 66; *Chitty's Statutes,* tit. '*Metropolis*'; and as to respective rights of 'building owner' and 'adjoining owner,' see ss. 114 *et seq.* of that Act; and *Mason* v. *Fulham Corporation,* 1910, 1 K. B. 631.

'Party-wall' by s. 5 means:—

(*a*) A wall forming part of a building and used or constructed to be used for separation of adjoining buildings belonging to different owners or occupied or constructed or adapted to be occupied by different persons; or

(*b*) A wall forming part of a building and standing to a greater extent than the projection of the footings on lands of different owners.

Parvise, an afternoon's exercise or moot for the instruction of young students—bearing the same name originally with the *Parvisæ* (little-go) of Oxford.—*Selden's Notes on Fortescue,* c. li.

Pas (Fr.), precedence; right of going foremost.

Pasch [fr. *pasahh,* Heb.], the passover.

Pascha clausum, the octave of Easter, or Low-Sunday, which closes that solemnity.

Pascha floridum, the Sunday before Easter, called Palm-Sunday.

Pascha rents, yearly tributes paid by the clergy to the bishop or archdeacon at their Easter visitations.

Pascuage, the grazing or pasturage of cattle.

Pascuum, feeding, is wheresoever cattell are fed, of what nature soever the ground is, and cannot be demanded in a *præcipe* by that name (*Co. Litt.* 4 *b*). See PASTURA.

Pasnage, or **Pathnage in woods,** etc. See PANNAGE.

Passage, properly a way over water.

Passage Broker, any person who sells or lets steerage passages in any ship proceeding from the British Islands to any place out of Europe, not within the Mediterranean (see Merchant Shipping Act, 1894, s. 341). Such person requires a licence, in London of the justices of the peace, in a county borough of the borough council, and in a county district of the district council. See s. 343 of the Merchant Shipping Act, 1894.

Passage, Court of. This is an ancient court of record for the trial of civil actions arising within the City of Liverpool; see the preamble to the Liverpool Court of Passage Act, 1893, *Chitty's Statutes,* tit. '*Local Courts.*' This and an amending Act of 1896 were repealed by a local Act (the Liverpool Corporation Act, 1926 (11 & 12 Geo. 5, c. lxxiv.), ss. 244–263, providing for jurisdiction, rules of procedure, removal of actions to the High Court, transfers to the county courts, appeals, execution, etc.

Passaglo, an ancient writ addressed to the keepers of the ports to permit a man who had the king's leave to pass over sea.—*Reg. Brev.* 193.

Passagium regis, a voyage or expedition to the Holy Land made by the kings of England in person.

Passator, he who has the interest or command of the passage of a river; or a lord to whom a duty is paid for passage.

Passengers, persons conveyed from one place to another. Passenger ships are those peculiarly appropriated to the conveyance of passengers, as distinguished from cargo ships. In some respects, passengers by ship may be considered as a portion of the crew. They may be called on by the master or commander of the ship, in case of imminent danger, either from tempest or enemies, to lend their assistance for the general safety; and in the event of their declining, may be punished for disobedience. This principle has been recognized in several cases; but as the authority arises out of the necessity of the case, it must be exercised strictly within the limits of that necessity.—*Boyce* v. *Bayliffe,* (1807) 1 Camp. 58.

A passenger is not, however, bound to remain on board a ship in the hour of danger, but may quit it if he have an opportunity; and he is not required to take upon himself any responsibility as to the conduct of the ship; if he incur any responsibility, and perform extraordinary services, in relieving a vessel in distress, he is entitled to a corresponding reward. The goods of passengers contribute to general average.

For definition of '*passenger*' and '*passenger ship,*' see Merchant Shipping Act, 1894, s. 267, and Merchant Shipping Act, 1906, ss. 13, 85, and Sched. II., and Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (c. 9), s. 33. The regulations concerning the inspection of passenger ships, their equipment, manning, and construction, are now contained in Part III. of the Merchant Shipping Act, 1894, and the Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 & 23 Geo. 5, c. 9). Consult *Abbott on Shipping* and *Temperley's Merchant Shipping Acts.*

As to passengers by land, see CARRIERS; NEGLIGENCE; RAILWAYS.

See also the London Hackney Carriages Act, 1843, s. 2, for definition of passenger for the purposes of the Act. See also Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), and AIR NAVIGATION.

As to the liability of a passenger to pay his fare without demand under a bye-law, fraud not being alleged, see *London Passenger Transport Board* v. *Sumner,* 1935, W. N. 196.

Passiagiarius, a ferry-man.—*Jac. Law Dict.*

Passim, occurring in various places in a statute, book or works of a certain author —e.g., 'see Agricultural Holdings Act, 1923, *passim.*'

Passing-ticket, a kind of permit, being a note or check which the toll-clerks on some canals give to the boatmen, specifying the lading for which they have paid toll.

Passive Debt, a debt upon which, by or without agreement between the debtor and creditor, no interest is payable, as distinguished from *active* debt, i.e., a debt upon which interest is payable. In this sense, the terms 'active' and 'passive' were long applied to certain debts due from the Spanish Government. Distinguish from 'Actif' (assets) to 'Passif' (liabilities) (*Fr. law.*).

Passive Resisters, those persons who, as a protest against the expenditure of a local

authority in connection with an object of which they disapprove, decline to pay that part of a rate attributable to such expenditure, and by such 'passive resistance' force the local authority to recover the sum withheld by distress and sale or other process. Passive resistance was resorted to especially in connection with the operation of the Education Act, 1902. See *R.* v. *Gillespie*, 1904, K. B. 174.

Passive Trust, a trust as to which the trustee has no active duty to perform. Passive uses were resorted to before the Statute of Uses, in order to escape from the trammels and hardships of the Common Law, the permanent division of property into legal and equitable interests being clearly an invention to lessen the force of some pre-existing law. For similar reasons equitable interests were after the statute revived under the form of trusts. As such, they continued to flourish, notwithstanding the singular amelioration effected at a later period in the law of tenure, because the legal ownership was attended with some peculiar inconveniences. For, in order to guard against the forfeiture of a legal estate for life, passive trusts, by settlements, were resorted to, and hence, trusts to preserve contingent remainders; and passive trusts were created in order to prevent dower.

Where an active trust was created, without defining the quantity of the estate to be taken by the trustee, the Courts endeavoured in the case of devises by will and executory contracts to give by construction the quantity originally requisite to satisfy the trust in every event, although the general rule is that the same words of limitation are (or were before 1926) necessary to convey either a legal or equitable estate in fee simple in a grant by deed to trustees as are required in any other grant of the legal estate in fee: see *Moncton's Settlement*, 1913, 2 Ch. 636; and also *Bostock's Settlement*, 1921, 2 Ch. 693. But if a larger estate was expressly given, the Courts could not reject the excess; and although the estate taken, whether expressly or constructively, might not have exceeded the original scope of the trust, yet, if eventually no estate, or a less estate, were actually wanted, the legal ownership remained wholly or partially vested in the trustee as a merely passive trustee.—1 *Hayes' Conv.* By the Law of Property Act, 1925, 1st Sched., par. 3, the legal estate existing on the 1st January, 1926, in a bare trustee became vested in the person of full age who at that date was entitled to require the legal estate to be vested in him subject to any mortgage term subsisting or created by the Act upon the conditions and subject to the provisions of the Schedule, and to the provisions of the Law of Property (Amendment) Act, 1926, in favour of a purchaser without notice from the trustee. See BARE TRUSTEE.

Passive Use, a permissive use. See PASSIVE TRUST and USES.

Passport, a licence for the safe passage of anyone from one place to another, or from one country to another. Passports are issued by the Foreign Office to British-born subjects or to those naturalized in the United Kingdom, British Dominions, Colonies or India, subject to the recommendation and identification of the applicant by a person holding certain positions, e.g., J.P., barrister, solicitor, physician. Application should be made to the Passport Office, 1, Queen Anne's Gate Buildings, Dartmouth Street, Westminster, London, or 36, Dale Street, Liverpool.

A combination to procure from the British Foreign Office a passport taken out in one name but to be used in another is an indictable misdemeanour (*R.* v. *Brailsford and McCulloch*, 1905, 2 K. B. 730). Forgery is a misdemeanour under the Official Secrets Act, 1920 (10 & 11 Geo. 5, c. 86), and obtaining passports by false statements, under the Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86).

Pastitium, pasture land.—*Domesday.*

Pastor [Lat., a shepherd], applied to a minister of the Christian religion, who has charge of a congregation, hence called his flock.

Pastura. Between *pastura* and *pascuum*, the legall difference is, that pastura in one signification containeth the ground itselfe called pasture, and by that name is to be demanded (*Co. Litt.* 4 *b*). See PASCUUM.

Pasture, land on which cattle feed. See *Norton on Deeds.*

The laying down permanent pasture with the written consent of the landlord is an improvement for which a tenant is entitled to compensation on quitting by the Agricultural Holdings Act, 1923; and so is, though without any consent or notice, laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than two years before the termination of the tenancy. See AGRICULTURAL HOLDINGS ACT.

Breaking up pasture is frequently prohibited by penal rents and otherwise in agricultural leases, and s. 29 of the Agricultural Holdings Act, 1923, which restricts

penal rents to the actual damage done, excepts 'breaking up permanent pasture,' amongst other things, from its operation. See *Rush* v. *Lucas*, 1910, 1 Ch. 437, and *Aggs on Agricultural Holdings*.

Pastus, the procuration or provision which tenants were bound to make for their lords at certain times, or as often as they made a progress to their lands. It was often converted into money.

Patent Agent.—By s. 84 of the Patents and Designs Act, 1907, as amended by Patents and Designs Act, 1932 (22 & 23 Geo. 5, c. 32), this expression 'means exclusively an agent for obtaining patents in the United Kingdom'; and by the same section no person can so term himself unless he is registered in pursuance of the Act.

Patent Ambiguity, a doubt apparent upon the face of an instrument. See AMBIGUITY.

Patent Letters. See LETTERS-PATENT.

Patent Medicine. Patent or proprietary medicines are—(1) those enumerated in the schedule to the Medicine Stamp Act, 1812; (2) all other medicines intended for human use and claimed to be made by a secret process or protected by letters-patent, or which have been advertised as beneficial to the prevention, cure, or relief of any ailment or disorder affecting the human body. Under the Medicine Stamp Acts, 1802 and 1804, duties were imposed on each bottle or package according to the price. These duties are payable by the manufacturers and collected by means of labels of appropriate amounts, so affixed to the packages as to be destroyed when they are opened. The duties were doubled by the Finance Act, 1915: this increased rate has been continued from year to year. The schedule to the Act of 1812 exempts from duty—(1) medicinal drugs vended entire (i.e., without mixture or composition with any other drug or ingredient) by a medical practitioner, chemist or druggist, or by the holder of a patent medicine licence; and (2) medicinal drugs though mixtures or compositions, if not within the definition of patent medicine, if sold by a medical practitioner, chemist or druggist. An annual licence (5*s*.) must be taken out by every dealer in or maker of proprietary medicines which are liable to duty. See Medicine Stamp Acts, 1802, s. 9, and 1812, s. 1 and Sched.; Customs and Inland Revenue Act, 1875.

By the Venereal Disease Act, 1917 (7 & 8 Geo. 5, c. 21), it is an offence to advertise, etc., any patent preparation for the prevention, cure or relief of any venereal disease. Treatment must be by qualified medical practitioners; and see *Chitty's Statutes*, tit. '*Medicines*'; see DRUGS, DANGEROUS, and POISON.

Patent-right, the exclusive privilege granted by the Crown to the first inventor of a new manufacture of making articles according to his invention. See LETTERS-PATENT.

Patent-rolls, registers in which letters-patent are recorded.

Patentee, one who has a patent. The offices of patentee and deputy patentee of the *Subpœna* office were abolished by 15 & 16 Vict. c. 87, s. 27.

Paterfamilias, one who was *sui juris* and the head of a family.—*Civ. Law*; *Sand. Just.*

Paternity. The general rule is that '*pater vero is est quem nuptiæ demonstrant*' (Dig. Lib. 2, tit. 4, l. 5). For a discussion of the law on the subject of paternity and the cases in which it may be shown that the child is not that of the husband, see *Russell* v. *Russell*, 1924, A. C. 687; *Hubback on Succession*, pp. 378 *et seq.*; *Sir Harris Nicolas on Adulterine Bastardy*. A husband may give evidence that he had never had intercourse with his wife before the marriage (*The Poulett Peerage*, 1903, A. C. 395). It becomes a question, when a widow marries immediately after the death of her husband, and she is delivered of a child at the expiration of ten months from the death of the first husband, as to the paternity of the child. Blackstone and Coke say, that if a man die, and his widow soon after marry again, and a child is born within such a time as that by the course of nature it might have been the child of either husband, in this case he is said to be more than ordinarily legitimate, for he may, when he arrives at years of discretion, choose which of the fathers he pleases. But Hargrave suggests that the circumstances of the case, instead of the choice of the issue, should determine who is the father. The Romans forbade a woman to marry until after the expiration of ten months from her husband's decease, which term was prolonged to twelve by Gratian and Valentinian. The French code has adopted the same rule, viz., after ten months. It was also established under the Saxon and Danish governments. It was the law in this country until the Conquest.—*Beck's Med. Jurisp.* See ACCESS.

Patibulary [fr. *patibulum*, Lat.], belonging to the gallows.

Patibulated, hanged on a gibbet.

Patria, the country; the men or jury of a neighbourhood.

Patria potestas, paternal power.—*Civ. Law.* For the extent of this great power, see *Sand. Just.; Maine's Ancient Law.* The modes in which the *patria potestas* was ended were: (1) The death of the father; (2) the father or son suffering loss of freedom or citizenship; (3) the son attaining certain dignities; (4) emancipation.

Patriarch, the chief bishop over several countries or provinces, as an archbishop is of several dioceses.—*God.* 20.

Patricide, or **Parricide,** the murder, or murderer, of a father. As to the punishment of that offence by the Roman Law, see *Sand. Just.; 4 Bl. Com.* 202. Our laws, unlike the ancient laws, distinguish in no respect between parricide, killing a husband, wife, or master, and simple murder.

Patricius, a title of the highest honour, conferred on those who enjoy the chief place in the emperor's esteem.—*Civ. Law.*

Patrimony, an hereditary estate or right descended from ancestors.

Patrinus, a godfather.

Patriotic Fund. A fund originally formed in 1854 for the relief of the families of men who fell in the Crimean War. The fund is now controlled by the provisions of the Patriotic Fund Reorganisation Act, 1903. See PENSIONS.

Patritius, an honour conferred on men of the first quality in the time of the English Saxon kings.

Patron, (1) one who has the disposition of an ecclesiastical benefice; (2) among the Romans an advocate or defender. See CLIENT.

Patronage, the right of presenting to a benefice. A disturbance of patronage is a hindrance or obstruction of a patron to present his clerk to his benefice, the remedy for which was the real action of *quare impedit.* See that title, and BENEFICE.

Also, the right of appointing to any office (see that title).

Patronatus, patronage.

Patronum faciunt dos, ædificatio, fundus. *Dod. Adv.* 7.—(Endowment, building, and land make a patron.)

Patruelis, a cousin-german by the father's side; the son or daughter of a father's brother.—*Civ. Law.*

Patruus, an uncle by the father's side, a father's brother; *magnus,* a grandfather's brother, great-uncle; *major,* a great-grandfather's brother; *maximus,* a great-grandfather's father's brother.

Pauper, a discarded term, see POOR PERSON. See CASUAL PAUPER; POOR LAWS; and EDUCATION.

As to right of a poor person, having reasonable ground for proceeding, to sue without paying Court fees, solicitor, or counsel, see IN FORMÂ PAUPERIS.

Pauper Lunatic, a discarded term, replaced by 'rate-aided patient of unsound mind' (Mental Treatment Act, 1930 (20 & 21 Geo. 5, c. 23)), s. 3. See PERSONS OF UNSOUND MIND.

Pavage, money paid towards paving.

Paving Acts. As to Local Government Districts, see the Public Health Act, 1875 (38 & 39 Vict. c. 55); and as to London, see the Metropolitan Paving Act, 1817 (57 Geo. 3, c. 29) ('Michael Angelo Taylor's Act'), the Metropolis Management Acts Amendment Act, 1862, s. 77, and the amending Act of 1890 (53 & 54 Vict. c. 54).

Pawn or **Pledge** [fr. *pignus,* Lat.], a bailment of goods by a debtor to his creditor, to be kept till the debt is discharged.

A mortgage of goods is in the Common Law distinguishable from a mere pledge or pawn. By a mortgage the whole legal title passes conditionally to the mortgagee; and if the goods be not redeemed at the stipulated time, the title becomes absolute at law although equity allows a redemption. But in a pledge, a special property only passes to the pledgee, the general property remaining in the pledgor. Also, in the case of a pledge, the right of a pledgee is not consummated, except by possession; and, ordinarily, when that possession is relinquished, the right of the pledgee is extinguished or waived. But, in the case of a mortgage of personal property the right of property passes by the conveyance to the mortgagee, and the possession is not or may not be essential to create or support the title.

As to things which may be the subject of pawn: These are, ordinarily, goods and chattels; but money, debts, negotiable instruments, choses in action, and indeed any other valuable things of a personal nature, such as patent-rights and manuscripts, may by the Common Law be delivered in pledge. It is not indispensable that the pledge should belong to the pledgor; it is sufficient if it is pledged with the consent of the owner. By the pledge of a thing, not only the thing itself is pledged, but also, as accessory, the natural increase thereof. If the pledgor have only a limited title to the thing, as for life or for years, he may still pawn it to the extent of his title; but when that expires, the pledgee must surrender it to the person who succeeds to the ownership. See FACTOR.

It is of the essence of the contract that

there should be an actual delivery of the thing to the pledgee; for until delivery, the whole contract is executory, however strong may be the engagement to deliver it; and the pledgee acquires no right of property in it. But there need not be an actual manual delivery, as it is sufficient if there are any of those acts or circumstances which, in construction of law, are deemed sufficient to pass the possession of property, as the key of a warehouse. As possession is necessary to complete the title, so by the Common Law the title determines if the pledgee lose the thing pledged, or deliver it back to the pledgor unless for a temporary or special purpose.

It is also of the essence of the contract that the thing should be delivered as a security for some debt or engagement. It may be delivered as security for a future debt or engagement, as well as for a past debt; for one or for many debts and engagements; upon condition or absolutely; for a limited time or for an indefinite period. It may also be implied from circumstances, as well as arise by express agreement, and it matters not what is the nature of the debt or the engagement. The pledge is understood to be a security for the whole and for every part of the debt or engagement. It is indivisible; *individua est pignoris causa.*

As to the pledgee or pawnee's rights and duties: The pawnee acquires, in virtue of the pawn, a special property in the thing, and is entitled to the exclusive possession of it during the time and for the objects for which it is pledged. The pledgee has a right to sell the pledge, when the pledgor fails to perform his engagement. He might have filed a bill in equity against the pledgor for a sale, or he may proceed to sell *ex mero motu*, upon giving due notice of his intention to the pledgor. If several things be pledged, each is deemed liable for the whole debt or engagement; and the pledgee may proceed to sell them from time to time, until the debt or other claim be completely discharged. The possession of the pawn does not suspend the right to sue for the whole debt or other engagement without selling the pawn, for it is only a collateral security. A pawnee cannot become the purchaser at the sale. A pledgee cannot alienate the property absolutely, nor beyond the title actually possessed by him, unless in special cases. He may deliver the pawn into the hands of a stranger for safe custody, without consideration; or he may sell or assign all his interest in the pawn, or he may convey the same interest conditionally, by way of pawn, to another person, without destroying or invalidating his security.

The following rules elucidate the principles as to the pawnee's title to use the pawn:—

(1) If the pawn is of such a nature that the due preservation of it requires some use, there such use is not only justifiable, but it is indispensable to the faithful discharge of the duty of the pawnee.

(2) If the pawn is of such a nature that it will be worse for the use, such, for instance, as clothes, the use is prohibited to the pawnee.

(3) If the pawn is of such a nature that the keeping is a charge to the pawnee, as a cow or horse, there the pawnee may milk the cow and use the milk, and ride the horse by way of recompense for the keeping.

(4) If the use will be beneficial to the pawn, or it is indifferent, there it seems that the pawnee may use it.

(5) If the use will be without any injury, and yet the pawn will thereby be exposed to extraordinary perils, there the use is impliedly interdicted.

The pawnee is liable for ordinary neglect in keeping the pawn. He must return the pledge and its increments, if any, after the debt or other duty has been discharged. He must render a due account of all the income, profits, and advantages derived by him from the pledge, in all cases where such an account is within the scope of the bailment.

As to the pledgor's rights and duties:—

If the pledge is conveyed by way of mortgage, so that the legal title passes unless the pledge is redeemed at the stipulated time, the title of the pledgee becomes absolute at law; and the pledgor has only an equitable right to redeem. If, however, it be a mere pledge, as the pledgor has never parted with the general title, he may, at law, redeem, notwithstanding he has not strictly complied with the condition of his contract. If, when the pledgor applies to redeem, the pledge has been sold by the pledgee without any proper notice to the former, no tender of the debt due need be made before bringing an action therefor: for the party has incapacitated himself to comply with his contract to return the pawn. Subject to the pledgee's right, the owner has a right to sell or assign his property in the pawn. As the general property of goods pawned remains in the pawnor, and the pawnee has a special property only, either may maintain an action against a

stranger for any injury done to it, or for any conversion of it. Goods pawned are not liable to be taken in execution in an action against the pawnor, at least, not unless the bailment is terminated by payment of the debt, or by some other extinguishment of the pawnee's title, except in case of the Crown, and then subject to the pawnee's right. By the act of pawning, the pawnor enters into an implied engagement of warranty that he is the owner of the property pawned. The pawnor is responsible for all frauds, not only in the title but in the concoction of the contract. The pawnor must reimburse to the pawnee all expenses and charges which have been necessarily incurred by the latter in the preservation of the pawn, even though by some subsequent accident these expenses and charges may not have secured any permanent benefit to the pawnor.

The contract of pledge is put an end to or extinguished :—

(1) By the full payment of the debt, or the discharge of the other engagements for which the pledge was given ;

(2) By the satisfaction of the debt in any other mode, either in fact or by operation of law ; as, for instance, by receiving other goods in payment or discharge of the debt ;

(3) By taking a higher or different security for the debt, without any agreement that the pledge shall be retained therefor (this is called a *novation* in the Roman Law) ;

(4) By extinguishing the debt, which also extinguishes the right to pledge ;

(5) By the things perishing ;

(6) By any act of the pledgee which amounts to a release or waiver of the pledge. —*Story on Bailents*, c. v. ; and consult *Coote on Mortgages*, 9th ed., pp. 1476 *et seq.* See PAWNBROKERS.

Pawnage, or **Pannage.** See PANNAGE.

Pawnbroker, one who lends money on goods which he receives upon pledge.

The rate of interest which pawnbrokers may take has been fixed by law since 1800, by 39 & 40 Geo. 3, c. 48, which Act placed their whole business under various other restrictions. By the Pawnbrokers Act, 1872 (which applies to Scotland, but not to Ireland), this Act, together with its amending Acts, is repealed, and the statute law of the subject consolidated. Sched. IV., dealing with profits and charges, has been amended by the Pawnbrokers Act, 1922, in respect of loans not exceeding 40*s*.

By s. 5 of the Act, the term ' " pawnbroker " includes every person who carries on the business of taking goods and chattels in pawn,' but by s. 10 the Act does not apply to loans above 10*l*.

Pawnbrokers must take out annual excise licences from the Inland Revenue Commissioners, which may be forfeited on conviction of fraud or receiving stolen goods, knowing them to be stolen, and are not grantable without magisterial or district council certificates, not to be refused except for failure to produce satisfactory evidence of good character (ss. 37-40, and ss. 27, 32 of the Local Government Act, 1894).

By ss. 14 and 16-19 of the Act it is enacted that :—

14. *Pawn-ticket.* A pawnbroker shall, on taking a pledge in pawn, give to the pawner a pawn-ticket, and shall not take a pledge in pawn unless the pawnor takes a pawn-ticket.

16. *Redemption.* Every pledge shall be redeemable within 12 months from the day of pawning, exclusive of that day ; and there shall be added to that year of redemption 7 days of grace, within which every pledge (if not redeemed within the year of redemption) shall continue to be redeemable.

17. *Forfeiture of pledge for 10s. or under.* A pledge pawned for ten shillings, or under, if not redeemed within the year of redemption and days of grace, shall at the end of the days of grace become and be the pawnbroker's absolute property.

18. *Pledge above 10s. redeemable until sale.* A pledge pawned for above ten shillings shall further continue redeemable until it is disposed of, as in this Act provided, although the year of redemption and days of grace are expired.

19. *Sale by Auction of Pledges above 10s.* A pledge pawned for above ten shillings shall, when disposed of by the pawnbroker, be disposed of by sale by public auction, and not otherwise ; and the regulations in the fifth schedule to this Act shall be observed with reference to the sale.

A pawnbroker may bid for and purchase at a sale by auction, made or purporting to be made under this Act, a pledge pawned with him, and on such purchase he shall be deemed the absolute owner of the pledge purchased.

The regulations in the 5th Schedule are very precise, directing, e.g., publication of catalogues of the pledges, that ' the pledges of each pawnbroker in the catalogue shall be separate from any pledges of any other pawnbroker ' ; that sales are to be advertised ' in some public newspaper ' ; that pictures, books, china, and other specified things are to be sold by themselves, ' four times only in every year, on the first Monday in the months of January, April, July, and October, and on the following day and days, if the sale exceeds one day, and at no other time,' and that catalogues are to be preserved for three years at least.

Special Contracts.—By s. 24, special contracts (see Sched. III., Form 7, and *Jones* v. *Marshall*, (1889) 24 Q.B.D. 269) may be made with a loan above 40*s*. Extended by

the Moneylenders Act, 1927 (17 & 18 Geo. 5, c. 21), s. 10 (3), giving powers to the Court to reopen special contracts.

By s. 30, upon the conviction of a thief who has pawned the stolen property, an order can be made on the pawnbroker for its restitution upon payment of the loan; but if such order is not made on the application of the owner, he is not thereby prevented from bringing a common law action (*Leicester* v. *Cherryman*, 1907, 2 K. B. 101).

By s. 31, if a pawnbroker, without reasonable excuse, neglects or refuses to deliver up a pledge to a person entitled to it, he is liable to be summarily convicted, but if the article has been honestly lost by him, this will be a reasonable excuse (*Allworthy* v. *Clayton*, 1907, 2 K. B. 685).

Unlawful Pawning.—Unlawful pawning is specially guarded against by ss. 33–36. Firearms and ammunition must not be taken in pawn (Firearms Act, 1920, s. 2 (2)); nor must pledges be accepted from children under 14 (Children and Young Persons Act, 1933 (23 Geo. 5, c. 12), s. 8).

Rate of Interest.—The 4th Schedule of the Act gives the rate of interest thus:—

On a loan of 40*s.* or under, one halfpenny per month for every 2*s.* or fraction of 2*s.* lent.

On a loan of above 40*s.*, one halfpenny per month for every 2*s.* 6*d.* or fraction of 2*s.* 6*d.* lent.

And the charge on a pawn-ticket thus:—

Where loan is 10*s.* or under, one halfpenny.

Where loan above 10*s.*, one penny.

By the Act of 1922 the pawnbroker, in addition, may charge the pledger upon receipt of the pledge, ½*d.* for each 5*s.* or part of 5*s.* lent where the loan does not exceed 40*s.* In *Singer Manufacturing Co.* v. *Clark*, (1879) 5 Ex. D. 37, it was held that the indemnity under s. 25 of the Act, to a pawnbroker delivering a pledge to the person producing the pawn-ticket, applies only as between the pawnbroker and the pawner, or the owner who has authorized the pledge, and that the Act does not affect the common law rights of the owner of property pledged against his will. As to the power of an executor to pledge the personal chattels of his testator, see *Solomon* v. *Attenborough*, 1913, A. C. 76. A trustee in bankruptcy may inspect goods pawned (Bankruptcy and Deeds of Arrangement Act, 1913, s. 26). Consult *Attenborough on Pawnbroking*.

Pawnee, the person with whom a pawn is deposited. See PAWN.

Pawner, or **Pawnor,** the person depositing a pawn. See PAWN.

Pax regis, the King's peace—verge of the Court.

Payee, one to whom a bill of exchange or promissory note or cheque is made payable; he must be named or otherwise indicated therein, with reasonable certainty. The bill, note, or cheque may be made payable to one or more payees jointly, or in the alternative to one of two or one or some of several payees, or to the holder of an office for the time being; but where the payee is a fictitious or non-existing person, it may be treated as payable to bearer.—Bills of Exchange Act, 1882, s. 7; and see *Bank of England* v. *Vagliano*, 1891, A. C. 107.

Paymaster-General (see now **Accountant-General**; the duties of Paymaster-General transferred to Accountant-General: see Judicature Act, 1925, ss. 133 *et seq.*). Under the Chancery Funds Act, 1872 (35 & 36 Vict. c. 44), the office of Accountant-General of the Court of Chancery was abolished, and the duties transferred to the Paymaster-General, and by the Supreme Court of Judicature (Funds, etc.) Act, 1883, there was only one accounting department for the Supreme Court of Judicature. Rules with respect to the Paymaster-General were authorized to be made by the Judicature Act, 1875, s. 24, and, further, s. 30 of that Act, and s. 4 of the Act of 1883, *supra*, the present practice and procedure being controlled by the Supreme Court Funds Rules, 1927.

Payment. The payment of money before the day appointed is in law payment at the day; for it cannot, in presumption of law, be any prejudice to him to whom the payment is made to have his money before the time; and it appears by the party's receipt of it, that it is for his own advantage to receive it then, otherwise he would not do it. —5 *Rep.* 117. See the notes to *Cumber* v. *Wane*, (1719) in 1 *Smith's L. C.*

Payment of Money into Court, i.e., the deposit of money with the official of or banker to the court for the purpose of proceedings commenced in that court. Payment into court is not strictly a defence; it is rather an attempt at a compromise. No such plea was known to the Common Law; it is entirely the creature of Statute (*Odgers on Pleading*). By the C. L. P. Act, 1852, s. 70, the defendant in all actions (except for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution or seduction) might pay into court a sum of

money by way of compensation or amends, and by the Libel Act, 1843, money might be paid into court in actions of libel, but this provision was repealed by the Statute Law Revision Act, 1879.

Payment into court is now regulated by R. S. C. 1883, Ord. XXII., by which, where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or by leave of the Court or a judge at any later time, pay into court a sum of money by way of satisfaction, which is taken to admit the cause of action; 'or he may, except in actions for libel or slander, pay money into court *with a defence denying liability*,' which he could not do before 1883.

The fact that money has been paid into court may not be mentioned to the jury, R. S. C., Ord. XXII., r. 6, except in an action to which a defence of tender before action is pleaded or in which a plea under the Libel Acts, 1843 and 1845, has been filed, no statement of fact that money has been paid into court under the preceding Rules of this Order shall be inserted in the pleadings and no communication of that fact shall at the trial of any action be made to the judge or jury until all questions of liability and amount of debt or damages have been decided, but the judge shall, in exercising his discretion as to costs, take into account both the fact that money has been paid into court and the amount of such payment (R. S. C. (No. 1, 1933)).

In the County Courts payment into court, together with costs of plaintiff up to payment in, is allowed by County Courts Act, 1934, s. 99 (3) (*d*), Sched. III., and C. C. R., Ord. IX., r. 26 of that Order directing that the fact of such payment is not to be communicated to a jury until after the verdict is given.

As to 'tender of amends' and payment into court by justices of the peace and other persons acting in the performance of certain public functions for anything done in the execution of their offices, see PUBLIC AUTHORITIES.

Quite distinct from payment into court in an action, is the Chancery practice of payment or transfer into court of money or funds in the hands of an executor or trustee who is unable to obtain a good discharge from the person beneficially entitled. This was formerly done under the Legacy Duty Act, s. 32, or the Trustee Relief Act, ss. 1, 2, and is now regulated by s. 42 of the Trustee Act, 1925, and R. S. C., Ord. LIV.B. The trustee lodges the money or funds in court on an affidavit in a specified form containing (*inter alia*) a description of the trust and the names of the persons interested; and the persons who claim to be entitled then apply by summons, or, if the amount exceeds 1,000*l*., by petition, to have the money paid out to them. The costs of the lodgment are deducted by the trustee before he pays the money in. Consult *Lewin on Trusts; Dan. Ch. Pr.; Seton on Judgments.*

Peace, a quiet behaviour towards the king and his subjects. It is one of the prerogatives of the Crown to make war and peace.—1 *Bl. Com.* 257.

Peace, Bill of. This equitable remedy sought repose from perpetual and needless litigation, and protection from a multiplicity of suits, either by establishing and perpetuating a right which the plaintiff claimed and which, from its nature, might be controverted by different persons at different times and by different actions; or where separate attempts had already been unsuccessfully made to overthrow the same right, and justice required that the plaintiff should be quieted in the right if it was already, or if it should be thereafter, established under the direction of the Court. See *Sheffield Waterworks* v. *Yeoman*, (1866) L. R. 2 Ch. 8; *Kerr on Injunctions.*

The results obtained by this bill would now generally be obtained by an action in the High Court for a declaration of title and an injunction. See *A. P. notes* to R. S. C., Ord. XXV., r. 4.

Peace, Breach of the, a violation of that quiet, peace, and security which is guaranteed by the laws for the personal comfort of the subjects of this kingdom. An ordinary subject of the Crown must act as a peace-officer to arrest an offender if a felony is committed, or a bad wound given in his presence; and an ordinary subject may arrest another who is on the point of committing murder, and may break and enter a house to do so; and may arrest a lunatic about to do a mischief, and may arrest one against whom an indictment has been found; or may arrest one to put a stop to a breach of the peace committed in his presence.

The power of justices of the peace to adjudge a person to enter into recognizance and find sureties to keep the peace or be of good behaviour towards any other person on his complaint is regulated by s. 25 of the Summary Jurisdiction Act, 1879, *Chitty's Statutes*, tit. '*Justices.*'

Peace, Clerk of the, an officer who acts as

clerk to the Court of Quarter Sessions, and records all their proceedings. He may have county property conveyed to him under the County Property Act, 1858, and is clerk of the County Council by virtue of s. 83 of the Local Government Act, 1888. See also Local Government Clerks Act, 1931 (21 & 22 Geo. 5. c. 45). He may be removed for misbehaviour in his office under 1 M. & W. c. 21, by the justices in Quarter Sessions, as amended by the Clerks of the Peace Removal Act, 1864 (see now Local Government Clerks Act, 1931 (21 & 22 Geo. 5, c. 45)), and the earlier Act also provides the form of oath not to pay for his appointment.

Peace, Commission of the, a special commission of the Great Seal, appointing justices of the peace. It is one of the authorities by virtue of which the judges sit upon circuit. See JUSTICES.

Peace of God and the Church [*pax Dei et ecclesiæ*, Lat.], was anciently used to signify that cessation which the king's subjects had from trouble and suit of law between the terms, and on Sundays and holidays.—*Cowel.*

Peace, Justices of. See JUSTICES.

Peace of the King [*pax regis*, Lat.], that security for life and goods which the king promises to all his subjects, or others taken into his protection. See PEACE, BREACH OF.

Pecia, a piece or small quantity of ground. —*Paroch. Antiq.* 240.

Peck, a measure of two gallons: a dry measure.

Peculatus, embezzling public money.

Peculiar, a particular parish or church that has jurisdiction within itself, and exemption from that of the ordinary. There are several sorts:—(1) Royal peculiars, which are the sovereign's free chapels, and are exempt from any jurisdiction but that of the sovereign. (2) Peculiars of the archbishops, exclusive of the bishops and archdeacons, which arose from a privilege they had to enjoy jurisdiction in such places where their seats and possessions were. (3) Peculiars of bishops, exclusive of the jurisdiction of the bishops of the diocese in which they are situate. (4) Peculiars of bishops in their own dioceses, exclusive of archidiaconal jurisdiction. (5) Peculiars of deans, deans and chapters, prebendaries, and the like, which are places wherein, by ancient compositions, the bishops have parted with their jurisdiction as ordinaries to these corporations. See *Parham* v. *Templer*, (1820) 3 Phill. Ec. Rep. p. 245; *Tomlins' Law Dict.*

Peculiars, Court of, a branch of, and annexed to, the Court of Arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these peculiar or exempt jurisdictions are, originally, cognizable by this Court, from which an appeal lies to the Court of Arches.—3 *Bl. Com.* 65. See now 37 & 38 Vict. c. 85, and title PUBLIC WORSHIP REGULATION ACT.

Peculium, the savings of a son or slave accumulated with the father's or master's consent.—*Civ. Law.*

Pecunia [fr. *pecus*, Lat., cattle], properly money, but anciently cattle, and sometimes other goods as well as money.

Pecunia dicitur a pecus omnes enim veterum divitiæ in animalibus consistebant. *Co. Litt.* 207.—(Money (*pecunia*) is so called from cattle (*pecus*), because all the wealth of our ancestors consisted in cattle.) So chattels (cattle) means all tangible personalty.

Pecunia sepulchralis, money anciently paid to the priest at the opening of a grave for the good of the deceased's soul. See MORTUARY.

Pecuniary Causes, such as arise either from the withholding of ecclesiastical dues, or the doing or neglecting to do some act relating to the church whereby damage accrues to the plaintiff, to obtain satisfaction for which he is permitted to institute a suit in the spiritual Court.—3 *Bl. Com.* 88.

Pedage, money given for the passage of foot or horse through any country.—*Spelm.*

Pedigree [fr. *per* and *degré*, Fr.—*Skinner*], genealogy; lineage; account of descent. Falsifying a pedigree, upon which title does or may depend, is punishable under the Law of Property Amendment Act, 1859, s. 24, now L. P. Act, 1925, s. 183 (1) (*b*); and see the Forgery Act, 1913. As to the admissibility of hearsay evidence in questions of pedigree, see *Taylor on Evidence*, s. 571; *Hubback on Succession*, p. 648; and see ACCESS.

Pedis abscissio, cutting off a foot; a punishment anciently inflicted instead of death.—*Fleta*, l. 1, c. xxxviii.

Pedis possessio, an actual possession or foothold.

Pedlars, certificated persons who travel about offering their goods or skill in handicraft for sale, between whom and hawkers there is the statutory distinction that the hawker travels with a horse, whereas the

pedlar does not. See HAWKERS AND PEDLARS, and Pedlars Acts, 1871 and 1881.

Pedones, foot soldiers.

Peel's (Sir R.) Acts (6 & 7 Vict. c. 37), otherwise called 'The New Parishes Acts,' 1843, amended by the New Parishes Act of 1844 and 1856, making better provision for the spiritual care of populous parishes, by the establishment of district churches therein; and 7 & 8 Geo. 4, cc. 27–29, abolishing benefit of clergy, and otherwise amending the criminal law.

Peer, an equal; one of the same rank; a member of the House of Lords, as either Duke, Marquis, Earl, Viscount, or Baron, or Scots or presumably Irish representative peer, although the status of Irish representative peers is apparently undecided owing to the establishment of the Irish Free State. The king cannot create a dignity with a mesne between baron and baronets (*Co. Litt.* 16 *b*, Hargrave note 8).

A member of the House of Lords cannot become a member of the House of Commons, nor can he vote at an election to that House (*Earl Beauchamp* v. *Madresfield*, (1872) L. R. 8 C. P. 245), although an Irish non-representative peer (*Lord Rendlesham* v. *Haward*, (1873) L. R. 9 C. P. 252); but an Irish non-representative peer may, presumably, be elected a member of the House of Commons for any seat in Great Britain. A peer cannot surrender his dignity to the king so as to affect the rights of his descendants therein (*The Norfolk Earldom*, 1907, A. C. 10). See *Jac. Law Dict.*; *Co. Litt.* 160.

Under the rule, established by Magna Charta, which applies to every subject of the realm, a peer, indicted for treason or felony, must be tried by his peers, but when an indictment for a felony is found against a peer it is removable by writ of *certiorari* into the Court of the Lord High Steward (see that title). In 1935, on 12th December, the trial of Lord de Clifford took place on a charge of unlawful killing in connection with a collision by driving on a road. On 4th February, 1936, a motion that the present system of trial of peers by peers has outlived its usefulness, was carried in the House of Lords (see *Times*, 5th February, 1936).

Peerage, the dignity of the lords, or peers of the realm. Where, on the death of a peer, doubts arise respecting the devolution of his dignity, and in all cases of long abeyance or other non-enjoyment of a peerage, the Lord Chancellor will not issue his writ of summons to a claimant without a previous investigation of his title, in order to which the claimant must present a petition to the Crown through the Home Secretary, which the Crown then refers to the Attorney-General, and in most cases the claim is subsequently referred to the Lords Committee for Privileges. For the practice and procedure in peerage claims, see *Hubback on Succession*, p. 84; *Shrewsbury Peerage*, (1857) 7 H. L. C. 1; *Palmer's Peerage Law in England*. In modern practice the creation of a peerage must be shown to have taken place either by writ, or by letters patent; the latter mode of creation was introduced in the eleventh year of Ric. 2. If the claim is by writ, actually sitting in Parliament is also essential, for until he sit the writ has no operation (*Co. Litt.* 16 *b*, 9 *b*; *Hubback*, p. 151). As to what will amount to a 'Parliament' for this purpose, see *St. John Peerage Claim*, 1915, A. C. 282, and the Honours (Prevention of Abuses) Act, 1925 (15 & 16 Geo. 5, c. 72), an Act to prevent abuses in connection with grant of honours.

Peeress. Women may acquire peerages by creation (as the Baroness Burdett Coutts), descent (as where a peerage goes in the female as well as in the male line, to which line it is usually confined), or marriage, but they have never had the legislative power, and it was decided in *Viscountess Rhondda's Claim*, 1922, 2 A. C. 339, that a peeress of the United Kingdom in her own right is not entitled to receive a writ of summons to Parliament by virtue of, the Sex Disqualification (Removal) Act, 1919 (9 & 10 Geo. 5, c. 71). 20 Hen. 6, c. 9, declares that peeresses, either in their own right or by marriage, shall be tried before the same judicature as peers of the realm.

Peers of Fees, vassals or tenants of the same lord, who were obliged to serve and attend him in his courts, being equal in function; these were termed *peers of fees*, because holding fees of the lord, or because their business in court was to sit and judge, under their lords, of disputes arising upon fees; but if there were too many in one lordship, the lord usually chose twelve, who had the title of peers, by way of distinction; whence, it is said, we derive our common juries and other peers.—*Cowel.*

Peine forte et dure (the strong and hard pain) [*peine* (or penance), probably a corrupted abbreviation of *prisone*.—3 *Bl. Com.* 325], an old punishment by which a prisoner, indicted for felony, if he refused to plead, was pressed by a heavy weight of iron till he

died or answered.—2 *Reeves*, c. ix., 134; 4 *Steph. Com.*

By the Criminal Law Act, 1827, s. 2, if a prisoner refuse to plead, the Court may order a plea of 'not guilty' to be entered.

Pela, a peel, pile, or fort.

Peles, issues arising from or out of a thing.

Pelfe, or **Pelfre,** booty; also the personal effects of a felon convict.

Pellage, the custom or duty paid for skins of leather.

Pellicia, a pilch or surplice.—*Spelm.*

Pelliparius, a leatherseller or skinner.—*Jac. Law Dict.*

Pellota, the ball of a foot.—4 *Inst.* 308.

Pells, Clerk of the, an officer in the Exchequer, who entered every seller's bill on the parchment-rolls, the roll of receipts, and the roll of disbursements. Abolished.

Pelt-wool, the wool pulled off the skin or pelt of dead sheep.—8 Hen. 6, c. 22.

Pembrokeshire, originally a county palatine, but dispalatinated in the reign of Henry VIII.

Pen (Welsh), a high mountain.—*Camd. Brit.*

Penal Action. See PENAL STATUTES.

Penal Laws, those laws which prohibit an act, and impose a penalty for its commission. For the penal laws *par excellence*, see ROMAN CATHOLICS, and *Lilly and Wallis's Laws affecting Catholics.*

Penal Servitude, a punishment in the United Kingdom which by the Penal Servitude Act, 1853, has superseded transportation (see that title) beyond the seas; but is in all respects as to hard labour, etc., similar to it. It ranges in duration from three years to the life of the convict.

The Criminal Law Consolidation Acts of 1861 frequently authorize a minimum term of three years' penal servitude. This minimum of *three* years was altered to *five* by the Penal Servitude Act, 1864, s. 2, but altered back to *three* by the Penal Servitude Act, 1891, that very important Act providing as follows by s. 1:—

(1) Where under any enactment in force when this section comes into operation [5th Aug., 1891] a Court has power to award a sentence of penal servitude, the sentence may, at the discretion of the Court, be for any period not less than 3 years, and not exceeding either 5 years, or any greater period authorized by the enactment.

(2) Where under any Act now in force or under any future Act a Court is empowered or required to award a sentence of penal servitude, the Court may, in its discretion, unless such future Act otherwise provides, award imprisonment for any term not exceeding 2 years, with or without hard labour.

By the Penal Servitude Act, 1926 (16 & 17 Geo. 5, c. 58), the court is given power to inflict penal servitude in lieu of imprisonment in the case of certain crimes.

The principal distinctions between imprisonment with hard labour and penal servitude are that the former is not, and generally speaking cannot be, imposed for more than two years, whereas penal servitude may be imposed for any period (within the limits of the statute governing the punishment for the particular offence) being not less than three years, and that the work done by the prisoner in the case of 'hard labour' is done within the prison, but in the case of penal servitude may be carried out in any place properly appointed for the purpose.

Penal Statutes, those which impose penalties or punishments for an offence committed; they are construed strictly in favour of the person charged with the offence. See, however, remarks of Lord Alverstone, C.J., in *Dunning* v. *Swetman*, 1909, 1 K. B. at p. 776.

The penalties or forfeitures under these statutes are generally made recoverable by the Crown, or the party aggrieved, or a common informer, as the case may be. See 4 Hen. 7, c. 20; 31 Eliz. c. 3; 18 Eliz. c. 5; 21 Jac. 1, c. 4; the House of Commons (Disqualification) Acts of 1782 and 1801; and *Chitty's Statutes*, tit. '*Penal Actions.*'

This remedy is generally designated a penal action; or, where one part of the forfeiture is given to the Crown and the other part to the informer, a popular or *qui tam* (*q.v.*) action. For an instance of a recent action for penalties, see *Forbes* v. *Samuel*, 1913, 3 K. B. 706.

Penalty. 1. A sum agreed to be paid on non-performance of the condition of a bond. See BOND.

2. A sum agreed to be paid on breach of an agreement or any stipulation of it. See LIQUIDATED DAMAGES, and NOMINE PŒNÆ. The fact that the parties state expressly in their contract that the sum named is 'liquidated damages' will not prevent the Court from deciding that it is a penalty. 'The cases upon the subject of penalty or liquidated damages are very numerous. The result of them seems to be this, that what the Courts look at is the real intention of the parties as it is to be gathered from the language they have used' (*Lea* v. *Whitaker*, (1872) L. R. 8 C. P. p. 73, per Keating, J.). The words are not conclusive; the essence of penalty is a payment stipulated as *in terrorem* of the offending party: the essence

of liquidated damages is a genuine covenanted pre-estimate of loss, *Dunlop Co.* v. *New Garage Co.*, 1915, A. C. 79, approved in *Widnes Foundry* (1925) *Ltd.* v. *Cellulose Acetate Co. Ltd.*, 1931, 2 K. B. 393, and 1933, A. C. 20.

3. A sum recoverable by action from a person infringing a statute. See PENAL STATUTES.

4. A sum, also called a fine, recoverable in a Court of Summary Jurisdiction from a person infringing a statute.

Penance [fr. *pœnitentia*, Lat.], an ecclesiastical punishment used in the discipline of the primitive church, which affected the body of the penitent, by which he was obliged to give a public satisfaction to the church for the scandal he had given by his evil example. See the still unrepealed Articuli Cleri, 9 Edw. 2, st. 1, c. 2; *Statutes Revised*, vol. i, at p. 66; also the Introduction to the Commination Service in the Prayer Book.

Pendente lite (during litigation).

Administration *pendente lite* is sometimes granted when an action is commenced in the Probate Court touching the validity of a will.

An injunction may be granted to restrain a party from disposing of or dealing with property *pendente lite*. As to registration of a *lis pendens*, see LAND CHARGES.

Pendente lite, Alimony. See ALIMONY.

Pendente lite nihil innovetur. *Co. Litt.* 344. —(During a litigation nothing new should be introduced.)

Pendentes, ungathered fruits.—*Civ. Law.*

Penerarius, an ensign-bearer.—*Cowel.*

Penitentiary-houses, prisons where criminals were confined to hard labour. See the repealed 19 Geo. 3, c. 74, and GAOL.

Pennon, a standard, banner, or ensign carried in war.

Penny Postage Act (3 & 4 Vict. c. 96), repealed by Post Office Act, 1908 (8 Edw. 7, c. 48).

Pennyweight, twenty-four grains; see Weights and Measures Act, 1878, Second Schedule, 'Weights.'

Pensam, the full weight of twenty ounces.

Pension, an annual allowance made to any one, usually in consideration of past services.

By the Succession to the Crown Act, 1707, (6 Anne, c. 7) (c. 41 in the Revised Statutes), and 1 Geo. 1, st. 2, c. 56, no person having a pension under the Crown during pleasure, or for any term of years, is capable of being elected or sitting in the House of Commons.

Old Age Pension.—The Old Age Pensions Act, 1908, which was not on a contributory basis, gave to every person the right to a pension who fulfilled certain conditions. The Act, with the amending Old Age Pensions Acts, 1911, 1919, and 1924, has been repealed by the Consolidating Old Age Pensions Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 31). These conditions are contained in s. 2 of the Act of 1936, as follows :—

> 2. The statutory conditions for the receipt of an old age pension by any person are—
> (1) The person must have attained the age of seventy, or in the case of a blind person, the age of fifty.
> (2) The person must satisfy the pension authorities that for at least ten years up to the date of the receipt of any sum on account of a pension he has been a British subject, and that he has been resident in the United Kingdom, if he is a natural-born British subject, for an aggregate of not less than twelve years since attaining the age of fifty years or in the case of a blind person thirty years and, if he is not a natural-born British subject, for an aggregate period of twenty years.
> (3) The person must satisfy the pension authorities that his yearly means as calculated in accordance with the provisions of the first schedule to the Act, after deducting therefrom such part, if any, thereof, but not exceeding in any case thirty-nine pounds, as is derived from any source other than earnings, do not exceed forty-nine pounds seventeen shillings and sixpence.

There are, however, several disqualifications, chief of which are the receipt of poor relief; or being detained in prison without the option of a fine; or maintained as a rate-aided patient of unsound mind; or criminal lunatic; or in a mental hospital. But see Widows, Orphans and Old Age Contributory Pensions Act, 1936, s. 11, in regard to pensions to persons who have been entitled under the contributory Acts becoming entitled after attaining 70 years of age to old age pensions although statutory conditions as to means, residence, or locality have not been fulfilled. The pension is 10*s.* per week where the yearly means do not exceed 26*l.* 5*s.* Between this sum and the yearly means of 49*l.* 17*s.* 6*d.* the pension is in accordance with a sliding scale.

Contributory Pensions.—A contributory old age pension under the Widows, Orphans and Old Age Contributory Pensions Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 33), consolidating the Acts of 1925 and 1929, 1931, is paid to persons between sixty-five and seventy, whereas non-contributory old age pensions are payable at seventy; see *ante*, and ss. 8, 9, 10 and 11 of this Act (c. 33). The Old Age Pensions and the Widows, Orphans and

Old Age Contributory Pensions Act, for persons insured under the National Health Insurance Acts, 1936, and others (see sec. 2 of c. 33, 1936), is administered by the Ministry of Health by Ministry of Health Act, 1919, s. 3.

Neither old age nor contributory pensions are assignable, nor do they pass to the trustee in bankruptcy (sec. 7 of c. 31 and sec. 36 of c. 33, respectively, of 1936).

Claims and questions relating to old age pensioners are made to and considered by local pensions committees appointed by the county or borough or urban district councils with a population of over 20,000 and then referred to the local pensions officer for inquiries and report, on which the committee give their decision. Claims relating to contributory pensions are to be made to the Minister of Health, and then may be made to referees (sec. 30 of c. 33).

Pensions are payable under special statutory provisions to grantees from the Crown, for political, naval and military, police, civil and other services and for services under local authorities under the Local Government Officers' Superannuation Act, 1922 (12 & 13 Geo. 5, c. 59), an adoptive Act for local authorities and other public bodies. Pensions for the clergy have been provided by the Clergy Pensions Measures, 1926 (16 & 17 Geo. 5, No. 6), as amended and extended by later measures, of which the most recent are the Clergy Pensions Measures, 1930 (No. 6), 1936 (Nos. 1 and 3), and see the Ecclesiastical Commissioners (Provision for Unbeneficed Clergy) Measure, 1928 (18 & 19 Geo. 5, No. 1).

See *Chitty's Statutes*, tit. '*Pension*,' and SUPERANNUATION.

Pension of Churches, certain sums of money paid to clergymen in lieu of tithes. A spiritual person may sue in the spiritual Court for a pension originally granted and confirmed by the ordinary; but where it is granted by a temporal person to a clerk, he cannot; as if one grant an annuity to a parson he must sue for it in the temporal Courts.—*Cro. Eliz.* 675. See previous title.

Pensions, Ministry of. Established by the Ministry of Pensions Act, 1916, to take over the powers and duties of (*a*) the Admiralty with respect to the pensions and grants to persons who have served in H.M. naval forces and their dependants, other than service pensions, so far as the pensions and grants are payable out of moneys provided by Parliament and not provided exclusively for Greenwich Hospital; (*b*) the Commissioners for the Royal Hospital for Soldiers at Chelsea with respect to the grant and administration of disability pensions and grants other than in-pensions; (*c*) the Army Council and the Secretary of State for War with respect to the pensions and grants to persons who have served in any of H.M. military forces and their dependants, and to persons who have served in the nursing service of these forces, other than service pensions. The Minister may sit in the House of Commons. See also *Chitty's Statutes*, tit. '*Pension*.'

Pension of the Inns of Court, an annual payment formerly made by each member to the houses. Also, that which in the two Temples is called a parliament, and in Lincoln's Inn a council, is, in Gray's Inn, termed a pension, being an assembly of the benchers to consult upon the affairs of the society. See INNS OF COURT.

Pensioner. 1. One who is supported by an allowance at the will of another; a dependant; he who receives an annuity from Government without filling any office.

2. A band of gentlemen who attend as a guard on the royal person. It was instituted in 1539; each gentleman has an allowance of 150*l. per annum*, and two horses. This band is now called the Honourable Body of Gentlemen-at-Arms.

3. A member of a college at Cambridge who is not on the foundation.

Pension-writ, a process formerly issued against a member of an Inn of Court when he was in arrear for pensions, commons, or other duties, etc.

Pentecostals, pious oblations made at the feast of Pentecost by parishioners to their priests; and sometimes by inferior churches or parishes to the principal mother churches. They are also called Whitsun-farthings.

Pentonville Prison, a place provided in 1842 under 5 & 6 Vict. c. 29 and 13 & 14 Vict. c. 39 for the confinement of male convicts under sentence of transportation, and later used for the confinement of those sentenced to penal servitude. Discontinued and sold under powers provided by 48 & 49 Vict. c. 72.

Peon, a footman, a soldier, an inferior officer, a servant employed in the business of the revenue, police, or judicature.—*Indian.*

People [*peuple*, Fr.; *populo*, It.; *pueblo*, Sp.; fr. *populus*, Lat.], the many, the multitude, the inhabitants of a nation, state, town, etc.; the commonalty or common folk, as distinguished from the higher classes; men; individuals—*Richard. Dict.*

Peppercorn. When it is desired to reserve only a nominal rent for any period, a 'peppercorn, if demanded,' is usually reserved. A writing showing that a peppercorn has been handed over is not 'a receipt for the last payment due for rent' within s. 3 (4) of the Conveyancing Act, 1881. See now Law of Property Act, 1925, s. 45 (2) and (3) (*Re Moody and Yates*, (1885) 30 Ch. D. 344). These rents may be reserved in building leases by mortgagors and mortgagees (Law of Property Act, 1925, s. 99), and in building and forestry leases by tenants for life (Settled Land Act, 1925, ss. 44 and 48).

Per and Post. To come in in the *per* is to claim by or through the person last entitled to an estate, as the heirs or assigns of the grantee: to come in in the *post* is to claim by a paramount and prior title, as the lord by escheat. See *Co. Litt.* 271 *b*, *Harg.*, n. (1), II.

Perambulation, a travelling through or over.

Perambulation of parishes is to be made by the minister, churchwardens, and parishioners, by going round them once a year, in or about Ascension week; and the parishioners may well justify going over any man's land in their perambulation, according to usage, and it is said may abate all nuisances in their way.—*Cro. Eliz.* 441. Manors are also perambulated.—*Wheat. Com. Pr.* 234. See PARISH BOUNDARIES.

Perambulatione faciendâ, a writ which lay where any encroachments had been made by a neighbouring lord, etc., to the sheriff to perambulate or settle the bounds. See *Jac. Law Dict.*

Actions upon writs of perambulation were authorized in Scotland, by the Act 1597, c. 79, to settle the bounds of disputed properties adjoining each other.

Perca, a perch of land, 16½ feet. See PERCH.

Per capita (by the number of individuals), opposed to *per stirpes* (by the number of families); if a man die and leave all his goods 'among my grandsons,' having nine grandsons, one of whom was an only son, and the other eight brethren; then if the division be *per stirpes*, the only son shall take half the goods as representing one of his grandsire's two children; if the division was to be *per capita*, he would take a ninth part only as being one of nine grandsons. Whether legatees are to take *per stirpes* or *per capita* is often a difficult question of construction; for the authorities, see *Theobald on Wills*; and see the Administration of Estates Act, 1925, s. 47.

Percaptura, a place in a river properly banked for the better preserving and taking of fish.—*Par. Ant.* 120.

Perch, a measure of land, consisting of five yards and a half of the standard measure.

Per, Cui, and **Post,** writs of entry, now abolished. See PER AND POST.

Perdings, men of no substance.—*Ley. Hen.* 1, c. 29.

Perdonatio utlagariæ, a pardon for a man who, for contempt in not yielding obedience to the process of a court, is outlawed, and afterwards of his own accord surrenders.—*Reg. Brev.* 28.

Perduellio, treason.—*Civ. Law.*

Peregrini, foreigners commorant or sojourning in Rome.—*Civ. Law.*

Peremption, a nonsuit, also a quashing or killing. See NONSUIT.

Peremptory [fr. *perimo*, Lat., I cut off], final, determinate and, in statutes, obligatory, as opposed to permissive.

Peremptory Challenge, an arbitrary species of challenge to a certain number of jurors without showing any cause.

This privilege is granted to a prisoner in cases of treason and felony, but not misdemeanour, and is denied to the Crown. In treason a prisoner can challenge without cause thirty-five jurors, unless the treason affects the King's person, when the number is limited to twenty, as in felony (Treason Acts, 1695, 1800 and 1842, and the Juries Act, 1825). See also the Criminal Law Act, 1827, s. 3.

Peremptory Day, a precise time when certain business by a rule of Court ought to be spoken to; but if it cannot be spoken to then, the Court, at the prayer of the party concerned, with give a further day without prejudice to him.

Peremptory Mandamus, a second *mandamus*, which issues where the return which has been made to the first writ is found either insufficient in law or false in fact. To this writ no other return will be admitted, but a certificate of perfect obedience and due execution. See MANDAMUS; and as to 'peremptory mandamus' in the first instance, to hold a municipal election, see Municipal Corporations Act, 1882, s. 225 (8), repealed by the Local Government Act, 1933.

Peremptory Paper, a court paper containing a list of all motions, etc., which are to be disposed of before any other business.

Peremptory Pleas, or **Pleas in Bar,** those which were founded on some matter tending to impeach the right of action.

Peremptory Rule. Formerly a defendant

might obtain a peremptory rule to declare within a certain time, absolute in the first instance. This was abolished by C. L. P. Act, 1852, s. 53, and a four-day notice substituted. See now PLEADING; STATEMENT OF DEFENCE.

Perengaria. See ANGARIA.

Perils of the Sea. They are strictly the natural accidents peculiar to the water, but the law has extended this phrase to comprehend events not attributable to natural causes, as captures by pirates, and losses by collision, where no blame is attachable to either ship, or at all events to the injured ship. It was held by the House of Lords in *Hamilton, Fraser & Co.* v. *Pandorf & Co.*, (1887) 12 App. Cas. 518, that, where (under a charter-party or bills of lading which excepted 'dangers and accidents of the seas'), rats gnawed a hole in a pipe on board ship, whereby sea-water escaped and damaged a cargo of rice, without neglect or default on the part of the shipowners or their servants, the damage was held to be due to a peril of the sea (as the proximate cause) and within the exception.

The word *peril*, like *periculum*, Lat., from which it is derived, is in itself ambiguous, and sometimes denotes the risk of inevitable mischance, and sometimes the danger arising from the want of due circumspection.—*Jones on Bailments*, 98.

Per incuriam, through want of care. An order of the Court obviously made through some mistake or under some misapprehension is said to be made *per incuriam*.

Perinde valere, a dispensation granted to a clerk, who, being defective in capacity for a benefice or other ecclesiastical function, is, *de facto*, admitted to it.—*Gibs.* 87; 25 Hen. 8, c. 21.

Perindinare, to stay, remain, or abide in a place.

Per infortunium, by mischance.

Periodical Payments, Apportionment of. See APPORTIONMENT.

Periphrasis, circumlocution; use of many words to express the sense of one.

Perishable Goods, goods which decay and lose their value if not consumed soon—as fish, fruit, and the like. By s. 48 (3) of the Sale of Goods Act, 1893, if on the sale of goods 'of a perishable nature' the buyer does not within a reasonable time pay or tender the price, the unpaid seller may resell and recover damages from the buyer; and by Ord. L., r. 2, such goods, when the subject of an action, may, by order of the Court or a judge, be sold.

Perished Goods. 'Where there is a contract for the sale of specific goods and the goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void,' and 'Where there is an agreement to sell specific goods and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.'—Sale of Goods Act, 1893, ss. 6, 7. See IMPOSSIBILITY.

Perjury, the offence committed when a lawful oath or affirmation (see OATHS and AFFIRMATION) is administered and the witness swears or affirms falsely in a matter material to the issue.

The law on this subject is now contained in the Perjury Act, 1911, 'an Act to consolidate and simplify the law relating to perjury and kindred offences'; it repeals the whole of the Acts 5 Eliz. c. 9 and 2 Geo. 2, c. 25 (the Perjury Act, 1728) and portions of one hundred and thirty other statutes. The Act may be briefly summarized as follows: If any person lawfully sworn as a witness or as an interpreter in a 'judicial proceeding' wilfully makes a statement material in that proceeding, which he knows to be false or does not believe to be true, he will be guilty of perjury and liable to penal servitude for not exceeding seven years, or imprisonment with or without hard labour for not exceeding two years, or to a fine, or to both penal servitude or imprisonment and fine; 'judicial proceeding' includes a proceeding before any Court, tribunal, or person having by law power to hear, receive and examine evidence on oath, and the question whether a statement was 'material' is a question of law to be determined by the Court of trial (s. 1). Section 2 deals with false statements on oath otherwise than in a judicial proceeding, and s. 3 with false oaths, declarations, notices, etc., with reference to marriage; an offence under either of these sections is a misdemeanour and punishable as above. Section 4 deals with false answers, declarations, etc., as to births and deaths; s. 5 (extended by Local Government Act, 1933, ss. 225 and 243) with false statutory declarations (see that title) and other false statements without oath; and s. 6 with false or fraudulent declarations, certificates, or representations, made in order to obtain registration for the purpose of carrying on any vocation or calling. Every person who aids, abets, counsels, procures or suborns another to commit an offence against the Act is liable

as a principal offender (s. 7), and every person who incites or attempts to procure or suborn another to commit an offence is guilty of a misdemeanour (*ibid.*). See SUBORNATION.

No person can, however, be convicted of any offence against the Act, or of any offence declared by any other Act to be perjury or subornation of perjury or to be punishable as such, solely upon the evidence of one witness as to the falsity of any statement alleged to be false (s. 13); in other words, there must be corroboration on that issue.

Of the remaining sections the principal are s. 9, which empowers judges and others to direct a prosecution for perjury; s. 10, which denies jurisdiction to quarter sessions; and s. 14, which deals with the proof of certain proceedings in which perjury can occur; and see also the Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86).

Perkins, the author of the '*profitable boke*' on the learning of conveyancing; as valuable a performance as any, perhaps, of the reign of Henry VIII. This was first printed in 1532, with the following title: 'Incipit perutilis Tractatus Magistri Jo. Perkins Interioris Templi Socii,' etc. The book is in French.—4 *Reeves*, c. xxx., 120.

Permanent Pasture.—See PASTURE.

Permissions, negations of law, arising either from the law's silence, or its express declaration.—*Ruth. Nat. Law*, bk. 1, ch. 1.

Permissive Use, a passive use which was resorted to before the Statute of Uses, in order to avoid a harsh law, as that of mortmain or a feudal forfeiture; it was a mere invention in order to evade the law by secrecy, as a conveyance to A. to the use of B. A. simply held the possession, and B. enjoyed the profits of the estate. See PASSIVE USE.

Permissive Waste, the neglect of necessary repairs. See WASTE.

Permit, a licence. An instrument granted by the officers of excise, certifying that the excise duties on certain goods have been paid, and permitting their removal from some specified place to another.

Permutation, or **Barter,** the exchange of one moveable subject for another.

Permutatione, etc., a writ to an ordinary, commanding him to admit a clerk to a benefice upon exchange made with another.—*Reg. Brev.* 307.

Per my et per tout (not of any part but of the whole). *Et sic totum tenet et nihil tenet, scil, totum conjunctim et nihil per se separatum;* see *Murray* v. *Hall*, (1849) 7 C. B. 455). Joint tenants, by reason of the combination of entirety of interest with the power of transferring in equal shares, are said to be seised *per my et per tout.* 'And this,' says Littleton, 'is as much as to say, as he is seised by every parcell and by the whole, etc.'; see *Co. Litt.* 186 *a*. If any joint tenant severs by alienating his share he destroys the joint tenancy in that share and the grantee obtains no joint tenancy. See JOINT TENANTS; ENTIRETIES.

Pernancy [fr. *prendre*, Fr., to take], the taking or receiving of anything, e.g., tithes.

Pernor, he who receives the profits of lands, etc.; the *cestui que use.*—1 *Rep.* 123; *Co. Litt.* 323 *b*.

Per pais, Trial, trial by the country (i.e., by jury).

Perpars, a part of the inheritance.—*Fleta*

Perpetua lex est, nullam legem humanam ac positivam perpetuam esse; et clausula quæ abrogationem excludit, ab initio non valet. *Bacon.*—(It is an everlasting law, that no positive human law shall be perpetual; and any part of an enactment which purports to admit of no repeal, is void from the beginning)

Perpetual Commissioners (under Fines and Recoveries Act, 1833). See COMMISSIONERS, PERPETUAL.

Perpetual Curate, a minister in holy orders, who is charged with the permanent care of a parochial church, which, although an appropriation, has no endowed vicar. He is entitled to emolument for his services.

By the Church Building Act, 1831, churches or chapels built and endowed by particular individuals shall have districts assigned to them, and be deemed perpetual curacies, and the right of nomination thereto shall be vested in the person so building and endowing.

Perpetual Injunction, an injunction which finally disposes of the suit, and is indefinite in point of time; as opposed to an injunction *ad interim*, i.e., until the trial or further order. See INJUNCTION.

Perpetuating Testimony. When evidence is likely to be irrecoverably lost, by reason of a witness being old, or infirm, or going abroad before the matter to which it relates can be judicially investigated, equity will, by anticipation, preserve and perpetuate such evidence in order to prevent a failure of justice; and by R. S. C. Ord. XXXVII., r. 35, superseding but substantially re-enacting the repealed 5 & 6 Vict. c. 69, any person who would become entitled, upon the happening of any future event, to any

honour, title, dignity, or office, or to any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such future event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim.

This jurisdiction emanates from the anxiety of equity to ward off litigation, where it may be oppressively exercised, by preserving the evidence in maintenance of an unpossessed legal right, or where an adversary with an apparent right is postponing his attack against the lawful possessor, until the death of witnesses who can give evidence against his claim. A common case used to be that of a devisee establishing a will against the heir-at-law, by compelling him to litigate the question at once or not at all, and by perpetuating the evidence of the attesting witnesses. See DE BENE ESSE.

The suit for declaration of legitimacy is in the nature of a suit for perpetuating testimony. See LEGITIMACY DECLARATION ACTS.

The Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35), s. 6, provides in criminal cases for the taking of the depositions of persons dangerously ill and not likely to recover, and the making of the same evidence in certain events after the death of such persons, and see now Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86), s. 13 (3).

Perpetuity, unlimited duration ; exemption from intermission or ceasing, where, though all who have interest should join in a covenant, so that they could not bar or pass the estate. It is odious in law, destructive to the commonwealth, and an impediment to commerce, by preventing the wholesome circulation of property.

The rule against perpetuities, or the doctrine of remoteness, applies to the *corpus* of property whether real or personal, and whether limited by deed or will, and may be thus stated : that the vesting of property cannot be postponed, or the alienation of it restricted, beyond any number of lives in being [whether interested or not is quite immaterial (*Duke of Norfolk's Case*, 3 Cha. Ca. 1 ; 33 Car. 2, called 'the Case of Perpetuities' ; and *Stephens* v. *Stephens*, Ca. *tem.* Talb. 228 (1736))], and twenty-one years from the death of the surviving life, without reference to the infancy of any person who is to take under the limitations, or of any other person, allowance for gestation being made only in those cases where it exists. If proof of the extinction of the lives mentioned is impracticable before the property can vest, the trust may be avoided (*Re Villar*, 1929, 1 Ch. 243).

The rule requires a limitation, whether of an absolute or partial interest, positively and necessarily to vest within the period prescribed, and not to depend upon a mere possibility. Moreover, not only the person to take, but also the precise amount of his interest, must be ascertained within the prescribed period (*Blight* v. *Hartnoll*, (1881) 19 Ch. D. 294 ; *Re Thompson*, 1906, 2 Ch. p. 202).

In regard to limitations and interests which take effect under or by virtue of any instrument executed before 1926 or any will of a person who died before that date, and subject to s. 163 of the Law of Property Act, 1925, *infra*, to all limitations after that date, if the rule be exceeded, the limitation is wholly void and cannot be validated by the happening of any event subsequently to its creation. When a limitation might have included objects too remote it is invalid, notwithstanding the objects may actually be ascertained within the verge of the rule. Further, limitations following upon a limitation void for remoteness are themselves void, whether within the line of perpetuity or not. But the Law of Property Act, 1925, s. 163, declares that :

Where in a will, settlement or other instrument the absolute vesting either of capital or income of property or the ascertainment of a beneficiary or class of beneficiaries, is made to depend on the attainment by the beneficiary or members of the class of an age exceeding 21 *years and thereby the gift to that beneficiary or class or any member thereof or any gift over, remainder, executory limitation or trust arising on the partial or total failure of the original gift is, or but for this section would be, rendered void for remoteness, the will, settlement or other instrument shall take effect for the purposes of such gift, gift over, remainder, executory limitation, or trust as if the vesting or ascertainment aforesaid had been made to depend on the beneficiary or member if the class attaining the age of* 21 *years and that age shall be substituted for the age stated in the will, settlement or other instrument.*

The statutory modification only extends to instruments executed after 1925 or to any appointment or bequest by will of a person dying after 1925.

The period presented by the rule is to be computed from the date or delivery of the deed creating the limitations, or from the testator's death, when given by will, that being the period at which a will takes effect,

while a power in favour of a special class or class is considered to have been created by the instrument conferring the power and not by the instrument exercising it.

The following limitations are exempt from the perpetuity rule :—

(1) A limitation expectant upon an entail, for it can be destroyed by barring the entail ; but should the entail be preceded by a term for years, and its trusts be postponed until the failure of the issue in tail, they will be void, because limited to arise on an indefinite failure of issue.

(2) Limitations the nature of whose subject-matter is such as to render it necessary for them to take effect, if at all, within the period prescribed by the perpetuity rule.

(3) Limitations in mortmain, and to charitable uses. Church property is not embraced by the law of perpetuity.

(4) Perpetuities allowed or created by Act of Parliament, such as Blenheim, settled upon the renowned Duke of Marlborough and his posterity (3 & 4 Anne, c. 6 ; 4 Anne, c. 4 ; and 5 Anne, c. 3) ; and Strathfieldsaye, on the great Duke of Wellington and his descendants (41 Geo. 3, c. 59 ; 42 Geo. 3, c. 113 ; and 54 Geo. 3, c. 171). See also as to the effect of an Act of Parliament, *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.*, 1900, 2 Ch. 352 ; 1901, 2 Ch. 37.

(5) Express exceptions set out in the Law of Property Act, 1925, s. 162, relating to rents, rent-charges and rights to land or relating to land and certain rights or remedies connected therewith, and see also s. 7, *ibid.* (determinable fees).

Closely connected with the rule against perpetuities was another and independent rule, commonly known as the rule against double possibilities, or the rule in *Whitby* v. *Mitchell*, (1890) 44 Ch. D. 85, viz., that after an estate has been limited to an unborn person for life, a remainder cannot be limited to any child of that unborn person, and this rule applies to equitable as well as to legal estates ; see *Re Nash*, 1901, 1 Ch. 1. This rule has been abolished in regard to the instruments coming into operation after 1925 (Law of Property Act, 1925, s. 161). See POSSIBILITY.

For the general law of perpetuities, consult the works of Lewis (1849) ; Marsden (1883) ; and Prof. Gray (Boston, U.S.A., 2nd ed. 1906) ; and as to option of purchase in a lease, and the present restrictions on the creation of a lease *in futuro*, see OPTION and LEASE.

Compare also title ACCUMULATION.

Per Pro. By procuration, which see.

Per quæ servitia, a judicial writ issuing from the note of a fine ; it lay for cognisee of a manor, seigniory, chief rent, or other services to compel him who was tenant of the land at the time of the note of the fine levied, to attorn unto him.—*Old N. B.* 155.

Perquisite, something gained by a place or office over and above the stated wages ; anything gotten by industry or purchase with money different from that which descends from a father or ancestor ; also fines of copyholds, heriots, amerciaments, etc.

Perquisitor, a searcher.

Per quod (whereby), a phrase formerly made use of by a plaintiff in a declaration alleging special damage, without which an action would not have been maintainable.

Per quod servitium amisit, words used by a plaintiff in his claim for damages from a defendant who has deprived him of the services of his servant by a wrongful act. See, e.g., *Martinez* v. *Gerber*, (1841) 3 M. & G. 88 ; *The Amerika*, 1917, A. C. at p. 38 ; SEDUCTION.

Perry, a drink made from the juice of pears fermented. The Finance (1909-10) Act, 1910, provides that any reference to cider shall include a reference to perry.

Per se, by itself, taken alone.

Person, in an Act of Parliament passed after 1st January, 1890, includes ' any body of persons corporate or unincorporate ' unless the contrary intention appears.—Interpretation Act, 1889, s. 19. A corporation, such as a limited company, may be a ' respectable and responsible person ' within the meaning of a covenant against assignment in a lease (*Willmott* v. *London Road Car Co.*, 1910, 2 Ch. 525). A corporation is not a person for the purpose of suing for penalties as a common informer unless expressly empowered by statute to do so (*Guardians of St. Leonards* v. *Franklin*, 3 C. P. D. 377). Apart from the provisions of the Interpretation Act, 1889, a firm of partners is not a person, although partners may sue or be sued in the firm's name (R. S. C. Ord. XLVIII.A, r. 1), and artificial persons are endowed only with the status or capacity conferred by the charter or statute of incorporation, see CORPORATION ; COMPANY ; TRUST CORPORATION.

Person of full age, under the Settled Land Act, 1925, means a person not being an infant, see *Re Earl of Carnarvon's Settled Estates*, 1927, 1 Ch. 138, and therefore includes a corporation (*ibid.*). An infant

cannot be a tenant for life under s. 19 of the Act.

Person of Unsound Mind, a term by which in a more enlightened age persons afflicted with a mental illness affecting their reason are to be known, as distinguished from Idiots, Imbeciles, Feeble-minded Persons and Moral Defectives under the Mental Deficiency Act, 1927 (17 & 18 Geo. 5, c. 33) (see those titles, and LUNATICS).

The statute law affecting persons of unsound mind is contained in the Lunacy and Mental Treatment Acts, 1890 to 1930, of which the principal are the Lunacy Acts, 1890 (53 & 54 Vict. c. 5), 1891 (54 & 55 Vict., c. 56), and, as regards Boards of Control, the Mental Deficiency Acts, 1913 to 1927, and the Mental Treatment Rules, 1930 (S. R. & O., 1930, No. 1083). A classification of patients has been made as follows: (*a*) Voluntary (see the Act of 1930, s. 1; (*b*) Temporary (*ibid.*, s. 5 (1); (*c*) Certified (Lunacy Act, 1890, s. 4); (*d*) Found to be of unsound mind upon inquisition (see that title), and a further classification is into a private certifiable patients and rate-aided certifiable patients. Voluntary and temporary patients will be admitted or received into the charge of institutions, hospitals, licensed houses, nursing homes, or single care as provided by the Acts, without being certified; and see 26 Geo. 5 & 1 Edw. 8, c. 17 (*paying patients*). In all other cases the requirements are:—

(1) An order of judicial authority (county court judge, stipendiary or police magistrate, or justice of the peace specially appointed) for the detention as persons of unsound mind of any such person not so found by inquisition.

(2) Examination of all detained persons of unsound mind with a view to their discharge unless they are expressly certified still to be in that state.

The Acts also authorize and provide for the management and administration of the estates and property of persons who are not detained as, and not found to be persons of unsound mind, who are proved to the satisfaction of the judge in lunacy to be, through mental infirmity arising from disease or age, incapable of managing their affairs.

The powers and duties of the Commissioners in Lunacy were transferred to the Board of Control by the Mental Deficiency Act, 1913, s. 65.

The Lord Chancellor's Visitors, who are independent of the Board of Control, report to the Judge or Master in Lunacy.

The Mental Treatment Rules, 1930, chiefly relate to the reception of lunatics, and their proper care and treatment. The Patients Estate Rules, 1934 (S. R. & O., 1934, No. 269/L.2), relate chiefly to inquisitions (*q.v.*) and the management and administration of the property of patients. See also CONCURRENT JURISDICTION; MASTER IN LUNACY.

See *Mills and Poyser's Lunacy Practice; Archbold's Lunacy and Mental Deficiency; Pope on Lunacy; Heywood and Massey's Lunacy Practice; Chitty's Statutes*, tit. '*Lunatics*.' Under the present practice a person who has become more or less of unsound mind is not generally so found, nor is a committee appointed; the usual course is to obtain the appointment of a 'receiver,' who manages the patient's affairs under the direction of the Masters in Lunacy. The cost of maintenance in a criminal lunatic asylum is a Crown debt recoverable against the lunatic's estate (*In re J.*, 1909, 1 Ch. 574).

Persona, anybody capable of having and becoming subject to rights.—*Civ. Law.* See *Sand. Just.*

Personæ ecclesiæ, the parson or personation of the church.

Personable, the being able to hold or maintain a plea in court; also capacity to take anything granted or given.—*Plowd.*

Personal Action, one brought for the specific recovery of goods and chattels, or for damages or other redress for breach of contract, or other injuries, of whatever description, the specific recovery of lands, tenements, and hereditaments only excepted. The term has been used in a narrower sense to express an action for injury to the person, as for slander, assault, injury by accident, as distinguished from injury to property. It is in this sense that it is said '*Actio personalis moritur cum personâ*.' See that title, and EXECUTOR and NEGLIGENCE.

Personal Acts of Parliament, statutes confined to particular persons, e.g., authorizing a person to change his name, etc.

Personal Bar, the name applied in Scotland to estoppel (*q.v.*).

Personal Chattels, goods, money, or moveables, and see the definitions in the Optional Statutory Forms of Wills prescribed under the Law of Property Act, 1925, s. 179, by S. R. & O., 1925, No. 780/L.15, and Adm. of Estates Act, 1925, s. 55.

Personal Property, money, goods, cattle, chattels, stocks, shares, securities, debts, etc., and also leases for years, however long. Personal property is either *in possession*, or *in action*, where a man has not the actual

occupation of the thing, but only a right to it arising upon some contract, and recoverable by an action at law.

Any person may assign personal property, including chattels real, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.—Law of Property Amendment Act, 1859, s. 21.

This was extended by the Emergency Act, 1881, to conveyances of freehold land or choses in action by a husband to a wife or *e contra*. Now, by the Law of Property Act, 1925, s. 72, a person may convey real or personal property to himself alone.

In the case of real property there can be no such thing as an absolute ownership in the subject-matter, i.e., land; the utmost that any one, even an owner in fee simple, can have is an estate. But in the case of personal property the primary rule is precisely the reverse; such property is essentially the subject of absolute ownership and cannot be held for any estate (*Williams on Pers. Prop.*). This strict rule of the law, however, was not recognized in equity, and accordingly under a gift of personal property to A. for life and after his decease to B., the Court of Chancery, to carry out the obvious intention, would hold that A. was entitled to a life interest merely, and that B. had during the life of A. a vested interest in remainder of which he could dispose at his pleasure; and if the property consisted of moveable goods, A. could be compelled to furnish and sign an inventory of them and an undertaking to take proper care of them. See *Re Swan*, 1915, 1 Ch. 829. The only exception was in the case of goods *quæ ipso usu consumuntur*, e.g., wines and household provisions, for in these a person to whom they are given for life takes the absolute interest. The proper and usual mode of creating limited interests in personal property is by means of the doctrine of trusts, i.e., by vesting the property absolutely in trustees and declaring that they shall hold it upon trust for the proposed beneficiaries either for life or otherwise as may be agreed. But even in equity personalty which was settled either by deed or will to follow the trusts of an equitable entailed estate in land vested absolutely in the first tenant in tail at his birth. See *Re Lord Chesham*, 1909, 2 Ch. 310. Joint tenancy and tenancy in common may subsist in the case of personal property, though now tenancy in common of any legal estate in land, including leaseholds or other interests in land, has been abolished (Law of Property Act, 1925, s. 1); of the latter kind of property almost every marriage settlement affords an instance. The policy of the land and property legislation of 1925 being to assimilate the law of real and personal property as much as possible, the Law of Property Act, 1925, provides (s. 130) that personal property may be entailed like real estate, but only (in either case) by way of equitable interest (see TAIL). Before the Land Transfer Act, 1897, a notable distinction between realty and personalty was that realty devolved directly on the heir or devisee upon the death of a person seised of the estate or inheritance. After that Act it devolved upon the personal representative in trust for the heir or devisee, and after the Administration of Estates Act, 1925, it devolved, as personal property and chattels real had always devolved, upon the personal representative, whose conveyance or assent is necessary and sufficient to confer title.

Personal Representatives, executors or administrators of a deceased person. See EXECUTOR; ADMINISTRATOR; and REAL REPRESENTATIVE.

Personal Rights, the rights of personal security, comprising those of life, limb, body, health, reputation, and the right of personal liberty.

Personal Tithes, those that are paid out of such profits as come by the labour of a man's person, as by buying and selling, gains of merchandise, handicrafts, etc.

Personality of Laws. By the personality of laws, foreign jurists generally mean all laws concerning the condition, state, and capacity of persons; by the reality of laws, all laws which concern property or things; *quæ ad rem spectant*. Whenever they wish to express that the operation of a law is universal, they compendiously announce that it is a personal statute; and whenever, on the other hand, they wish to express that its operation is confined to the country of its origin, they simply declare it to be a real statute.—*Story's Confl. of Laws*, 8th ed. p. 20.

Personalty, personal property—as distinguished from realty, or real property, in the usual sense of the word, freehold or copyhold land or houses; that which relates to the person. See PERSONAL PROPERTY.

Personation, pretending to be some other particular person.

Personation in order to obtain property is made felony by the False Personation Act, 1874 (37 & 38 Vict. c. 36). Personation of a voter is made felony by the Ballot Act, 1872, and personation of a master for the purpose

of giving a false character to a servant is a misdemeanour by 32 Geo. 3, c. 56. Personation of an official entitled to wear uniform, see 10 & 11 Geo. 5, c. 75, s. 1; of police, 2 & 3 Vict. c. 93; and, generally, Local Government Act, 1933, and Companies Act, 1929, s. 71, and other statutes.

Perspicua vera non sunt probanda. *Co. Litt.* 16.—(Evident truths need not be proved.)

Per stirpes (by the right of representation —literally, according to the stocks). See PER CAPITA.

Perticata terræ, the fourth part of an acre.

Perticulas, a pittance; a small portion of alms or victuals. Also, certain poor scholars of the Isle of Man.

Pertinents, appurtenants.—*Scots term.*

Per totam curiam, by the voice or judgment of the whole Court.

Perturbatrix, a woman who breaks the peace.

Per varios actus legem experientia fecit. 4 *Inst.* 50.—(By various acts experience framed the law.)

Per verba de futuro [tempore], **Per verba de præsenti** [tempore], a contract of marriage by words. See MARRIAGE.

Perverse Verdict, a verdict whereby the jury refuse to follow the direction of the judge on a point of law. See NEW TRIAL.

Pervise, the palace-yard at Westminster.—*Somner.*

Pesa, a weight of 256 lb.

Pesage, a custom or duty paid for weighing merchandise or other goods.

Peshcush, a present, particularly to Government, in consideration of an appointment, or as an acknowledgment of a tenure. Also tribute, fine, quit-rent, or advance, or stipulated revenues.—*Indian.*

Peshura, Paishura, guide, leader, the prime minister of the Mahratta Government. —*Ibid.*

Pessimi exempli, of the worst example.

Pessona, mast of oaks, etc., or money taken for mast, or feeding hogs.—*Cowel.*

Pessurable, Pestarble, or **Pestarable Wares,** merchandise which takes up a good deal of room in a ship.

Pests. See DESTRUCTIVE INSECTS.

Peter-pence, an ancient levy or tax of a penny on each house throughout England paid to the Pope, called *Peter-pence,* because collected on the day of St. Peter *ad vincula.* Abolished by 25 Hen. 8, c. 21.

Petit Cape. See CAPE.

Petitio, a count or declaration.—*Glanv.*

Petition, a supplication made by an inferior to a superior, having jurisdiction to grant redress.

The subject has a right to petition the sovereign, or the two Houses of Parliament, and all commitments and prosecutions for such petitioning are declared by the Bill of Rights (see BILL OF RIGHTS) to be illegal.

But by 13 Car. 2, st. 1, c. 5, prior in date to the Bill of Rights, it was enacted that not more than twenty names should be signed to a petition to the Crown or either House of Parliament for alteration of matters in Church or State, without the previous approval of the contents by three justices or the majority of a grand jury, and further, that no petition should be presented by a company of more than ten persons.

There are several regulations respecting petitions to Parliament, which, if neglected in any one particular, will prevent their reception. For instance, signatures or marks must be original, not copies nor signatures of agents on behalf of others; no chairman of a public meeting can sign for the whole meeting (though the common seal of a corporation is received as the petition of the whole corporate body). In the Chancery Division of the High Court, petitions (as to which see R. S. C. 1883, Ord. LII., rr. 16 *et seq.*) are used for getting money out of court. and a variety of other matters, but many matters in which a petition was formerly necessary are now disposed of on originating summons. Consult *Dan. Ch. Pr.*

In bankruptcy, proceedings are commenced by one or more creditors of the debtor, or the debtor himself, filing a petition in the Court of Bankruptcy, praying that the debtor may be adjudged bankrupt. See ACT OF BANKRUPTCY.

Petition to wind up a company. A winding-up of a company by order of the Court must be begun by petition (Companies Act, 1929, s. 170). For form of petition, see Winding-up Rules, 1929, and WINDING UP.

Divorce and matrimonial suits, and suits instituted under the Legitimacy Declaration Act, are commenced by petition.

As to election petitions, see that title.

Petition de droit (Petition of Right), one of the Common Law methods of obtaining possession or restitution from the Crown of either real or personal property, or compensation in damages for breach of contract, the Crown not being liable to an ordinary action at the suit of a subject. It is said to owe its origin to Edward I.

By the Petition of Right Act, 1860 (23 & 24 Vict. c. 34) (commonly called Bovill's Act),

the procedure on a petition of right is assimilated as far as practicable to the course of an ordinary action. The fiat of the sovereign 'that right be done' is, however, a necessary preliminary step; this is obtained by leaving the petition with the Home Secretary. A judgment that the suppliant is entitled to the whole or some portion of the relief sought by his petition, or to such other relief as the Court may think right, has the same effect as a judgment of *amoveas manus*. Costs are made payable both to and by the Crown, and nothing in the Act is to prevent any suppliant from proceeding as he might have done before the Act passed. Consult *Robertson on the Crown*.

Petition of Right, 3 Car. 1, c. 1, a parliamentary declaration of the liberties of the people, assented to by Charles I. in the beginning of his reign.

In the first parliament of Charles I., which met in 1626, the Commons refused to grant supplies until certain rights and privileges of the subject, which they alleged had been violated, should have been solemnly recognized by a legislative enactment. With this view they framed a petition to the king, in which, after reciting various statutes by which their rights and privileges were recognized, they prayed the king 'that no man be compelled to make or yield any gift, loan, benevolence, tax, or suchlike charge, without common consent by Act of Parliament; that none be called upon to make answer so to do; that freemen be imprisoned or detained only by the law of the land, or by due process of law, and not by the king's special command, without any charge; that persons be not compelled to receive soldiers and mariners into their houses against the laws and customs of the realm; that commissions for proceeding by martial law be revoked; all which they pray as their rights and liberties, according to the laws and statutes of the realm.'

To this petition the king at first sent an evasive answer: 'The king willeth that right be done according to the laws and customs of the realm, and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrongs and oppressions contrary to their just rights and liberties, to the preservation whereof he holds himself in conscience obliged as of his own prerogative.' This answer being rejected as unsatisfactory, the king at last pronounced the formal words of unqualified assent, *Soit droit fait comme est desiré*—'Let right be done as it is desired' (3 Car. 1, c. 1). Notwithstanding this, however, the ministers of the Crown caused the petition to be printed and circulated with the first insufficient answer.—See *Hall, Const. Hist.* ch. vii.

Petitioning Creditor, one who applies for an adjudication in bankruptcy against his debtor. See Bankruptcy Act, 1914, ss. 3 *et seq.*, whereby the creditor's debt must be a liquidated one for 50*l.* at least, and grounded upon an act of bankruptcy (see Act of Bankruptcy) having occurred within three months before the presentation of the petition.

Petitio principii, begging the question, which is the taking of a thing in itself in dispute or not proved or false, for true or for granted, and drawing conclusions from it as such, when it is really dubious, perhaps false, or at least wants to be proved, before any rational inference can be drawn from it. For a discussion of the further question 'Is the syllogism a *petitio principii*?' see 1 *Mill's Log.*, bk. 2, chap. 3, s. 1.

Petit Jury, a jury in criminal cases who try the bills found by the grand jury. See Jury.

Petit Larceny, stealing of goods to the value of a shilling or under. The distinction between grand and petit larceny was abolished by 7 & 8 Geo. 4, c. 29, s. 2.

Petit Serjeanty, holding lands of the Crown by the service of rendering annually some small implement of war, as a bow, a sword, a lance, an arrow, flag, or the like. By s. 136 of the Law of Property Act, 1922, nothing in the Act shall affect the services incident to Grand or Petty Serjeanty (which are not to be deemed manorial incidents; see Copyhold), and the land is to be held in like manner as if before the commencement of the Act it had been held in free and common socage or had been copyhold as the case may require. See *Co. Litt.*, 108 *a*, and Tenure.

Petit Treason, treason of a lesser kind, as if a servant killed his master, a wife her husband, a secular or religious man his prelate. But by 9 Geo. 4, c. 31, s. 2, every offence which, before the passing of the Act, would have amounted to petit treason, is deemed murder only.

Peto's Act, the Trustee Appointment Act, 1850 (13 & 14 Vict. c. 28), whereby property conveyed for religious or educational purposes vests in the trustees from time to time without any further conveyance; amended by the Trustees Appointment Act, 1890, by its extension to societies of associated congregations, such as those of the Wesleyan Methodists, to which body the Act of 1850

had been held in *Re Hoghton Chapel*, (1854) 2 W. R. 631, not to apply. Extended to burial grounds by 32 & 33 Vict. c. 26.

Petra, a stone weight.

Petroleum. The landing, carriage, and storage of petroleum, a highly inflammable oil, is regulated by the Petroleum (Consolidation) Act, 1928 (18 & 19 Geo. 5, c. 32); under which petroleum includes crude petroleum, oil made from petroleum or from coal, shale, peat or other bituminous substances, and other products of petroleum; and 'petroleum spirit' means such petroleum which when tested in the manner set out in the schedule gives off an inflammable vapour at a temperature of less than 73° Fahrenheit. The Act also prohibits the keeping of petroleum without a licence (except a small amount in sealed cans for private use). Accidents causing loss of life by petroleum must be reported to the Secretary of State.

The Petroleum (Production) Act, 1934 (24 & 25 Geo. 5, c. 36), vests in the Crown the property in petroleum and natural gas within Great Britain and makes provision with respect to the searching and boring for petroleum. It prohibits the boring for petroleum in the United Kingdom unless on behalf of or under licence for the Crown. Petroleum for the purposes of this Act includes any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

See also London County Council (General Powers) Act, 1912, Part II.; London Building Act, 1930, s. 99; and EXPLOSIVE SUBSTANCES; OIL IN NAVIGABLE WATERS; MOTOR SPIRIT; and *Chitty's Statutes*, tit. '*Petroleum.*'

Pettifogger [fr. *petit*, Fr., little, and *vogueur*, a rower], a dishonest lawyer in a mean way of business.—*Cant term.*

Petty-bag Office, an office belonging to the Common Law jurisdiction of the Court of Chancery, for suits for and against solicitors and officers of that Court, and for process and proceedings by extents on statutes, recognizances, *ad quod damnum*, *scire facias* to repel letters-patent, etc.—*Termes de la Ley.* The term is derived from the little bag (*parva baga*) in which original writs relating to the business of the Crown were anciently kept.

By the Great Seal Offices Abolition Act, 1884, s. 5, provision was made for the abolition of the office of Clerk of the Petty Bag, and the transfer of his duties, and in 1888, the last holder of the office dying, it ceased to exist.

The Common Law jurisdiction of the Court of Chancery is now transferred to the High Court of Justice (Jud. Act, 1925, s. 18 (2) (*b*)), replacing Jud. Act, 1873, s. 16).

Petty Constables, inferior officers in every town and parish, subordinate to the high constable of the hundred. See CONSTABLE.

Petty Jury. See PETIT JURY.

Petty Sergeanty. See PETIT SERJEANTY.

Petty Sessions. A meeting of two or more justices of the peace, not being a general or quarter sessions, to transact business with which it is either necessary or desirable that more than one justice should deal. The expression is, however, often used to denote a *Petty Sessional Court*, which is defined as 'a court of summary jurisdiction, consisting of two or more justices, sitting in a petty sessional court-house,' and includes 'any stipendiary magistrate when sitting in a court-house or place at which he is authorized to do alone any act authorized to be done by more than one justice of the peace.'—Interpretation Act, 1889, s. 13 (12). The principal business transacted by a petty sessional court is the trial of minor offences in a summary way without a jury. This power is given by various statutes dealing with particular offences and by the Summary Jurisdiction Acts. There is an appeal from the decision of a petty sessional court on questions of law and fact to quarter sessions in the manner provided by the S. J. Acts by any person aggrieved by any conviction in respect of any offence who did not plead, or who has pleaded, guilty, or did or did not admit the truth of the information (Criminal Justice Administration Act, 1914, s. 37, and Criminal Justice Act, 1925, s. 25). An alternative method of appeal on a point of law only is by case stated to the High Court. Appeals to petty sessions are provided for by a number of Acts, e.g., Public Health, Housing, Road Traffic, etc. As to the duties of justices, see JUSTICES, and *Stone's Justices' Manual.*

Pew [fr. *puye*, Dut.; *appui*, Fr.], an enclosed seat in a church. It is somewhat in the nature of an heirloom, and may descend by immemorial custom, without any ecclesiastical concurrence, from an ancestor to his heir. Consult *Cripps's Law of the Church and Clergy*, 5th ed., 467.

The right to sit in a particular pew in the church arises either from prescription, as appurtenant to a messuage—but not to land (*Philipps* v. *Halliday*, 1891, A. C. 228), or

from a faculty or grant from the ordinary, for he has the disposition of all pews, which are not claimed by prescription. As to the proof of a right by prescription and the doing of repairs, see *Stileman-Gibbard* v. *Wilkinson*, 1897, 1 Q. B. 749, and see *Bathurst* (*Earl*) v. *Cirencester Parish*, 1921, P. 381. All other pews and seats in the body of a church are the property of the parish; and the churchwardens, as the officers of the ordinary, and subject to his control, have authority to place the parishioners therein. See 3 *Steph. Com.*; *Carson's R. P. Stat.*, p. 98; 3 *Hagg. Ec. Rep.* 733; *Reynolds* v. *Monckton*, 1841, 2 M. & Rob. 384.

The New Parishes Act, 1856, s. 6, provides for pew-rents in district churches, but also that one half of the whole number of pews or sittings shall be free sittings; the New Parishes Acts and Church Building Acts Amendment Act, 1869, that pews or sittings which are subject to any trust or are private property may be surrendered to the bishop and become 'subject to the same laws as to all rights and property therein as the pews and sittings of ancient parish churches'; and by the Church Seats Act, 1872, the Ecclesiastical Commissioners may accept a church site under a grant declaring that the pews or part of them shall not be let. A mortgage of pew rents by the vicar of a district church is void under the Act 13 Eliz. c. 20 (*Ex parte Arrowsmith*, (1878) 8 Ch. D. 96). See *Chitty's Statutes*, tit. '*Church and Clergy*.'

Pharmaceutical Society of Great Britain. See CHEMIST AND DRUGGIST.

Pharmacopœia (British), a book containing a list of medicines and compounds, and the manner of preparing them, together with the true weights and measures by which they are to be prepared and mixed, published by the Medical Council, under the Medical Act, 1858, s. 54, as amended by 25 & 26 Vict. c. 91. As to whether the standard set up by the British Pharmacopœia is final and absolute, see *Dickins* v. *Randerson*, 1901, 1 K. B. 437; *Boots Cash Chemists, Ltd.* v. *Cowling*, 88 L. T. 539.

Pharmacy Acts. See CHEMIST AND DRUGGIST, and POISON.

Pharos, a watch-tower, or sea-mark, which cannot be erected without lawful warrant and authority.—3 *Inst.* 204.

Phatuk, a gaol or prison.—*Indian.*

Pheasant. See GAME, and for larceny of young hen-hatched pheasants, see *R.* v. *Corry*, (1864) 10 Cox, 23.

Photographs. By the Copyright Act, 1911, s. 5, the author of a work is the first owner of the copyright therein, but where in the case of a photograph the plate or other original was ordered by some other person, and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered will be the first owner of the copyright; and such person can restrain the public sale of his photographic likeness (*Pollard* v. *Photographic Co.*, (1888) 40 Ch. D. 345). The period for which copyright in photographs subsists is fifty years from the making of the original negative (s. 21). 'Photograph' includes photo-lithograph and any work produced by any process analogous to photography (s. 35). See COPYRIGHT.

It is a misdemeanour to send indecent matter, including photographs, through the post (Post Office Act, 1908, s. 63, as amended by the Post Office Act, 1935, s. 13 and 1st Sched.).

Photographing or sketching a judge, magistrate, coroner or any litigant, juror, etc., in Court or its precincts is an offence under the Criminal Justice Act, 1925, s. 4, and as to prohibited places, see the Official Secrets Acts, 1911 and 1920.

As to taking photographs of criminals, see PREVENTION OF CRIMES ACT, 1871.

Phylaxist [fr. φυλάσσω, Gk., to keep], a gaoler.

Physician, one who professes the art of healing.

The necessity of placing under supervision the practitioners of physic and surgery appears early in the statute-book; for by the still unrepealed 3 Hen. 8, c. 11, it is enacted, that no person within London or seven miles thereof, shall practise as a physician or surgeon without examination and licence of the Bishop of London or Dean of St. Paul's (duly assisted by the faculty); or beyond these limits without licence from the bishop of his diocese or his vicar-general similarly assisted, saving the privileges of the Universities of Cambridge and Oxford. The superintendence of the bishops was taken away by a royal charter, dated 23rd September (10 Hen. 8), which incorporated the physicians. By 14 & 15 Hen. 8, c. 5, this charter was confirmed, and a perpetual college of physicians established with a constitution of eight elects, etc. The subsequent history of the college is sufficiently traced in 23 & 24 Vict. c. 66, which provides for the style of the new charters allowed to be granted by the Medical Act, 1858, s. 47. And

see *Davies* v. *Makuna*, (1885) 29 Ch. D. 596. The Act of 1858 was amended by the Medical Act, 1886 (49 & 50 Vict. c. 48); by s. 6 of this Act a physician may recover his fees by action unless he is a fellow of a college of physicians prohibited by bye-law from so doing; bye-law 170 of the Royal College of Physicians forbids such recovery. See MEDICAL PRACTITIONERS.

Piacle [Lat. *piaculum*], an enormous crime. Obsolete.

Picaroon [fr. *picare*, Ital.], a robber; a plunderer.

Pick of Land, a narrow slip of land running into a corner.

Pickage [fr. *picagium*, Low Lat.], money paid at fairs for breaking ground for booths.

Pickery, petty theft, or stealing things of small value.—*Bell's Scots Law Dict.*

Picketing [fr. *piquet*, Fr., a diminutive of *pique*, a pike]. In its legal sense this word means the stationing of men to watch and accost workmen passing between their homes and place of employment in order thereby to induce them to come out on strike, or to remain on strike. Such proceeding is to some extent legalized by the Trade Disputes Act, 1906 (6 Edw. 7, c. 47), s. 2 (1) of which is as follows:—

> 2. (1) It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

But the right of picketing is limited to peaceful attendance, and by the Trade Disputes and Trade Unions Act, 1927 (17 & 18 Geo. 5, c. 22), s. 3, the attendance in such numbers or otherwise in such manner as to be calculated to intimidate any person in that house or place, is declared to be unlawful. For a definition of intimidation see that Act, s. 3 (2), and the Conspiracy and Protection of Property Act, 1875 (c. 86), provides penalties for intimidation, which includes violence, persistent following, and watching and besetting.

As to the meaning of 'trade dispute,' see s. 5, sub-s. (3), of the Act; *Conway* v. *Wade*, 1909, A. C. 506; and that title.

Pickle, Pycle, or **Pightel** [fr. *piccolo*, Ital]. a small parcel of land enclosed with a hedge, which in some counties is called a pingle.

Pick-lock, an instrument by which locks are opened without a key.

Pick-pocket, or **Pick-purse,** a thief who steals by putting his hand privately into the pocket or purse of another: an offence punishable with great severity in early times and still a felony as larceny from the person within s. 14 of the Larceny Act, 1916. See *Reg.* v. *Ring*, (1892) 61 L. J. M. C. 116, where it was held an offence to attempt to pick an empty pocket.

Picture. For copyright in, see FINE ARTS; and as to the copyright in a picture not registered at the commencement of the Copyright Act, 1911, see *E. W. Savory* v. *The World of Golf*, 1914, 2 Ch. 566. Where framed pictures are sent by rail, the frames as well as the pictures are within the Carriers Act (*Henderson* v. *London and N. W. Ry. Co.*, (1870) L. R. 5 Ex. 90); and see CARRIER. A picture may be libellous (5 Rep. 125); consult *Odgers on Libel.*

Piedpoudre, Court of [*curia pedis pulverizati*, Lat., so called either from the dusty feet of the suitors, or because justice is there done as speedily as dust can fall from the foot; or derived from *pied puidreaux*, Old Fr., a pedlar or petty chapman, such as resorts to fairs or markets], a Court of record incident to every fair and market, though fallen into disuse, and now in a manner forgotten; of which the steward of him who owns, or has the toll of the market, is the judge; its jurisdiction extends to administer justice for all commercial injuries done in that very fair or market, and not in any preceding one; so that the injury must be done, complained of, heard and determined, within the compass of one and the same day, unless the fair continue longer. The Court had cognizance of all matters of contract that could possibly arise within the precinct of that fair or market, and the plaintiff must make oath that the cause of action arose there. A writ of error lay in the nature of an appeal to the Courts at Westminster.—3 *Reeves*, c. 20, p. 293.

Pierage, the duty for maintaining piers and harbours.

Piers and Harbours. As to the formation, management, and maintenance of piers and harbours in Great Britain and Ireland, see the General Pier and Harbour Act, 1861 (24 & 25 Vict. c. 45), amended by 25 Vict. c. 19, and later Acts. See HARBOURS.

Pietantia, a pittance, a portion of victuals distributed to the members of a college.

Pietantiarius, the officer in a college who distributed the *pietantia*.

Pig. See SWINE.

Pigeons. Unlawfully and wilfully to 'kill,

wound, or take any house dove or pigeon under such circumstances as shall not amount to larceny at common law' is, by s. 23 of the Larceny Act, 1861, punishable 'on conviction before a justice of the peace' by fine up to 2*l*., over and above the value of the bird, and though the owner be compensated and satisfied, any other person may prosecute; see *Cotterill* v. *Penn*, (1935) 51 T. L. R. 459, and L. Q. R. (1935), p. 60, in which a member of the 'National Homing Union' prosecuted. As to cruelty to pigeons, see Protection of Animals Act, 1911, s. 15, as amended by the Protection of Animals Act, 1927.

Piggot's Act (14 Geo. 2, c. 20), relating to recoveries which are abolished. Repealed by 30 & 31 Vict. c. 59.

Pightel, a little enclosure.

Pignorative, Pignorary [fr. *pignus*, Lat.], pledging, pawning.

Pignus, a pledge or security for a debt or demand, is derived, says Gaius (*Dig.* 50, tit. 16, s. 238), from *pugnus*, '*quia quæ pignori dantur, manu traduntur.*' This is one of several instances of the failure of the Roman jurists when they attempted an etymological explanation of words. The element of *pignus* (*pig*) is contained in the word *pa(n)go* and its cognate forms. A pledge was called *pignus* when the possession of a thing was transferred to the pledgee, and *hypotheca*, when the pledgor retained it in his possession. See *Sand. Just.*; 2 *Steph. Com.*

Pila, that side of money which was called *pile*, because it was the side on which there was an impression of a church built on piles. —*Fleta*, lib. 1, c. 39 [cf. Fr. '*pile ou face*'; 'heads or tails'].

Pileus supportationis (the cap of maintenance); see that title.

Pilferer, one who steals petty things.

Pillery, rapine; robbery. Obsolete.

Pillettus [fr. *pila*, Lat., a ball], in our ancient forest laws, an arrow which had a round knob a little above the head, to hinder it from going far into the mark.

Pillory, a frame erected on a pillar, and made with holes and moveable boards, through which the heads and hands of criminals were put.

The punishment of the pillory, abolished by 56 Geo. 3, c. 138, except for perjury, a person convicted for which was directed, by the still unrepealed 5 Eliz. c. 9, to have his ears nailed thereto, was altogether and finally abolished in 1837 by 7 Wm. 4 & 1 Vict. c. 23.

Pilot, a person taken on board at any particular place for the purpose of conducting a ship through a river, road, or channel, or from or into a port, defined in s. 742 of the Merchant Shipping Act, 1894, as meaning 'any person not belonging to a ship who has the conduct thereof.' Pilots are established in various parts of the country, by ancient charters of incorporation or by particular statutes. The most important of these in corporations are those of the Trinity House, Deptford Strond; the fellowship of the Pilots of Dover, Deal, and the Isle of Thanet, commonly called the Cinque Port Pilots; and the Trinity Houses of Hull and Newcastle. For the general law on the subject of pilots and pilotage, see the Pilotage Acts, 1913 (2 & 3 Geo. 5, c. 31) and amending Acts and the Pilotage Authorities (Limitation of Liability) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 36). Consult *Digby and Cole on Pilots.*

Compulsory Pilots.—By the Act of 1913, s. 15 (reversing the Common Law rule), owners and masters of ships become liable for damage caused by the ship or fault in navigation, in districts where the employment of a pilot is compulsory, even though the pilot was in charge of the ship.

A pilot is included in the Workmen's Compensation Act, 1925, s. 35 (4).

As to pilots by air, see Air Navigation Act, 1920.

Pilotage, the compensation of a pilot. Pilotage dues are not payable by his Majesty's ships (*Symons* v. *Baker*, 1905, 2 K. B. 723), unless they are registered under s. 80 of the Merchant Shipping Act, 1906.

Pimp-tenure, a very singular and odious kind of tenure mentioned by our old writers, '*Wilhelmus Hoppeshort tenet dimidiam virgatam terræ per servitium custodiendi sex damisellas, scil. meretrices ad usum domini regis.*'—12 Edw. 1. It is suggested by some writers that '*usum*' is a copyist's error for '*custum*,' and that the last four words mean 'at the cost of our lord the king,' and not 'for the use of our lord the king,' and that this record is one of reformatory activity.

Pin-money, an annual sum settled on a wife, to defray her personal expenses in dress and pocket-money. See *Howard* v. *Lord Digby*, (1834) 2 Cl. & Fin. 634; *Sugd. Law of Property*, pp. 162 *et seq.*

There was a very ancient tax in France for providing the queen with pins.

Pinnage [fr. *pin* or *pen*], poundage of cattle.

Pinner, a pounder of cattle, a pound-keeper.

Pint, or four gills; a measure of half a

quart, or the eighth part of a gallon. See Weights and Measures Act, 1878.

Pipe, a roll in the Exchequer; otherwise called the great roll. The Pipe Rolls contained an account of the ancient revenue of the Crown, written out in process every year to the several sheriffs of England, who were the general receivers and collectors thereof, and by them levied and answered to the Crown upon their annual accounts, before the clerk of the pipe (*First Rep. of Select Com. on Pub. Rec., App.* p. 161). The Pipe-office was abolished by 3 & 4 Wm. 4, c. 99. Consult *Hubback on Succession*, p. 624.

Piracy [fr. *pirata*, Lat.], the commission of those acts of robbery and violence upon the sea, which if committed upon land would amount to felony. Pirates hold no commission or delegated authority from any sovereign or state, empowering them to attack others. They can, therefore, be only regarded in the light of robbers. They are, as Cicero has truly stated, the common enemies of all (*communes hostes omnium*); and the law of nations gives to every one the right to pursue and exterminate them without any previous declaration of war (see *Piracy Jure Gentium*, 1934, A. C. 586, where a frustrated attempt was held to be piracy by that law); but it is not allowed to kill them without trial, except in battle. Those who surrender or are taken prisoners must be brought before the proper magistrates, and dealt with according to law. By the ancient Common Law of England, piracy, if committed by a subject, was held to be a species of treason, being contrary to his natural allegiance; if by an alien, to be felony only; but since the Statute of Treason (25 Edw. 3, c. 2), it is held to be only felony in a subject. Formerly this offence was only cognizable by the Admiralty Courts, which proceed by the rules of the civil law, but it being inconsistent with the liberties of the nation that any man's life should be taken away, unless by the judgment of his peers, the still unrepealed Offences at Sea Act, 1536 (28 Hen. 8, c. 15), established a new jurisdiction for this purpose, which proceeds according to the course of the Common Law.

By the Piracy Act, 1837 (7 Wm. 4 & 1 Vict. c. 88) (which repealed various previous enactments), it is provided by s. 2 that:—

2. Whosoever, with intent to commit or at the time or of immediately before or immediately after committing the crime of piracy in respect of any ship or vessel, shall assault, with intent to murder, any person being on board of or belonging to such ship or vessel, or shall stab, cut, or wound any such person, or unlawfully do any act by which the life of such person may be endangered, shall be guilty of felony, and being convicted thereof shall suffer death as a felon.

If sentence is passed under this section a *public* execution will have to take place, as the section is not within the Capital Punishment Amendment Act, 1868 (31 Vict. c. 24).

Section 3 of the Act of 1837 as now amended provides that:—

3. Whosoever shall be convicted of any offence which by any of the Acts hereinbefore referred to amounts to the crime of piracy, and is thereby made punishable with death, shall be liable to penal servitude for the term of the natural life of such offender.

As to the punishment of principals in the second degree and accessories before or after the fact, see s. 4 of the same Act. Various acts which do not amount to piracy at Common Law have been made piracy by statute, e.g., rendering assistance to a pirate, or boarding a merchant ship and destroying her goods (8 Geo. 1, c. 24, s. 1, made perpetual by 2 Geo. 2, c. 28). As to piracy, see 13 & 14 Vict. cc. 26, 27. As to the jurisdiction of the Admiralty in regard to the Colonies, see 12 & 13 Vict. c. 96 and 13 & 14 Vict. c. 26; to India, see 23 & 24 Vict. c. 88; in territorial waters, 41 & 42 Vict. c. 73, s. 6.

The Treaty of Washington Act, 1922, s. 4, provides for the trial and punishment of persons who violate any of the rules set forth in Art. 1 of Sch. II. of the Act as if for an act of piracy. These rules prohibit (*a*) the seizing of a merchant vessel in time of war unless first ordered to submit to visit and search; (*b*) the attack on such a vessel unless it refuses to submit to visit and search after warning or to proceed as directed after seizure; (*c*) the destruction of such a vessel unless the crew and passengers have been first placed in safety. As to the meaning of 'piracy' in a policy of marine insurance, see *Bolivia Republic* v. *Indemnity Mutual Insurance Co.*, 1909, 1 K. B. 785.

Piracy of Works, an offence against the law of copyright or an author's right to his works, which consists in an exclusive right to the sequence of the words as they stand; and if any one else reprint these without addition, subtraction, or transposition, it is an inroad on the author's right. But, on the one hand, the sentences and words may be so rearranged that, although nothing be added to or taken from them, they give a substantially new idea to the public, and are therefore no infringement of the law. And,

on the other hand, although parts may be omitted and new passages introduced, yet, if these alterations be merely colourable, and it is really an attempt to profit by taking the ideas of another, the publication is a piracy. An author who has been led by a former author to refer to older writers, may, without committing piracy, use the same passages in the older writers which were used by the former author (*Pike* v. *Nicholas*, 1869, L. R. 5 Ch. 251); as to pirating news from another newspaper, see *Walter* v. *Steinkopff*, 1892, 3 Ch. 489.

The remedies for piracy are, an action at law for damages, and an injunction to restrain its continuance. See INJUNCTION and COPYRIGHT.

Pirata est hostis humani generis. 3 *Inst.* 113.—(A pirate is an enemy of the human race.) See PIRACY.

Piscary, Common of, a right or liberty of fishing in the waters of another person. See *Ecroyd* v. *Coulthard*, 1898, 2 Ch. 358; *Chesterfield* (*Earl*) v. *Harris*, 1908, 2 Ch. 397; 1911, A. C. 623; *Staffordshire, etc., Navigation* v. *Bradley*, 1912, 1 Ch. 91; and FISHERY.

Pistol. See GUN; FIREARMS.

Pitching-pence, money (commonly a penny) paid for pitching or setting down every bag of corn or pack of goods in a fair or market.—*Jac. Law Dict.*

Pittance, a slight repast or refection of fish or flesh more than the common allowance; and the pittancer was the officer who distributed this at certain appointed festivals.—*Ibid.*

Pitt Press, the University Press at Cambridge.

Pix. See PYX.

Pl., abbreviation for Placitum, which see.

Placard, or **Placart** [fr. *placard*, Fr.; fr. *plaque*, a flat piece of metal, stone, or wood], an edict, a declaration, a manifesto; also an advertisement or public notification.

Place. See PUBLIC PLACE.

Place of Trial. See VENUE.

Placeman, one who exercises a public employment, or fills a public station; one who lays himself out for the obtaining of public appointments.

Placit, or **Placitum,** decree, determination.

Placita, the public assemblies of all degrees of men where the sovereign presided, who usually consulted upon the great affairs of the kingdom. Also, pleas, pleadings, or debates, and trials at law; sometimes penalties, fines, mulcts, or emendations; also, the style of the Court at the beginning of the record at *nisi prius*; but this is now omitted. See *Jac. Law Dict.*

Placitare, to plead.

Placitory, relating to pleas or pleading.

Placitum, any of the points decided in a judgment put concisely by the reporter, abbreviated *pl.* See PLACITA.

Placitum aliud personale, aliud reale, aliud mixtum. *Co. Litt.* 284.—(Pleas are personal, real, and mixed.)

Placitum nominatum, the day appointed for a criminal to appear and plead and make his defence.—*Leg. H.* 1, c. 29. *Placitum fractum*, when the day is past.

Plagiarist, or **Plagiary,** one who publishes the thoughts or writings of another as his own; if thoughts only, not expressed in the same or substantially the same words, there is no breach of copyright. See PIRACY OF WORKS.

Plagiarius, one who knowingly kept in irons, or confined, sold, gave, or bought a citizen (whether freeborn or a freedman), or the slave of another; the offence being called *plagium*.—*Civ. Law.*

Plagiary [fr. *plagiarius*, Lat.], a man-stealer.

Plagii-crimen, or **Plagium,** the stealing and retaining the children of freemen and slaves. —*Civ. Law.*

Plague [fr. πληγη, Gk., a wound], pestilence; a contagious and malignant fever.

By 1 Jac. 1, c. 31, it was a capital offence for any infected with the plague, after having been commanded by the mayor or constable, etc., to keep house, to go abroad and in company. This Act was repealed by 7 Wm. 4 & 1 Vict. c. 91, s. 4. See now Public Health Act, 1875 (38 & 39 Vict. c. 55), ss. 134–140; repealed as from October, 1936, and replaced by ss. 143–170, Public Health Act, 1936; and tits. PUBLIC HEALTH; QUARANTINE, *post*. For an account of the Great Plague in London in 1665, see *Pepys's Diary*.

Plaideur [Fr.], an attorney who pleaded the cause of his client; an advocate. Obsolete.

Plainant, a plaintiff.

Plaint [fr. *plainte*, Fr.; *querela*, Lat.], the statement in writing of a cause of action. It is the first process in an inferior court in the nature of an original writ, because there is briefly set forth the plaintiff's cause of action: and the judge is bound, of common right, to administer justice therein without a special mandate from the Crown.

Plaintiff [abbrev. *pltf.*, or *plff.*, fr. *plaintif*, Fr.], he who commences an action against another, who is called defendant.

Plan. In the Copyright Act, 1911, 'literary work' includes 'plans' (s. 35); and see also as to plans, s. 2, sub-s. (1) (ii). See COPYRIGHT. Under various Acts, plans have to be deposited with local authorities for various purposes. If the local authority neglect to pass the plans the remedy is by mandamus (*Davis* v. *Bromley Corporation*, 1908, 1 K. B. 170, and *R.* v. *Cambridge Corporation*, 1922 1 K. B. 250). As to a purchaser's right to have the property conveyed to him by reference to a plan on his conveyance, see *Re Sansom*, 1910, 1 Ch. 741; *Re Sparrow*, *ib.* 2 Ch. 60, and as to maps as evidence, *Storey* v. *Eastbourne R. D. C.*, 1927, 1 Ch. 367.

Under the Land Registration Act, 1925, s. 76, land may be described by description and a map or plan. For the practice of the Land Registry, consult *The Land Registry General Map*, by *W. S. Tratman*, and *L. R. Rules*, 272–285.

As to the property in plans, see ARCHITECT.

Plant, the fixtures, tools, machinery, and apparatus necessary to carry on a trade or business. See the Employers Liability Act, 1880, and *Yarmouth* v. *France*, (1887) 19 Q. B. D. 647, where a horse was held to be 'plant' within that Act; and see *National Provincial and Union Bank of England* v. *Charnley*, 1924, 1 K. B. 431, and *Daphne* v. *Shaw*, (1926) 53 T. L. R. 45. 'Plant' does not include solicitors' books under the Finance Act, 1925, s. 16.

For the meaning under the Rating and Valuation Acts, 1925 and 1929, consult *Weston Booth on Valuations for Rating*.

Plant. Stealing, or damaging with intent to steal, any plant, root, fruit or vegetable production growing in a garden, orchard, greenhouse, etc., is punishable on summary conviction by imprisonment up to six months with or without hard labour, or by fine up to 20*l.*; a second offence being felony punishable as simple larceny. Stealing, etc., any cultivated root or plant used for food of man or beast or dyeing or manufacture in any land, not being a garden, is punishable by imprisonment up to one month or fine up to 20*s.*—Larceny Act, 1861, ss. 36, 37. Malicious damage is similarly punishable by ss. 23, 24 of the Malicious Damage Act, 1861.

Plantation, a colony.

With respect to their internal policy our colonies are of three sorts: (1) provincial establishments; (2) proprietary governments; (3) charter governments.—*Steph. Com.* See COLONY.

Plate, of gold and silver. The duties were repealed by the Customs and Inland Revenue Act, 1890, s. 10. The hall-marking of foreign plate is prescribed by ss. 59, 60 of the Customs Act, 1842, as amended by the Hall-marking of Foreign Plate Act, 1904 4 Edw. 7, c. 6), which directs that foreign plate when brought to be assayed and stamped, as it has to be by revenue law, must be marked so as to distinguish it as foreign, and that every person bringing it to an assay office, unless it be in charge of a revenue officer, must state in writing whether it was wrought in England, Scotland, or Ireland, or was imported from foreign parts. Watch-cases imported from foreign parts before 1st June, 1907, are exempted from assay by the Assay of Imported Watch-Cases (Existing Stocks Exemption) Act, 1907. As to the meaning of 'plate' in ss. 2, 6 of the Plate (Offences) Act, 1738, and other statutes, see *Fabergé* v. *Goldsmiths' Co.*, 1911, 1 Ch. 286. Gold watches which are jewelled and set in gold chain-bracelets are not exempt from being hall-marked (*ibid.*).

Platform. He who causes a platform to be erected for viewing a public exhibition, and admits the public for payment thereto, impliedly guarantees, to those so admitted, the security of the platform: *Francis* v. *Cockerell*, (1870) L. R. 5 Q. B. 591, Ex. Ch.; and see s. 37 of the (adoptive) Public Health Acts Amendment Act, 1890, by which platforms erected or used on public occasions must be safely constructed to the satisfaction of the urban authority of urban districts in which the Act has been adopted.

Play-debt, debt contracted by gaming. See GAMING.

Play-grounds. See RECREATION GROUNDS.

Plea [fr. *plée*, Fr.]. This was the name of a defendant's answer of fact to a plaintiff's declaration; anciently a suit or action.

Pleas were divided into *common pleas*, relating to civil causes, and *pleas of the Crown*, relating to criminal prosecutions.

At *Common Law* pleas were divided into—

(1) Dilatory; which were subdivided into—

(*a*) To the jurisdiction of the Court,

(*b*) In suspension of the action,

(*c*) In abatement of the writ or declaration, and—

(2) Peremptory, i.e., in bar of the action.

The distinction between these two classes of pleas was, that the dilatory showed some ground for quashing the declaration, the peremptory for defeating the action. Consult *Bullen and Leake*, or *Odgers on Pleading*, and *Ch. Arch. Practice*.

In *equity*, a plea was resorted to by a defendant when an objection was not apparent on the bill itself, or, as the technical phrase was, where it arose from matter *dehors* the bill, other matter being dealt with by 'Answer' (see that title).

A defendant now raises his defence in all actions in the High Court of Justice by a statement of defence; see that title and PLEADING.

The order of a prisoner's pleas in *criminal* law is as follows:—

(1) To the jurisdiction.
(2) In abatement.
(3) Special pleas in bar, as
  (*a*) *Autrefois acquit.*
  (*b*) *Autrefois convict.*
  (*c*) *Pardon.*
(4) General issue of not guilty.

Plead, to make an allegation in a cause; also to argue a cause in court.

Pleader [fr. *narrator*, Lat.], one who draws pleadings. See SPECIAL PLEADER.

Pleading. 1. In its general sense, the proceedings from the statement of claim to issue joined, i.e., the opposing statements of the parties. 2. Any part of these proceedings.

The science of pleading was no doubt derived from Normandy. The use of stated forms of pleading is not to be traced among the Anglo-Saxons. Pleading was cultivated as a science in the reign of Edward I. The object of pleading is to ascertain, by the production of an issue, the subject for decision. Before the Judicature Acts, pleading in equity consisted of long statements of fact (generally with a liberal admixture of evidence) in 'bill' and 'answer'; while pleading at Common Law mainly consisted of short technical statements in 'declaration,' 'plea,' 'replication,' 'rejoinder,' 'surrejoinder,' 'rebutter,' 'surrebutter,' the four last being rarely used. The system of pleading under the Judicature Act is intended to combine the advantages of the two systems; it being provided by R. S. C. 1883, Ord. XIX., r. 4, that 'every pleading shall contain, *and contain only*, a statement in a summary form of the material facts on which the party pleading relies; but not the evidence by which they are to be proved,' and 'shall, when necessary, be divided into paragraphs numbered consecutively.' Consult *Bullen and Leake*, or *Odgers on Pleading*.

Plead Over, to follow up an opponent's pleading by replying, etc., and so overlooking some defect to which exception might have been taken.

Pleas of the Crown, the Criminal Law department of our jurisprudence; so called because the sovereign, in whom centres the majesty of the whole community, is supposed by the law to be the person injured by every wrong done to that community, and is, therefore, in all cases, the proper prosecutor for every such offence. See the works on this subject of *Coke* (3rd Institute), *Hale*, or *Hawkins*.

Pleasure-grounds may be provided by local authorities under the Public Health Act, 1875 (38 & 39 Vict. c. 55), s. 164 (this section coming in place of 11 & 12 Vict. c. 63, s. 74); and by parish councils under s. 8 of the Local Government Act, 1894, as amended by the Local Government Act, 1933. Rules prescribing restrictions and conditions can be made by virtue of s. 76 of the Public Health Acts Amendment Act, 1907. See RECREATION GROUNDS.

Plebanus, a rural dean.

Plebeity, or **Plebity,** the common or meaner sort of people; the plebeians.

Plebiana, a mother church.—*Old Record.*

Plebiscite, or **Plebiscitum,** among the Romans a law enacted by the common people at the request of the tribune or some other plebeian magistrate, without the intervention of the senate; more particularly applied to the law which the people made, when upon some misunderstanding with the senate they retired to the Aventine mount.

Pledge, anything put to pawn or given by way of warrant or security; also a surety, bail, or hostage. See PAWN; PIGNUS.

Pledgee, one who receives pledges; a pawnee.

Pledgery, suretyship, or an undertaking or answering for another.

Pledgor, one who offers a pledge, a pawner.

Plegii de prosequendo, pledges to prosecute with effect an action of replevin.

Plegii de retorno habendo, pledges to return the subject of distress, should the right be determined against the party bringing the action of replevin.—3 *Steph. Com.*

Plegiis acquietandis, a writ that anciently lay for a surety against him for whom he was surety, if he paid not the money at the day.—*Fitz. N. B.* 173.

Plena forisfactura, a forfeiture of all that one possesses.

Plena probatio, testimony by two witnesses.—*Civ. Law.*

Plenarty [*plenus*, full, Lat.], said of a benefice when full, or possessed by an incumbent; opposed to *vacancy*.—3 *Steph. Com.*

Plenary, full, complete; an ordinary pro-

ceeding through all its gradations and formal steps, opposed to *summary*.

Plenary causes in the Ecclesiastical Courts are reduced to the following :—

(1) Suits for ecclesiastical dilapidations.

(2) Suits relating to seats or sitting-places in churches.

(3) Suits for tithes.

Plene administravit (he has fully administered). A defence by an executor or administrator that he has fully administered all the assets that have come to his hands. If the defendant simply pleads *plene administravit* without any other defence, the plaintiff may apply under Ord. XXXII., r. 6, to have judgment for his debt and costs of future assets *quando acciderint;* or he may take issue on the defence, and if successful obtain judgment to the extent of the existing assets against the defendant and of future assets *quando acciderint* for the residue of his debt. *Bullen and Leake, Pr. Pl.*

Plene administravit præter (he has fully administered, except). A defence by an executor or administrator that he has fully administered the assets that have come to his hands, except, etc. The plaintiff may go to trial upon this defence, or may apply under Ord. XXXII., r. 6, for leave to sign judgment to the extent of the assets admitted and of future assets *quando acciderint* for the residue of his debt and costs. *Bullen and Leake, Pr. Pl.*

Plenipotentiary, a person who has full power and commission to do anything, generally used in connection with ambassadors and delegates of States on special occasions.

Pleno lumine. See IN PLENO LUMINE.

Plenum dominium, a title combining the right and the corporal possession of property, which possession could not be acquired without both an actual intention to possess, and an actual seisin or entry into the premises, or part of them, in the name of the whole.—*Civ. Law.*

Plevin [fr. *plevina*, Low Lat.], a warrant or assurance.

Plight, signifieth an estate, with the habit and quality of the land; it extends to a rent-charge and to a possibility of dower.—*Co. Litt.* 221 *b.*

Plough-alms [*eleemosynæ aratrales*, Lat.], the ancient payment of a penny to the Church from every-plough land.—*Dugd. Mon.* tom. i. 256.

Plough-bote, a tenant's right to take wood for the repairs of ploughs, carts, and harrows, and for making rakes, forks, etc.

Plough-land, a hide of land, a carucate, which see.—*Co. Litt.* 69 *a*, 86 *b.*

Plough-Monday, the Monday after Twelfth-Day.

Plough-silver, money formerly paid by some tenants, in lieu of service to plough the lord's lands.

Plowden's (Edm.) Commentaries or **Reports,** first published in 1571. They contain cases from 4 Edw. 6 to 20 Eliz., and from the close style of the reporter, have been said to form some of the most instructive and most entertaining books in the law.—5 *Reeves*, c. 35, 241.

Plumage. As to prohibition on importation, see Importation of Plumage (Prohibition) Act, 1921 (11 & 12 Geo. 5, c. 16).

Plunderage, embezzling goods on shipboard.—*Marit. Law.*

Pluralist, one that holds more than one ecclesiastical benefice with cure of souls.

Plurality, majority; in greater number than one. The holding of more than one ecclesiastical benefice is very much restricted.

The Pluralities Act, 1838 (repealing the former statute against pluralities, 21 Hen. 8, c. 13), as amended by the Pluralities Measure, 1930 (20 & 21 Geo. 5, No. 7), provides that two benefices may be held together, by dispensation of the archbishop on the recommendation of the bishop, if the churches be within four miles of each other, and if the annual value of one does not exceed 400*l.*

Plures cohæredes sunt quasi unum corpus propter unitatem juris quod habent. *Co. Litt.* 163.—(Several co-heirs are, as it were, one body, by reason of the unity of right which they possess.)

Plures participes sunt quasi unum corpus, in eo quod unum jus habent. *Co. Litt.* 164.—(Several parceners are as one body, in that they have one right.)

Pluries (as often), a writ that issues in the third instance, after the first and the *alias* have been ineffectual. See EXECUTION.

Plus petitio, or **Pluris petitio,** when a demandant includes in his demand (in the *intentio* of the formula) more than his due. It happens in four ways. See *Sand. Just.*

Plus valet quod agitur quam quod simulate concipitur.—(What is done more avails than what is pretended to be done.)

P. O., abbreviation for public officer (*q.v.*); also for Post Office.

Poaching, taking game by trespass. Also taking fish, e.g., salmon and trout by illegal methods (see *infra*).

Trespassing in the daytime in pursuit of

'game'—i.e., hares, pheasants, partridges, grouse, heath or moor game, black game, or bustards—or woodcock, snipe, quails, landrail, or rabbits, is punishable summarily by fine up to 2*l.*, and in case of a trespass by five or more, up to 5*l.*; the leave of the occupier being no defence if the landlord or other person have by reservation the right to kill the game. See Game Act, 1831, ss. 2, 30.

Unlawfully taking in the night, i.e., between the expiration of the first hour after sunset and the commencement of the first hour before sunrise, 'game,' as above defined, is punishable summarily by imprisonment with hard labour; and any persons, to the number of three or more, by night unlawfully entering lands, for the purpose of taking or destroying any 'game,' as above defined, or rabbits (any of them being armed with any gun or other offensive weapon), are each guilty of a misdemeanour, and liable to penal servitude for any term between seven and three (now five) years, or imprisonment with hard labour for not more than three years; see Night Poaching Act, 1828.

Any constable, in any highway, etc., may search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search of 'game'—i.e., hares, pheasants, partridges, eggs of pheasants or partridges, woodcock, snipe, rabbits, grouse, black or moor game, or eggs of grouse, black or moor game—and having in his possession any game unlawfully obtained, or any gun, or net for taking game, and may stop and search any cart, etc., in which such constable, etc., shall have good cause to suspect that any such game, etc., is being carried by any such person, and should there be found any game, etc., upon such person, cart, etc., may seize such game, etc. (see *Stone* v. *Benstead*, 1909, 2 K. B. 415); and such constable, etc., shall in such case apply to some justice for a summons, citing such person to appear before two justices, by whom the party may on conviction be fined any sum not exceeding 5*l.*, etc.—Poaching Prevention Act, 1862. See *Aggs on Agricultural Holdings*, and *Chitty's Statutes*, tit. 'Game.'

As to unlawfully taking fish in private water, see Larceny Act, 1861, ss. 24, 25; and Salmon and Fresh Water Fisheries Acts, 1923 to 1935; *Chit. Stat.* tit. 'Fish.'

Pocket-judgment, a statute-merchant which was enforceable at any time after non-payment on the day assigned, without further proceedings. See STATUTE-MERCHANT.

Pocket-sheriff. When the sovereign appoints a person sheriff who is not one of the three nominated in the King's Bench Division of the High Court, he is called a pocket-sheriff.—1 *Bl. Com.* 342.

Pœnæ potius molliendæ quam exasperandæ sunt. 3 *Inst.* 220.—(Punishments should rather be softened than aggravated.)

Poet-laureate. See LAUREATE.

Poinding, the Scots term for taking goods, etc., in execution, or by way of distress. It is defined to be 'the diligence (process) which the law has devised for transferring the property of the debtor to the creditor in payment of his debt.' It is either real or personal; not that any inheritance is conveyed by a poinding, but real poinding is a power of carrying off the effects on the land in payment of such debts as are *debita fundi*, or heritable; personal poinding is the poinding of movables for debt or for rent, etc. There is also a species of poinding by attaching cattle trespassing.—See *Bell's Scots Law Dict.*

Poinding of the Ground, a poinding in Scotland, founded on a heritable security or other *debitum fundi*, for poinding or taking in execution all the goods on the lands over which the security extends.

Points, in the paper books were the chief grounds or heads of argument on which each party relied, on an argument in the special paper. See PAPER BOOK.

Poison (*poison*, Fr.; fr. *potio*, Lat., a drink—applied originally to a medicated drink or draught].

The administration of poison or other destructive thing, if done with intent to commit murder, is a felony, punishable with penal servitude for life, or any term not exceeding three years, or with imprisonment for any term not exceeding two years (Offences against the Person Act, 1861, s. 11), and so is the attempt to administer with like intent, whether bodily injury be effected or not (s. 14).

On a trial for murder of A. by poisoning, evidence of a subsequent poisoning of other persons is admissible against the prisoner (*Reg.* v. *Geering*, (1849) 18 L. J. M. C. 215; *Rex* v. *Armstrong*, (1922) 38 T. L. R. 631); as also of antecedent poisoning (*Reg.* v. *Garner*, (1863) 3 F. & F. 681).

The unlawful and malicious administering poison so as to endanger life or to inflict grievous bodily harm is a felony, punishable by penal servitude up to ten years, or imprisonment; and such administration with intent to injure, aggrieve, or annoy is a

misdemeanour, punishable by penal servitude up to five years: see ss. 23, 24 of the same Act. As to poisoning to procure miscarriage by a woman, see ABORTION.

Restrictions on Sale.—By the Arsenic Act, 1851 (now repealed), certain restrictions—as that name and address, etc., of the purchaser are to be registered by the seller—were placed upon the sale of arsenic, and by the Pharmacy Act, 1868, persons selling or compounding poisons, or assuming the title of chemist or druggist, must be qualified as by that Act is required. See CHEMISTS AND DRUGGISTS. For the purposes of that Act a list of articles deemed poisons was set out—a list which may be added to by the Pharmaceutical Society with the approval of the Privy Council (*Brown* v. *Leggett*, 1906, 1 K. B. 330). The list as contained in Schedule A. of that Act was repealed, and a list in substitution was given in the Schedule to the Poisons and Pharmacy Act, 1908. This in turn was repealed by the Pharmacy and Poisons Act, 1933 (23 & 24 Geo. 5, c. 25), which set up a Poisons Board to prepare and submit a list of substances to be treated as poisons, for the approval of the Secretary of State. The list is to be in two parts, Part I. consisting of those poisons which are to be sold only by an authorized seller of poisons, and Part II. consisting of those poisons which may be sold by an authorized seller of poisons, or by a person whose name is entered on the 'local authority's list' (s. 17).

Sect. 18 deals with prohibition regarding the sale of poisons, and s. 19 makes exemptions with respect to medicines.

The Dangerous Drugs Acts, 1920, 1923 and 1932, and the regulations made thereunder, impose stringent restrictions upon the importation, exportation and sale of certain poisons and dangerous drugs. See these Acts and regulations, and DRUGS, DANGEROUS.

Poisoned Food or Grain.—Penalties are imposed upon persons placing poisoned fluid or edible matter upon land, and upon persons selling or exposing for sale poisoned grain or seed, unless for *bonâ fide* use in agriculture; see Protection of Animals Act, 1911, s. 8; and see s. 1, sub-s. 1 (*d*) of the same Act as to administering poisonous drugs to animals. See *Chitty's Statutes*, tit. '*Poison*.'

Poison Gas, the making, sale or possession of weapons or ammunition for discharge of noxious liquids or gas is prohibited by the Fire Arms Act, 1920 (10 & 11 Geo. 5, c. 43).

Pole, a measure of five and a half yards.

Police [fr. πόλις, Gk., a city], the regulation and government of a country or city; the constabulary of a locality. The police forces now consist of County, Borough (these may be consolidated, see 3 & 4 Vict. c. 88, s. 14, and 19 & 20 Vict. c. 69, s. 20), Metropolitan, City of London, and River Forces, e.g., Tyne, Manchester Ship Canal, Mersey and Wear; and Railway Police. As to the liability of a local authority for a tort committed by a member of its police force, see *Stanbury* v. *Exeter Corporation*, 1905, 2 K. B. 838. See CONSTABLE; METROPOLITAN POLICE; and *Chitty's Statutes*, tit. '*Police*' and '*Police* (*Metropolis*).'

Police Courts (Metropolis). See METROPOLITAN POLICE MAGISTRATES.

Police Supervision. Where a person is twice convicted on indictment he may be subjected to police supervision for not more than seven years in addition to any other punishment. He is obliged to notify his place of residence to the chief officer of police of the district, and, if a male, to report himself monthly to this officer or to some one nominated by him (Prevention of Crimes Act, 1871, s. 8, and amending Acts 54 & 55 Vict. c. 69, and 4 & 5 Geo. 5, c. 58, s. 26).

Policies of Insurance, Court of. It was erected in pursuance of 43 Eliz. c. 12, which enabled the Lord Chancellor yearly to grant a standing commission to the Judge of the Admiralty, the Recorder of London, two doctors of the civil law, two common lawyers, and eight merchants; any three of whom, one being a civilian, or a barrister, were thereby, and by 13 & 14 Car. 2, c. 23, empowered to determine in a summary way all causes concerning policies of insurance in London, with an appeal by way of bill to the Court of Chancery. It had been long wholly disused in Blackstone's time, and both the above Acts were repealed by Stat. Law Rev. Act, 1863.

Policy, the general principles by which a government is guided in its management of public affairs, or the legislature in its measures. See PUBLIC POLICY. In Scotland, the park or demesne land lying around a country seat or gentleman's house (*Oxf. Dict.*).

Policy of Insurance, a contract between A. and B., that upon A.'s paying a premium equivalent to the hazard run, B. will indemnify or insure him against a particular event. See INSURANCE.

The Policies of Assurance Act, 1867, enabled assignees of life policies to sue thereon in their own names. The Policies of

Marine Assurance Act, 1868, made a like provision in regard to marine policies. See also CHOSE.

Policy Proof of Interest (P.P.I.). A policy of marine insurance which was made valid by its terms, although the insurer had no insurable interest. Such a policy in the absence of an insurable interest is made void by the Gaming Act, 1845. The Marine Insurance Act, 1906 (s. 4), specifically declares such policies void. The Marine Insurance (Gambling Policies) Act, 1909, makes it an offence to effect a contract of marine insurance without an insurable interest.

Politiæ legibus non leges politiis adaptandæ. *Hob.* 154.—(States are to be adapted to the laws, and not the laws to States.)

Political Offence. As to the meaning of 'offence of a political character' in the Extradition Act, 1870, see *Re Castioni*, 1891, 1 Q. B. 149, where it was held that to come within the words of the statute the offence must be incidental to and form part of political disturbances. Cf. *Re Meunier*, 1894, 2 Q. B. 415.

Political Offices Pensions Act, 1869 (32 & 33 Vict c. 60), not applicable to any person in the Civil Service of the Crown, but only to persons who have held political offices. There are three classes named in the Act, and no pension can be granted in any class while four pensions in that class are subsisting, nor may more than one pension under the Act be granted in the same year. A pension is only granted in the absence of adequate private income.

Polity [fr. *πολιτεία*, Gk., the government of a city], the form of government; civil constitution.

Poll, to give a vote at an election; also to receive a vote; also a taking of votes of all persons entitled to vote present, by proxy, or otherwise, as opposed to counting the votes of voters present at a meeting.

As to taking a poll at parliamentary and municipal elections by secret voting, see the Ballot Act, 1872.

Wherever a person has to be chosen, or a thing may be ordered to be done by the majority of persons entitled to vote, there is a Common Law right to demand a poll, so that *all* entitled to vote may have a second opportunity of voting (*Reg.* v. *Wimbledon Local Board*, (1881) 8 Q. B. D. 459, better reported, 46 L. T. 47). Voting papers are allowed if the Articles of Association or other regulations so provide (*McMillan* v. *Le Roi Mining Co. Ltd.*, 1906, 1 Ch. 331, and s. 116, Companies Act, 1929). As to the power of the chairman to direct a poll to be taken forthwith, i.e, at the meeting, see *Re Chillington Iron Co.*, (1885) 29 Ch. D. 159; *Re British Flax Co.*, (1889) 60 L. T. 215. The taking of a poll is not a 'meeting' (*Shaw* v. *Tati Concessions*, 1913, 1 Ch. 292).

Pollah, a Government lease granted to a cultivator, either written on paper or engraved with a style on a leaf of the Fanpalmyra tree.—*Indian.*

Pollards, or **Pollengers,** trees which have been lopped, distinguished from timber-trees.—*Plowd.* 649.

Pollicitation, a promise before it is accepted.—*Civ. Law.*

Polligar, Polygar, the head of a village or district; also a military chieftain in the peninsula, answering to a hill *zemindar* in the northern circars.—*Indian.*

Poll-money, Poll-silver, Poll-tax, a capitation-tax. It was formerly assessed by the head on every subject according to rank.

Polls, Challenge to the. See CHALLENGE.

Polyandry, the state of a woman who has several husbands. See BIGAMY.

Polygamy [fr. *πολύς*, Gk., many; and *γαμος*, marriage], plurality of wives or husbands. It is prohibited by the Christian religion, but permitted by some others. See BIGAMY.

Polygarchy [fr. *πολύς*, Gk., many; and *ἀρχή*, government], that kind of government which is in the hands of many.

Pondus, poundage, i.e., a duty paid to the Crown according to the weight of merchandise.

Pondus regis, the standard weight appointed by our ancient kings.

Pone. If goods had been replevied by virtue of a *replegiari facias* (which was rarely if ever the case), the plaint in a County Court was removed into the King's Bench or Common Pleas by writ of *pone*. It was an original writ obtained from the cursitor, bearing *teste* after the entry of the plaint in the County Court, and returnable on a general day in term, wheresoever, etc. It was also the proper writ to remove all suits which were before the sheriff by writ of justices. Obsolete.—3 *Steph. Com.*

Pone per vadium, an obsolete writ to the sheriff to summon the defendant to appear and answer the plaintiff's suit, on his putting in sureties to prosecute: it was so called from the words of the writ, *pone per vadium et salvos plegios*—'put by gage and safe pledges, A. B., the defendant.'

Ponendis in assisis, an abolished writ to empannel juries.—*Fitz. N. B.* 165.

Ponendum in ballium, a writ commanding that a prisoner be bailed in cases bailable.—*Reg. Brev.* 133.

Ponendum sigillum ad exceptionem, a writ by which justices were required to put their seals to exceptions exhibited by a defendant against a plaintiff's evidence, verdict, or other proceedings before them, according to the statute, West. 2, 13 Edw. 1, st. 1, c. 31. See BILL OF EXCEPTIONS.

Pontage [fr. *pons*, Lat., a bridge], duty paid for the reparation of bridges; also, a due to the lord of the fee for persons or merchandises that pass over rivers, bridges, etc.

Pontibus reparandis, a writ directed to the sheriff, etc., requiring him to charge one or more to repair a bridge.—*Reg. Brev.* 153.

Pool, a small lake of standing water. By the grant of a pool, both the land and water will pass.—*Co. Litt.* 5.

Poor Laws. By the Poor Relief Act, 1601, (43 Eliz. c. 2), frequently called 'The Act of Elizabeth,' overseers of the poor were annually appointed in every parish; the churchwardens of every parish being also *ex-officio* overseers, except in rural parishes, in which the churchwardens ceased to be overseers by virtue of the Local Government Act, 1894.

Overseers of the Poor and Boards of Guardians were abolished (overseers from 1st April, 1927, boards of guardians from 1st April, 1930, except in the Scilly Islands) by the Rating and Valuation Act, 1925, and their powers, duties and property were transferred to local authorities.

By the Poor Law Amendment Act, 1834, the administration of the parochial funds and the management of the poor throughout the country were placed for five years under the control of a central board called 'The Poor Law Commissioners'; succeeded in 1847 by a temporary 'Poor Law Board' made perpetual, after many continuances, in 1867; and in 1871, by 'The Local Government Board Act, 1871,' superseded by the Local Government Board. The powers and duties are now vested in the Ministry of Health (Ministry of Health Act, 1919).

The Poor Law Act, 1930 (20 & 21 Geo. 5, c. 17) consolidates the enactments relating to the relief of the poor in England, and it repeals the greater part of the Poor Law Act, 1927, which latter consolidated enactments relating to the relief of the poor, but it did not provide for all the powers and duties which had been conferred on overseers of the poor and boards of guardians by various statutes. such as the Vaccination, Bastardy, and Lunacy Acts; and the law as regards this is not affected by the 1930 Act; the functions of boards of guardians in connection therewith were transferred to local authorities by the Local Government Act, 1929 (19 & 20 Geo. 5, c. 17). The Poor Law Act, 1934, amends the Act of 1930 so as to secure uniformity throughout Great Britain in the provisions relating to the disregarding of sick pay, maternity benefit, and wounds or disability pensions in connection with relief.

General or special orders of a voluminous and detailed character (see *Glen's Poor Law Orders*), made by one or other of the abovenamed authorities under the powers of the Act of 1834, have been since that Act the main sources of the Poor Law; but the statutes upon the subject have also been very numerous. Consult *Chitty's Statutes*, tits. '*Poor*,' '*Poor (Apprentices)*,' '*Poor (Rating)*,' '*Poor (Settlement and Removal)*,' and '*Poor (Metropolis)*.'

The duty of making and levying the poor-rate or parochial fund, out of which the relief is to be afforded, belonged to the churchwardens and overseers; and the concurrence of the inhabitants was not necessary. But for the better execution of these duties, the appointment of collectors and assistant overseers was authorized. They were abolished from 1st April, 1927, *supra*; for details of the transfer to the rating authority, see the Overseers Order, 1927 (S. R. & O., 1927, No. 55). The rate was raised prospectively for some given portion of the year, and upon a scale adapted to the probable exigencies of the parish; and the Act of Elizabeth directed that it should be raised by 'taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods in the parish.' By the Rating Act, 1874, the liability to rates was extended to (1) land used for a plantation or wood, or for the growth of saleable underwood, and not subject to any right of common; (2) rights of fowling, shooting, taking, or killing game or rabbits, and fishing, when severed from the occupation of the land; and (3) mines of every kind not mentioned in the Act of Elizabeth. As an occupier, a man is rateable for all lands which he occupies in the parish, whether he is resident or not; but the tenant and not the landlord is considered as the occupier within this statute.

The poor rate is now part of the general rate (see RATES) under the Rating and Valuation Act, 1925, the object of which was to consolidate the numerous rules levied by different authorities on differing areas and to enlarge the unit of administration so as to secure uniformity; the power to make rates being conferred on the rating authority, with special provisions for representation of every parish in rural areas.

The poor in Ireland had, till of late years, no relief but from private charity. But by 1 & 2 Vict. c. 56, intituled 'An Act for the more effectual Relief of the destitute Poor in Ireland,' the authority of the Poor Law Commissioners was extended to that part of the realm, and an Irish Board of Commissioners established

Numerous statutes deal with the administration of poor law in Scotland, the latest of which is the Local Government (Scotland) Act, 1929 (19 & 20 Geo. 5, c. 25).

If a prisoner on his release after the termination of his sentence is likely to need poor law relief, an order may be made for his removal to the workhouse immediately on his discharge from prison (Poor Law Act, 1930, s. 103).

Aliens have the same right to relief under the Poor Laws as natural-born subjects have.

Poor Person includes any poor or indigent person applying for or receiving relief (Poor Law Act, 1930). As litigant, see IN FORMÂ PAUPERIS.

Poor Prisoners, Defence of. The Poor Prisoners Defence Act, 1930 (20 & 21 Geo. 5, c. 32), repealing the Poor Prisoners' Defence Act, 1903, entitles any person to free legal aid in the preparation and conduct of his defence at the trial and to have solicitor and counsel assigned to him for that purpose, if a certificate, called the 'defence certificate,' is granted by the justices committing him for trial or of the judge or chairman of the Court before which he is to be tried, at any time after reading the depositions. The certificate is grantable only 'when it appears to the certifying authority that his means are insufficient to enable him to obtain such aid, and must be granted in respect of any person committed for trial on a charge of murder, and may be granted when a person committed for trial upon any other charge, if it appears to the authority, having regard to all the circumstances of the case (including the nature of such defence, if any, as may have been set up) that it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence at the trial. Rules for carrying the Act into effect may be made by the Attorney-General, with the approval of the Lord Chancellor and a Secretary of State, and regulations as to scales of payment may be made by a Secretary of State. For the Regulations, Report of House of Commons Select Committee on the Bill which became the Act, and notes on the Act, see *Chitty's Statutes*.

Criminal Appeal.—The Criminal Appeal Act, 1907, provides (s. 10) as follows:—

> 10. The Court of Criminal Appeal may at any time assign to an appellant a solicitor and counsel, or counsel only, in any appeal or proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

Popery. See PAPISTS.

Popular Action, brought by one of the public to recover some penalty given by statute to any person who chooses to sue for it. See also QUI TAM ACTION.

Population. As to the mode of ascertaining the 'population' of a municipal borough according to the returns of the last census, *q.v.*, for the purposes of investment in its stock under s. 1 (*m*) of the Trustee Act, 1925, see *Re Druitt*, 1903, 1 Ch. 446.

Populous Parishes. For their spiritual improvement, see the New Parishes Acts, 1843, 1844, and 1856 (6 & 7 Vict. c. 37; 7 & 8 Vict. c. 94; and 19 & 20 Vict. c. 104); *Chit. Stat.* tit. '*Church and Clergy.*'

Populous Place, was defined by s. 32 of the Licensing Act, 1874, as 'any area with a population of not less than 1,000 which by reason of the density of such population the county licensing committee may by order determine to be a populous place.' By s. 3 of this Act the closing hours were made different in towns and 'populous places' from those (1) in London and (2) elsewhere than in London or in towns and populous places. The above definition was repealed and substantially re-enacted by Licensing (Consolidation) Act, 1910, but was repealed by the Licensing Act, 1921. A 'populous place' no longer exists in licensing law.

Porrecting, producing for examination or taxation, as porrecting a bill of costs, by a proctor.

Port, a place for the lading or unlading of ships, created by royal charter or lawful prescription. See *Foreman* v. *Free Fishers and Dredgers of Whitstable*, (1869) L. R. 4 H. L., at p. 285. *Portus est locus in quo*

exportantur et importantur merces. 2 *Inst.* 148.—(A port is a place where goods are exported and imported.) See LONDON, PORT OF; HAVENS; and 1 *Br. & Had. Com.* 314, and 2 *Steph. Com.*, and HARBOUR.

Port Health Authority. See QUARANTINE.

Portatica, port-duties charged on ships.

Porteous Mob, an extraordinary riot and conspiracy which occurred in Edinburgh in 1736. On the occasion of the execution of a man named Wilson, Porteous, the Captain of the City Guard, fearing a riot, had given orders to fire on the crowd who had assembled to witness the spectacle, and several persons were killed. For this he was tried and sentenced to death, but on the eve of his execution he was respited by orders from London. This enraged the mob, with whom Porteous was very unpopular, with the result that they rose, stormed the Tolbooth in which Porteous was confined, and themselves hanged him in the Grassmarket. For an account of the inquiries made into the affair by the Crown Counsel, see Scott's *Heart of Midlothian, Centen. Ed.*, note D.

Porter, an officer who carries a white or silver rod before the justices in *eyre*, so called *a portando virgam*: also, a person employed to carry messages, parcels, etc. Porters in the City of London are regulated by the Corporation.

Porterage, a kind of duty formerly paid at the custom-house to those who attended the water-side, and belonged to the package-office; but it is now abolished; also, the charge made for sending parcels.

Portgreve, or **Portreeve,** a magistrate in certain sea-coast towns.

Portion, property settled or provided in favour of children or their issue. In settlements by deed or will of personal property, portions were and are usually effected by direct trusts in favour of the children or issue, either immediately or after the death of the parent or parents. In regard to realty the usual plan was to settle a long term of years from or out of the real estate upon trust to sell or mortgage the term in order to provide the portions when they became payable. See SATISFIED TERM; ATTENDANT TERM. This term preceded the settlement of the estate in fee or in tail according to the intention of the settlor. This method is still available although the term is not a legal estate and will not affect a purchaser even with notice who takes his title from estate owners who are entitled to sell the estate unaffected by the term, but the trustees entitled to the term may require to have the term secured by a legal mortgage. See Law of Property Act, s. 3 (1) and Settled Land Act, s. 16: and see also in the 1st Schedule, Form 3, which is an optional statutory form of settlement. See *Key and Elphinstone, Notes to Real Settlements.* Settlements of portions usually contain a provision for *hotchpot* and *maintenance* of infants and *advancement* of capital before the period of vesting or distribution. Interest is payable on portions from the time they become due. All causes and matters connected with the raising of portions or other charges on lands are assigned to the Chancery Division of the High Court of Justice (Jud. Act, 1925, s. 56, reproducing Jud. Act, 1873, s. 34), and see SATISFACTION.

Portioner, a minister who serves a benefice, together with others, so called because he has only a portion of the tithes or profits of the living; also an allowance which a vicar commonly has out of a rectory or impropriation.

Portmen, the burgesses of Ipswich and of the Cinque Ports.—*Camden.*

Portmote, a court held in haven towns or ports, and sometimes in inland counties.

Portoria, duties paid in ports on merchandise.—*Civil Law.*

Portrait. Where a portrait is ordered and made for valuable consideration, the person who gave the order is, in the absence of any agreement to the contrary, the first owner of the copyright: see Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), s. 5.

Portsale, a public sale of goods to the highest bidder; also a sale of fish as soon as it is brought into the haven.

Portsoka, or **Portsoken,** the suburbs of a city, or any place within its jurisdiction.

Portuas, a breviary.

Positio, a claim.

Positive Evidence, proof of the very fact, opposed to negative evidence.

Positive Law. A rule of conduct enforced by sovereign sanction, Consult *Austin's Jurisprudence* and *Maine's History of Law.* See MALA PROHIBITA; LAW.

Posse, a possibility. A thing is said to be *in posse* when it may possibly be; *in esse* when it actually is.

Posse comitatus, the 'power of the county,' including the aid and attendance of all knights and other men above the age of fifteen within the county; but ecclesiastical persons, peers, and such as labour under any infirmity are not compellable to attend. It is called out when a riot is committed, a possession is kept on a forcible entry, or any force is used or rescue made contrary

to the commandment of the King's writ, or in opposition to the execution of justice; and it is expressly authorized to be called out by the Sheriffs Act, 1887 (50 & 51 Vict. c. 55), s. 8, sub-s. 2, if the sheriff finds any resistance in the execution of a writ. See *Jac. Law Dict.*

Possessio, in its primary sense, is the condition or power by virtue of which a man has such a mastery over a corporeal thing as to deal with it at his pleasure, and to exclude other persons from meddling with it. This condition or power is detention; and it lies at the bottom of all legal senses of the word 'possession.' This possession is no legal state or condition, but it may be the source of rights, and it then becomes *possessio* in a juristical or legal sense. Still, even in this sense it is not in any way to be confounded with property (*proprietas*). A man may have the juristical possession of a thing without being the proprietor, and a man may be the proprietor of a thing without having the juristical possession of it, and consequently without having the detention of it (*Dig.* 41, tit. 2, s. 12). Ownership is the legal capacity to operate on a thing according to a man's pleasure, and to exclude everybody else from doing so. Possession, in the sense of detention, is the actual exercise of such a power as the owner has a right to exercise. The term *possessio* occurs in the Roman jurists in various senses. There is *possessio* generally, *possessio civilis*, and *possessio naturalis*.

Possessio denoted, originally bare detention; but this detention, under certain conditions, becomes a legal state inasmuch as it leads to ownership through *usucapio*. Accordingly the word *possessio*, which required no qualification so long as there was no other notion attached to *possessio*, requires such qualification when detention becomes a legal state. This detention, then, when it has the conditions necessary to *usucapio*, is called *possessio civilis*, and all other *possessio* as opposed to *civilis* is *naturalis*.—*Sand. Just.*

Possessio fratris, a seisin to turn the descent away from the brother of the half-blood to the sister of the whole-blood; thus, if a father had two sons, A. and B., by different wives, these two brethren were not brethren of the whole-blood, and therefore could never inherit to each other, but the estate rather escheated to the lord. Nay, even if the father died, and his lands descended to his eldest son, A., who entered thereon, and died seised without issue, still B. could not be heir to this estate, because he was only of the half-blood to A., the person last seised; but it descended to a sister (if any) of the whole-blood to A.; for in such cases the maxim was that the seisin, or *possessio fratris*, made the sister the heiress. Yet, had A. died without entry, B. might have inherited, not as heir to A., his half-brother, but as heir to their common father, who was the person last actually seised.—2 *Bl. Com.* 227. Abolished by 3 & 4 Wm. 4, c. 106.

Possessio fratris de feodo simplici facit sororem esse hæredem. 3 *Rep.* 41.—(the brother's possession of an estate in fee simple makes the sister to be heir.)

Possession, the state of owning or having a thing in one's own hands or power; the thing possessed.

It is either *actual*, where a person enters into lands or tenements descended or conveyed to him; *apparent*, which is a species of presumptive title where land descended to the heir of an abator, intruder, or disseisor, who died seised; *in law*, when lands, etc., have descended to a man, and he has not actually entered into them; or *naked*, that is, mere possession, without colour of right.

The primary meaning is physical control. A secondary meaning is physical control by an agent or servant, or by relation back, e.g., by the owner having entered without remaining in physical possession, see *Ocean Accident etc., Corporation* v. *Ilford Gas Co.*, 1905, 2 K. B. 493.

Possession may also extend over a thing in itself uncontrolled within an inclosure which is controlled, such as horses, sheep or cattle within a fenced field, but see FERÆ NATURÆ. A condition of possession is the intent to control. Possession may connote different kinds of control according to the nature of the thing or right over which it is being exercised. A man may possess an estate of land; if he leases it he will be in possession of the rents and profits and the reversion, but not of the land which is in the lessee who may bring an action of trespass against the lessor. Possession, even wrongful, is a form of ownership. In all cases it confers the rights to the thing under possession against all the world except any one with a better legal title to it (see next title) and LIMITATIONS. But there are many kinds of ownership without possession, and in its legal meaning, possession is often indistinguishable from ownership, which is the right to possess. In regard to real property a mere right without possession is

not sufficient to found an action for trespass, for instance, until 1926 a lessee before entry having a mere *interesse termini* could not bring an action for trespass on the land demised (*Wallis* v. *Hands*, 1893, 2 Ch. 75); and see POSSESSIO FRATRIS. In regard to chattels it is said that property draws to it the possession (*Bac. Abr. Trespass*, C. 3), but this is subject to a temporary interest of another, such as a bailee, in the property if his possession is inconsistent with the owner's right to possession at the same time. In that case the bailee is the only person who can bring an action for trespass, detinue or conversion if and so long as his contract of bailment has not been exceeded (*Donald* v. *Suckling*, 1866, L. R. 1 Q. B. 585). If the owner, reversioner or person entitled, subject to the bailee's interest, has suffered damage by the same acts, he may sue for the damage done to his interest, but not on the causes of action referred to. Under the Law of Property Act, 1925, s. 205 (1) (xix.): 'Possession' includes the receipt of rents and profits or the right to receive the same, if any; while, for the purposes of the Act, the right of the person in 'actual occupation' of the land appears to have been safeguarded by s. 14, *ibid.* Consult *Pollock and Wright's Possession in the Common Law.*

Possession is nine points of the law. This adage is not to be taken to be true to the full extent, so as to mean that the person in possession can only be ousted by one whose title is nine times better than his; but it places in a stronger light the legal truth that every claimant must succeed by the strength of his own title and not by the weakness of his antagonist's. For instance, if the claimant be able to show a descent from the grantor of the estate, perfect except in one link of the chain, and the man in possession be a perfect stranger, the latter shall keep the estate; and so, also, if the claimant be a natural son of the last owner and adopted by him, and declared by him to be designed as his heir, yet if he die without making a will in his favour, a stranger in possession has a better title. In *Beddall* v. *Maitland*, (1881) 17 Ch. D. p. 183, Sir Edward Fry, speaking of the statute 5 Rich. 2, stat. 1, c. 8, which makes a forcible entry an indictable offence, says: 'This statute creates one of the great differences which exist in our law between the being in possession and the being out of possession of land, and which gave rise to the old saying that possession is nine points of the law. The effect of the statute is this, that when a man is in possession he may use force to keep out a trespasser; but if a trespasser has gained possession, the rightful owner cannot use force to put him out, but must appeal to the law for assistance.' And see *Lows* v. *Telford*, (1876) 1 App. Cas. 414, and cases there referred to; also *Hemmings* v. *Stoke Poges Golf Club*, 1920, 1 K. B. 720, C. A., and POTIOR EST CONDITIO DEFENDENTIS, and POTIOR EST CONDITIO POSSIDENTIS.

Possession, Writ of, the process of execution in an action of ejectment. A judgment for the recovery, or for the delivery of the possession of land may be enforced by writ of possession (R. S. C. 1883, Ord. XLVII.) In County Courts, see County Courts Act, 1934, and Rules. See HABERE FACIAS POSSESSIONEM.

Possessory Action, the action of trespass, the gist of which is the injury to the possession; a plaintiff, therefore, cannot maintain it, unless at the moment of the injury he was in actual, or constructive, and exclusive possession.

Possessory Lien. A possessory lien arises at common law from an agreement express or implied. As a rule it is immaterial how possession is obtained (*Robbins* v. *Gray*, 1895, 2 Q. B. 501; *Keene* v. *Thomas*, 1905, 1 K. B. 136). The lien can be extinguished by tender of the amount due and may be lost by waiver express or implied, and also only continues so long as actual possession is retained. See LIEN.

Possibility, expectation, an uncertain thing which may or may not happen.

It is either *near*, or *ordinary*, as where an estate is limited to one after the death of another; or *remote*, or *extraordinary*, as where it is limited to a man, provided he marries a certain woman, and that she shall die and he shall marry another. See next title.

A possibility coupled with an interest in any tenements or hereditaments, of any tenure, whether the object of the gift or limitation of such possibility be or be not ascertained, may be disposed of by deed (Real Property Act, 1845, s. 6, reproduced by the Law of Property Act, 1925, s. 4 (2)).

Possibility on a Possibility. Lord Coke lays it down as a rule that the event on which a remainder is to depend must be a common possibility, and not a double possibility, or a possiblity *on* a possibilicy, which the law will not allow. Thus he tells us that the chance that a man and a woman, both married to different persons, shall themselves marry one another is but a common possibility. But the chance that a married

man shall have a son named Geoffrey is stated to be a double or remote possibility; see *Williams on Real Property*; 2 *Rep.* 51 *a*; 10 *Rep.* 50 *b*; *Co. Litt.* 184 *a*. The idea that there cannot be a possibility on a possibility seems to have been a conceit invented by Popham, C.J., but it was never really intelligible (*Whitby* v. *Mitchell*, (1890) 44 Ch. D. p. 92, per Lindley, L.J.), and never applied to trusts of personal estate (*Re Boules*, 1902, 2 Ch. 650). It gave rise, however, to the rule, now well settled in regard to limitations and trusts of realty created by instruments coming into operation before 1926, but abolished in regard to those created by instruments coming into operation after 1925 by the Law of Property Act, 1925, s. 161 (see PERPETUITIES), that if land is limited to an unborn person for life, a remainder cannot be limited so as to confer an estate by purchase on that person's issue (*Whitby* v. *Mitchell*, *ubi sup.*), and the rule applies to equitable as well as to legal limitations (*Re Nash*, 1910, 1 Ch. 1); and see also *Re Park's Settlement*, 1914, 1 Ch. 595. Consult *Williams on Real Property*; *Gray on Perpetuities*, 2nd ed. par. 125 *et seq.*; and *Wolst. and Ch. Conveyancing Acts*.

Post, after: occurring in a report or a text-book, is used to direct the reader to a subsequent part of the book.

Post, a conveyance for letters or dispatches. The word is derived from *positi*, the horses carrying the letters or dispatches being kept or placed at fixed stations. The word is also applied to the person who conveys the letters to the houses where he takes up and lays down his charge, and to the stages or distances between house and house. Hence the phrases, 'post-boy,' 'post-horse,' 'post-house,' etc.

Contract through Post.—A letter of acceptance posted, though not received, if the post has been expressly or impliedly (as it usually is) authorized as a means of communication, creates a binding contract between the party offering and the party accepting as soon as it is posted (*Household Fire Insurance Co.* v. *Grant*, (1879) 4 Ex. D. 216), but a *revocation* of an offer is of no effect until brought to the mind of the person to whom the offer was made, and therefore a revocation sent by post does not operate from the time of posting it (*Henthorn* v. *Fraser*, 1892, 2 Ch. 27).

Service by Post.—Service by means of registered post is frequently provided for by statute; see, e.g., s. 53 of the Agricultural Holdings Act, 1923. See also R. S. C. Ord. LXVII., r. 2; also Ord. VIII., r. 39 of the County Court Rules, 1936, allows of the service of notices, etc., by ordinary post. See also Companies Act, 1929, s. 370. See SERVICE.

As to the meaning of 'service by post' in an Act of Parliament, see SERVICE.

Post, Writ of Entry in, an abolished writ given by the Statute of Marlbridge, 52 Hen. 3, c. 29, which provided that when the number of alienations or descents exceeded the usual degrees, a new writ should be allowed, without any mention of degrees at all.

Postage, the duty or charge imposed on letters or parcels conveyed by post. See POST OFFICE.

Postal Convention, a treaty made at Berne in October, 1874, for the regulation of rates of postage and matters connected with the Post Office, between England and various other countries. See 38 & 39 Vict. c. 22, now repealed by the Post Office Act, 1908 (8 Edw. 7, c. 48). See now Post Office Acts, 1908-1935, and 45 & 46 Vict. c. 74, ss. 14 and 15.

Post and Per. See PER AND POST.

Post Conquestum (after the Conquest).

Post-dating Bills or Notes. A bill or note or cheque may be post-dated.—Bills of Exchange Act, 1882, s. 13, sub-s. 2.

Post disseisin, a writ that lay for him who, having recovered lands or tenements by force of *novel disseisin*, was again disseised by the former disseisor.

Postea (afterwards), the return of the judge before whom a cause was tried, after a verdict of what was done in the cause. It was indorsed on the *nisi prius* record by the associate.—1 *Chit. Arch. Prac.*

Post Entry. When goods are weighed or measured, and the merchant has got an account thereof at the Custom House, and finds his entry already made too small, he must make a post or additional entry for the surplusage in the same manner as the first was done. As a merchant is always in time prior to the clearing of the vessel to make his post, he should take care not to over-enter. However, if this be the case, and an over-entry has been made and more paid or bonded for customs than the goods really landed amount to, the land-waiter and surveyor must signify the same upon oath, and a statement be made and subscribed by the person so over-entered, that neither he, nor any other to his knowledge, had any of the said goods over-entered on board the said ship, or anywhere landed them without payment of custom; which

oath must be attested by the collector or comptroller, or their deputies, who then compute the duties and set down on the back of the certificate the several sums to be paid.—*McCull. Com. Dict.*

Posteriority, coming after, the correlative of *priority*.

Posterity, succeeding generations, descendants, opposed to ancestry.

Post fine, a duty otherwise called the King's silver, formerly paid to the King for the *licentia concordandi*, or leave to agree the suit, on the levying of a fine.—2 *Bl. Com.* 350. See FINE.

Posthumous Child, a child born after its father's death. By 10 & 11 Wm. 3, c. 16, such child may take an estate as if born in its father's lifetime, although there be no limitation to trustees to preserve the contingent remainder to such child. See EN VENTRE SA MERE.

Postliminium, the return of a person to his own country, after having sojourned abroad. The right of *Postliminy* (*jus postliminii*) is that by virtue of which persons and things taken by an enemy in war are restored to their former state, upon coming again under the power of the nation to which they belonged.—*International Law.* See 2 *Steph. Com.*

Post litem motam (after the commencement of litigation), **depositions, etc.** Where they relate to the subject of suit, they are not admissible as a rule when made after the litigation has commenced.—*Stark. Evid.*, 4th ed., 421.

Postman, a barrister in the Court of Exchequer and Exchequer Division of the High Court, who had precedence in motions till the Exchequer was merged in the Queen's (now King's) Bench Division.

Postmaster-General. The head of the Post-office, whose appointment and powers are regulated by the Post Office Acts, 1908 to 1920 and the Post Office (Amendment) Act, 1935 (25 & 26 Geo. 5, c. 15). He acts in a corporate capacity (Post Office Act, 1908, s. 33), and for the purpose of holding land is a corporation sole. See CORPORATION, s. 45, *ibid.* He is usually one of the Ministry, and may sit in the House of Commons (see 29 & 30 Vict. c. 55), and if an Assistant Postmaster-General is appointed he can sit and vote in the House of Commons by virtue of the Assistant Postmaster-General Act, 1909. There were two before 1822, when one was abolished.

Post-mortem (after death), as a *post-mortem* examination of a corpse by a surgeon, in order to discover the cause of death. Such an examination may be ordered by a coroner under the Coroners Act, 1887, s. 21. See CORONER.

Post-natus, the second son; also one born in Scotland after the accession of James I., and therefore not an alien in England. See *Calvin's Case*, (1608) 7 Rep. 1; 2 *State Tr.* 559; *Broom's Const. Law.*

Post-note, a bank-note intended to be transmitted to a distant place by the public mail, and made payable to order; differing in this from a common bank-note, which is payable to the bearer.

Post-nuptial Settlement, a settlement made after marriage; it is generally deemed voluntary unless made pursuant to written articles entered into before marriage. See VOLUNTARY CONVEYANCES.

Post-obit Bond. A bond, conditioned to be void on the payment by the obligor of a sum of money upon the death of another person. In most cases the person upon whose death it is so payable is one from whom the obligor expects to derive some property. *Post-obit* bonds, and other securities of a like nature, are set aside, when made by heirs and expectants, as frauds upon the parents and other ancestors, unless the person dealing with such heir can prove satisfactorily that the stipulated payment is not more than a just indemnity for the hazard. Even the sale of a *post-obit* bond at public auction will not necessarily give it validity, or free it from the imputation of being obtained under the pressure of necessity. See BOND; EXPECTANT HEIR.

Post Office, the Government service for the carriage of letters, first established in 1643. Regulated by statutes 7 Wm. 4 & 1 Vict. c. 33; 1 & 2 Vict. cc. 97, 98: 3 & 4 Vict. c. 96 (the Post Office (Duties) Act, 1840, which established penny postage), and many other Acts, which are consolidated by the Post Office Act, 1908, as amended by subsequent Acts. Besides its monopoly in respect of letters, telegraphs and wireless telegraphy (*q.v.*) and telephones (*q.v.*), it carries on the business of a carrier of parcels, a savings bank, life assurance, the transmission of money by postal orders and money orders, and pays old age pensions. See also Post Office and Telegraph Act, 1920; Post Office (Parcels) Act, 1922; Post Office and Telegraph (Money) Acts, 1928 and 1931; and also, in connection with National Health and Unemployment Insurance (stamps), old age, widows' and orphans' pensions and other functions.

Postponement of Payments Act, 1914, a temporary Act expiring six months from the date of its passing (3rd August, 1914), and empowering His Majesty by Proclamation to postpone payment of bills of exchange and payments in pursuance of other obligations. Under this Act a ' moratorium ' was at once proclaimed on the outbreak of the war with Germany, and subsequently renewed until 4th November, 1914, when it finally expired.

Postponement of Trial. Civil trials in the High Court may be postponed under R. S. C. 1883, Ord. XXXVI. ; County Court trials under County Court Rules, 1936, Ord. XIII., r. 4 ; and criminal trials under the Criminal Procedure Act, 1851, s. 27.

Postremo-geniture. Borough - English, which see.

Postulatio, the first act in a criminal proceeding.—*Civ. Law.*

Postulation, a petition.

Pothier, Robert Joseph, 1699–1772, a professor and legal writer of Orleans, author of works of authority on many legal subjects, e.g., ' *Traité des Obligations* ' (translated into English by W. D. Evans).

Potior est conditio defendentis.—(The defendant has the better position.) Where both parties have been concerned in an illegal transaction, the Court will not help the plaintiff against the defendant. Compare *In puri delicto melior est conditio possidentis.* —(Where both parties are in the wrong the position of the possessor is the better.)

Potior est conditio possidentis.—(The possessor is in the stronger position.) See POSSESSION and next preceding title.

Potwallers, or **Potwallopers,** persons who cooked their own food, and were on that account in some boroughs entitled to vote for Members of Parliament.

Poultry. As to the protection of live poultry from unnecessary suffering, see the Poultry Act, 1911, authorizing Orders for that purpose to be made under the Diseases of Animals Acts. See also Diseases of Animals Act, 1935 (25 & 26 Geo. 5, c. 31).

Pound [fr. *pund,* Sax. ; *pondo,* Lat.], a certain weight, consisting in troy weight of 12, in avoirdupois of 16 ounces ; the sum of 20*s.*—said to be so called because in Saxon times 240 pence weighed a pound. See *Lambard,* 219. A pound Scots, *anglicè,* a shilling.

Pound [fr. *pindan,* Sax.], a penfold, an inclosure, a prison in which beasts seized for rent (see DISTRESS) or caught on the land of another (see DAMAGE FEASANT) may be kept until they are replevied or redeemed. It is either *overt,* i.e., open overhead ; or *covert,* i.e., in a close. See 1 & 2 P. & M. c. 12, whereby no distress of cattle may be driven more than three miles from where it was taken, and not more than 4*d.* may be taken for any one whole distress impounded ; the Distress for Rent Act, 1737, s. 10, empowering any person lawfully distraining for rent to impound the distress on the premises chargeable with the rent.

By s. 7 of the Protection of Animals Act, 1911 (1 & 2 Geo. 5, c. 27) penalties are imposed for impounding or confining any animal in any pound without supplying it with wholesome and suitable food and water —any one may supply the animal in pound if kept for six hours or longer without sufficient suitable food. The reasonable cost may be recovered from the owner as a civil debt. These provisions extend an old law. See *Co. Litt.* 47 *b* as to expenses, etc., and, in Scotland, see 55 & 56 Vict. c. 55, s. 380.

Pound-breach in the case of distress for rent makes the breaker liable to the party grieved to treble damages and costs, by the Sale of Distress Act, 1690, s. 4, and in the case of distress on cattle damage feasant to a penalty of not more than 5*l.*, recoverable before justices of the peace, by the Pound-Breach Act, 1843.

Pound of Land, an uncertain quantity of land, said to be about fifty-two acres.

Poundage, a certain sum deducted from or added to each pound of any sum of money recovered by one person for another, to remunerate the person recovering the sum for his trouble.

The sheriff's poundage by sub-s. 1 of s. 20 of the Sheriffs Act, 1887, in case of debts due to the Crown, is 1*s.* for the first hundred pounds recovered, and 6*d.* for every pound exceeding the first hundred ; while in case of other debts it is as fixed by Rules under sub-s. 2. It is added to each pound of the debt, and may be levied with other expenses of execution over and above the sum due, by R. S. C. Ord. XLII., r. 15.

Pour faire proclaimer, an ancient writ addressed to the mayor or bailiff of a city or town, requiring him to make proclamation concerning nuisances, etc.—*Fitz. N. B.* 176.

Pourparty, to divide the lands which fall to parceners.—*Old N. B.* 11.

Pourpresture or **Purpresture** [fr. *pourpris,* Fr., an inclosure], anything done to the nuisance or hurt of the King's demesnes, or the highways, etc., by enclosure or building, endeavouring to make that private which ought to be public ; see *Co. Litt.* 277 *b.*

The difference between a *purpresture* and a public nuisance is that *purpresture* is an invasion of the *jus privatum* of the Crown; but where the *jus publicum* is violated it is a nuisance. Skene makes three sorts of this offence: (1) against the Crown; (2) against the lord of the fee; (3) against a neighbour —2 *Inst.* 38. Purpresture within a forest was where any man made any manner of encroachment upon the forest either by building or inclosure or by using of any liberty or privilege without lawful warrant so to do (*Williams on Rights of Common*, p. 231). See also *Glanv.* i. 9, c. 11.

Pour seisir terres, an ancient writ whereby the Crown seized the land which the widow of its deceased tenant, who held *in capite*, had for her dower, if she married without leave; it was grounded on the statute *De Prærogativâ Regis*, 7.—17 Edw. 2, st. 1, c. 4. It is abolished by 12 Car. 2, c. 24.

Poursuivant, a king's messenger; those employed in martial causes were called *Poursuivants-at-Arms*.

There are, at present, in the Heralds' Office four poursuivants, distinguished by the names following:—

(1) *Rouge Croix.*—Instituted at an uncertain period, but generally considered to be the most ancient. The title was doubtless derived from the cross of St. George.

(2) *Blue Mantle.*—An office instituted by Edward III. or Henry V., and named either in allusion to the colour of the arms of France or to that of the robes of the Order of the Garter.

(3) *Rouge Dragon.*—This poursuivancy was founded by Henry VII. on the day before his coronation, the name being derived from the ensign of his ancestor, Cadwaladyr. He also assumed a red dragon as the dexter supporter of his arms.

(4) *Portcullis.*—This office was instituted by the same monarch, from one of whose badges the title was derived. See HERALD.

As to the office of poursuivant of the Great Seal, see 37 & 38 Vict. c. 81.

Pourveyance, or **Purveyance,** the providing necessaries for the sovereign, by buying them at an appraised valuation in preference to all others, and even without the owner's consent. Indeed, it was a royal right of spoil, and was long since abolished. It was forbidden, without the owner's consent, by 25 Edw. 1 (Statut. de Tallag.), and see 12 Car. 2, c. 24; 3 *Hallam's Middle Ages*, c. 8, pt. 3, p. 148. See LAND COMPULSORY ACQUISITION.

Pourveyor, or **Purveyor,** a buyer; one who provided for the royal household.

Powdikes, an ancient dyke or embankment to keep out the fen waters. Destroying them in the fens of Norfolk and Ely is felony by 22 Hen. 8, c. 11.

Power. A power is an authority reserved by or limited to a person to dispose, either wholly or partially, of real or personal property, either for his own benefit or that of others (*Farwell on Powers*; and see *Freme* v. *Clement*, (1881) 18 Ch. D. 499). So far as they relate to land, powers are either (1) Common Law authorities; (2) declarations, or directions, operating only on the conscience of the persons in whom the legal interest is vested; or (3) declarations or directions deriving their effect from the Statute of Uses. A power given before 1926 by a will to A., an executor, to sell an estate, to whom no estate was devised, and a statutory power to sell estates, as in the instance of the Land Tax Redemption Acts, are both Common Law authorities. The estate passed by force of the will or passes by force of the Act, and the person who executes the power merely nominates the party to take the estate. A power of attorney is also a Common Law authority. A power to dispose of an estate or sum of money where the *legal* interest is vested in another may be a power of the second sort. The legal interest is not divested by the execution of the power, but equity will compel the person seised of it to clothe the estate created with the legal right. Powers deriving their effect from the Statute of Uses are either given to a person who has an estate limited to him by the deed creating the power, or who had an estate in the land at the time of the execution of the deed; or to a stranger, to whom no estate is given, but the power is to be exercised for his own benefit; or to a mere stranger to whom no estate is given, and the power is for the benefit of others. For the difference between a power vested in a public authority for the purposes of a statute, and property, see *Russ and Brown's Contract*, 1934, Ch. 34.

By the Law of Property Act, 1925, s. 1 (8), all powers of appointment over, or powers to convey or charge land or any interest therein, whether created by statute or other instrument or implied by law, and whether created before or after the Act, will operate only in equity and are termed equitable powers. The only exceptions are legal powers (see *ibid.*, s. 1 (8)) which can operate in law after 1925, i.e., the powers vested in legal mortgagee; the powers vested in an *estate owner* and exercisable by him or on his behalf;

certain statutory powers (see ss. 7 and 8, *ibid.*). This Act, having abolished the Statute of Uses, powers deriving their effect by way of a declaration to uses will, after 1925, only take effect as either legal or equitable powers. By the same Act (s. 205, (1) (xi.): '*Legal powers' include the powers vested in a chargee by way of legal mortgage or in an estate owner under which a legal estate can be transferred or created, and 'equitable powers' mean all the powers in or over land under which equitable interests or powers only can be transferred or created.*

The classification of powers appearing below has been retained for the determination of legal titles existing before 1925 and because the equitable force of powers has been preserved by the Law of Property Act, 1925, s. 3.

(1) *Collateral*, which are given to strangers, i.e., to persons who have neither a present nor future estate or interest in the land. These are also called *simply collateral*, or *powers not coupled with an interest*, or *powers not being interests*. These terms have been adopted to obviate the confusion arising from the circumstance that powers in gross have been by many called *powers collateral*. —*Saville* v. *Blackett*, (1721) 1 P. Wms. 777.

(2) *Relating to the land*, which are either—

(α) *Appendant* or *appurtenant*, because they strictly depend upon the estate limited to the person to whom they are given. Thus, where an estate for life is limited to a man, with a power to grant leases in possession, a lease granted under the power may operate wholly out of the life-estate of the party executing it, and must in every case have its operation out of his estate during his life. Such an estate must be created, which will attach on an interest actually vested in himself; or,

(β) *In gross*, which are given to a person who had an interest in the estate at the time of the execution of the deed creating the power, or to whom an estate is given by the deed, but which enable him to create such estates only as will not attach on the interest limited to him. Of necessity, therefore, where a man seised in fee settles his estate on others, reserving to himself only a particular power, the power is in gross. A power to a tenant for life to appoint the estate after his death amongst his children, a power to jointure a wife after his death, a power to raise a term of years to commence from his death for securing younger children's portions, are all powers in gross.

A power may, with reference to the particular estates in the land over which it extends, have different aspects; it may, in regard to one, be a power appendant; in respect to another, a power in gross. Thus where an estate is settled to A. for life, remainder to B. in tail, remainder to A. in fee, and A. has a power to jointure his wife after his death, this power is in gross as to the estate for life, but appendant or appurtenant as to the remainder in fee. It may affect the latter, but never can attach on the former.

An important distinction is established between *general* and *particular* or *special* powers. By a general power we understand a right to appoint to whomsoever the donee pleases. Such a power is, in fact, merely a mode of ownership. By a particular power it is meant that the donee is restricted to some objects designated in the instrument creating the power, as to his own children.

A power is expounded strictly; therefore, if a man have power to make leases generally, this extends to make leases in possession only, and not in reversion.

Powers appendant may be destroyed by release, bargain and sale, or feoffment; powers in gross, by feoffment or release; but powers simply collateral could not formerly be destroyed by the act of the person to whom they are given. By s. 52 of the Conveyancing Act, 1881, replaced by the Law of Property Act, 1925, s. 155, however, a person to whom any power, whether coupled with an interest or not, is given, may by deed release, or contract not to exercise, the power; and by s. 6 of the Conveyancing Act, 1882, replaced by the Law of Property Act, 1925, s. 156, a person to whom any power, whether coupled with an interest or not, is given, may by deed disclaim the power, and after disclaimer will not be capable of exercising, or joining in the exercise of the power, though it may be exercised by the other or others of the persons to whom the power was given unless the contrary is expressed in the instrument creating the power. A power given to two or more jointly annexed to an office, e.g., a trust, will survive to the other or others after the death of one of the donees (Trustee Act, 1925, s. 18), but a bare power to two or more by name will not survive (*Sugden on Powers; Wms. on Executors*). A power intended to be exercised personally and jointly will not survive, *sed. qu.*, if the power is appendant to a joint beneficial interest or estate in the donees.

Wills in execution of powers of appointment by will are to be executed like other wills, and to be valid, although other required solemnities are not observed (Wills

Act, 1837, s. 10); and a deed attested by two witnesses is a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution, or attestation or solemnity (Law of Property Amendment Act, 1859, s. 12), reproduced by the Law of Property Act, 1925, s. 159; and equity will aid defective execution if there is good consideration; see *Sugden on Powers*, and *Hals. L. E.*, tit. '*Powers*.'

The Powers of Appointment Act, 1874 ('Lord Selborne's Act'), reproduced by Law of Property Act, 1925, s. 158, provides that appointments under powers shall be valid notwithstanding one or more objects are excluded, in certain cases.

For ascertaining the date for the purpose of the rule against perpetuities, the date from which the period is taken is the date of the instrument conferring the power unless the power is exerciseable by an owner or having a general power equivalent to that of ownership. See *Hals. L. E.*, tit. '*Perpetuities*.'

Consult *Farwell* or *Sugden on Powers*. See APPOINTMENT IN EXERCISE OF A POWER; ILLUSORY APPOINTMENTS ACT; POSSIBILITY,

Power of Attorney (Letter of Attorney), a writing usually, but not always necessarily, under seal authorizing another person, who is called the attorney of the person appointing him, to do any lawful act in the stead of another, as to give seisin of lands, receive debts or sue a third person. It is either general or special. The nature of this instrument is to give the attorney the full power and authority of the maker to accomplish the act intended to be performed. If it is an authority coupled with an interest, e.g., if the attorney is authorized to collect debts and pay thereout a debt due to himself, it is irrevocable. As it is necessary for certain purposes (e.g., execution of a deed) that it should be under seal, a power of attorney is usually in the form of a deed. By ss. 8 and 9 of the Conveyancing Act, 1882, now Law of Property Act, 1925, ss. 126 and 127, powers of attorney may be made irrevocable either absolutely or for a limited period according as they are given for valuable consideration or not. See REVOCATION OF AGENCY. No person making any payment or doing any act *bonâ fide* under or in pursuance of any power of attorney is liable for the moneys so paid or the act so done by reason that the person who gave the power of attorney was dead, or had become a person of unsound mind or bankrupt, or had revoked the power before such payment or act, if the death, etc., was not known to him at the time of the payment or act. See Law of Property Act, 1925, s. 124, replacing Conveyancing Act, 1881, s. 47, extending Law of Property Amendment Act, 1859, s. 26, which applied to trustees, etc., only, and to the case only of death of the donor of the power. Sect. 124 of the Act of 1925 further provides that proof by an attorney by statutory declaration made within three months after the performance of an authorized act that he has had no notice of revocation, may be conclusive. As to filing at the Central Office of the original power of attorney if it relates to unregistered land and the obtaining of office copies and the searching of the file, see s. 48 of the Act of 1881 and s. 125 of the 1925 Act. If to unregistered as well as registered land, the original must be filed at the Central Office and an office copy at the Land Registry; if to registered land only, at the Land Registry. Sect. 46 of the 1881 Act, now s. 123 of the 1925 Act, allows the attorney to act in his own name instead of in that of the donor of the power. As to derivative powers exercisable by a purchaser if, as regards registered land, the power is protected by a caution or other entry on the register, see s. 128, Law of Property Act, 1925. A company can give a power of attorney under s. 31 of the Companies Act, 1929, to execute deeds on its behalf outside the United Kingdom.

Power of the County. See POSSE COMITATUS.

Poynding. See POINDING.

Poyning's Act, or STATUTE OF DROGHEDA, an Act of Parliament, made in Ireland, 10 Hen. 7, c. 22, A.D. 1495; so called because Sir Edward Poynings was lieutenant there when it was made, whereby all general statutes before then made in England were declared of force in Ireland, which, before that time, they were not.—12 *Rep.* 109; 3 *Hall, Const. Hist.* c. xviii. p. 361.

P.P.I. See POLICY PROOF OF INTEREST.

Practice, the form and manner of conducting and carrying on suits, actions, or prosecutions at law or in equity, civil or criminal, through their various stages, from the commencement to final judgment and execution, according to principles and rules laid down by the several Courts. As to the precise meaning of 'practice,' see *A.-G.* v. *Sillem*, (1864) 10 Jur. N.S. 457.

Multa exercitatione multo facilius quam regulis percipies (You will perceive many things much more easily by practice than by rules): 4 *Inst.* c. 50.

As to the practice of the Courts of Common Law, see *Day's Common Law Procedure Acts*, and *Chitty's Archbold's Practice*; of Courts of Equity, *Daniell's Chanc. Prac.*; *Seton on Judgments*. As to the practice of the Supreme Court, see the Judicature Acts, 1873, 1875, and 1925, the Rules of the Supreme Court, and the *Annual Practice*. And see the titles of the various proceedings in an action; e.g., PLEADING, SUMMONS, etc.

As to the practice of the County Courts, see the County Court Act of 1934 (which consolidates with amendments the former Acts), the County Court Rules, 1936; and the County Courts *Annual Practice*.

Practice Court. See BAIL COURT.

Practitioner, one who is engaged in the exercise or employment of any art or profession.

Præceptories, a kind of benefices, so called because they were possessed by the more eminent Templars, whom the Chief Master by his authority created and called *Præceptores Templi.—Dugd. Mon.* ii. 543.

Præcipe (command), a slip of paper upon which the particulars of a writ are written; it is lodged in the office out of which the required writ is to be issued.

A præcipe must be filed by the party issuing or his solicitor before a writ of execution is issued, which præcipe must contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, for execution, and the names of those against whom it issued, and must be signed by the party or solicitor issuing it (R. S. C. Ord. XLII., r. 12). For forms of such præcipes, see *ibid.*, App. G. The goods of the debtor are bound immediately after the application for the præcipe (*Murgatroyd* v. *Wright*, 1907, 2 K. B. 333).

Præcipe in capite, a writ out of Chancery for a tenant holding of the Crown *in capite*, i.e., in chief.—*Mag. Chart.* c. 24.

Præcipe, Tenant to the, a person having an estate of freehold in possession, against whom the præcipe was brought by a tenant in tail, seeking to bar his estate by a recovery. If the latter was tenant in tail in possession, it was usual for him to convey a freehold estate to any indifferent person against whom the præcipe was brought. See RECOVERY.

Præcipitium, the punishment of casting headlong from some high place.

Præcognita, things to be previously known in order to the understanding of something which follows.

Præda belli, booty, property seized in war.

Prædia stipendiaria, provincial lands belonging to the people.—*Civ. Law.*

Prædia tributaria, provincial lands belonging to the emperor.—*Ibid.*

Prædia volantia. In the duchy of Brabant, certain things movable, such as beds, tables, and other heavy articles of furniture, were ranked amongst immovables, and were called *prædia volantia*, or volatile estates.—2 *Bl. Com.* 428.

Prædial Tithes [fr. *prædium*, Lat., ground], such as arise merely and immediately from the ground; as grain of all sorts, hops, hay, wood, fruit, herbs.—2 *Steph. Com.*

Prædict (aforesaid).—*Hob.* 6.

Prædium dominans, an estate to which a servitude is due; the ruling estate.—*Colquhoun's Roman Civil Law*, s. 937.

Prædium rusticum, heritage which is not destined for the use of man's habitation; such, for example, as lands, meadows, orchards, gardens, woods, even though they should be within the boundaries of a city.—*Ibid.*

Prædium serviens, an estate which suffers or yields a service to another estate.—*Ibid.*

Prædium urbanum, a building or edifice intended for the habitation and use of man, whether built in cities or in the country.—*Ibid.*

Præfectus urbi, from the time of Augustus, an officer who had the superintendence of the city and its police, with jurisdiction extending one hundred miles from the city, and power to decide both civil and criminal cases. As he was considered the direct representative of the emperor, much that previously belonged to the *prætor urbanus* fell gradually into his hands.—*Ibid.*, s. 2395.

Præfectus vigilum, the chief officer of the night watch. His jurisdiction extended to certain offences affecting the public peace, and even to larcenies. But he could inflict only slight punishments.—*Ibid.*

Præfectus villæ (the mayor of a town).

Præfine, the fee paid on suing out the writ of covenant, on levying fines, before the fine was passed.—2 *Bl. Com.* 350.

Præmium pudicitiæ, the consideration given by the seducer of a chaste woman for her defilement. See *Annandale* v. *Harris*, (1727) 2 P. Wms. 432; 3 Bro. P. C. 445.

Præmunire [fr. *præmoneri*, Lat., to be forewarned]. It is an offence so called from

the words of the writ preparatory to the prosecution thereof: *præmunire facias* A. B. (cause A. B. to be forewarned) that he appear before us to answer the contempt wherewith he stands charged; which contempt is particularly recited in the preamble to the writ. The offence of *præmunire* is, in effect, described by Blackstone to be 'introducing a foreign power into the land, and creating *imperium in imperio*, by paying that obedience to alien process which constitutionally belonged to the King alone': see 4 *Bl. Com.* pp. 103 *et seq.*

The statutes of *præmunire* (which are all still unrepealed, and are of the most confused character) were framed to encounter papal usurpation by presentation of aliens to English benefices. The first of them, called the Statute of Provisors, was passed in 1350, in the twenty-fifth year of the reign of Edward III., and was the foundation of all the subsequent statutes of *præmunire*, of which 16 Rich. 2, c. 5, passed in 1392, is the 'Statute of Præmunire' generally so called, and incorporated by reference in many subsequent statutes; e.g., in 25 Hen. 8, c. 20, s. 6, whereby an archbishop or bishop refusing to confirm and consecrate a person elected bishop still incurs a præmunire; and 13 Car. 2, c. 1, whereby to assert maliciously and advisedly, by speaking or writing, that both or either House of Parliament have or has a legislative authority without the sovereign, is still an offence within the statutes of *præmunire*, or, as it is shortly called, a *præmunire;* and the Habeas Corpus Act, 31 Car. 2, c. 2, s. 11, whereby it is still a *præmunire* to send any subject of this realm a prisoner, under certain exceptions in the Act specified, into parts beyond the seas.

The punishment of the offence is (see 25 Edw. 3, st. 5, c. 22, and 16 Rich. 2, c. 5) that, from the conviction, the defendant be out of the Crown's protection, and his lands and goods are forfeited to the Crown. Until the passing of the repealed 5 Eliz. c. 1, it was perhaps lawful to kill the defendant. Consult *Co. Litt.* 391 *a* and *Harg.* note.

Prænomen, the name of a person, distinguishing him from others of the same family. —*Civil Law.*

Præpositus, an officer next in authority to the alderman of a hundred, called *præpositus regius;* or a steward or bailiff of an estate, answering to the *vicnere.*—*Anc. Inst. Eng.*

Also the person from whom descents are traced under the old canons.

Præpositus ecclesiæ, a church-reeve or churchwarden.

Præpositus villæ, a constable of a town, or petty constable.

Præscriptio est titulus ex usu et tempore substantiam capiens ab authoritate legis.—(Prescription is a title taking his substance of use and time allowed by the law.) *Co. Litt.* 113 *a, b.*

Præsentia corporis tollit errorem nominis: et veritas nominis tollit errorem demonstrationis. *Bac. Max.* 224.—(The presence of the body (substance) cures error in the name: the truth of the name cures an error of description.)

Præstat cautela quam medela. *Co. Litt.* 304.—(Caution is better than cure.)

Præsumitur pro negante.—(It is presumed for the negative.) The rule of the House of Lords when the numbers are equal on a motion. See SEMPER PRÆSUMITUR PRO NEGANTE.

Præsumptio, intrusion, or the unlawful taking of anything.—*Leg. Hen.* 1, c. 11.

Prætor fidei-commissarius, the judge at Rome who enforced the performance of all fiduciary obligations and confidence. See 1 *Steph. Com.*

Pragmatic Sanction, a rescript or answer of the sovereign, delivered by advice of his council to some college, order, or body of people, who consult him in relation to the affairs of the community. A similar answer given to an individual is simply called a *rescript.*—*Civ. Law.* Also, the instrument by which the Emperor Charles VI. endeavoured to secure the succession of his daughter Maria Theresa to the Austrian dominions after his death.

Pratique [fr. *practica*, Ital.], a licence for the master of a ship to traffic in the ports of Italy upon a certificate that the place whence he came is not annoyed with any infectious disease.

Pratum bovis, or **carucæ,** a meadow for oxen employed in tillage.

Praxis, use, practice.

Prayer Book. See UNIFORMITY, ACT OF.

Prayer for the Dead. A bequest of personal estate for masses for the dead is not void as a gift to superstitious uses (*Bourne* v. *Keane*, 1919, A. C. 815 (overruling *West* v. *Shuttleworth*, (1835) 2 My. & K. 684, and the cases decided thereunder). See also *O'Hanlon* v. *Logue*, 1906, 1 Ir. 247, and *Re Caus. Lindenboom* v. *Camille*, 1934, Ch. 162, A tombstone bearing an inscription 'Of your charity pray for the repose of the soul of' or similar words can be removed (*Pearson* v. *Stead*, 1903, P. 66), but see *Capel St. Mary* v. *Packard*, 1927, P. 289.

Pray in Aid, to petition in a court of justice for the calling in of help from another that has an interest in the cause in question.

Preamble, introduction, preface; also the beginning of an Act of Parliament, etc., serving to portray the interests of its framers, and the mischiefs to be remedied; a good mean to find out the meaning of the statute, and as it were a key to open the understanding thereof.—1 *Inst.* 79 *a*; and see the *Sussex Peerage Case,* (1844) 11 Cl. & F. 143; *Winn* v. *Mossman,* (1869) L. R. 4 Ex. 299; *Maxwell on Statutes; Hardcastle on Statutes; Mews's Digest,* tit. '*Statute*'; the effect of the cases being that as a general rule the preamble is to be resorted to only in case of ambiguity in the statute itself.

Preambles, which in early Acts (see, e.g., 4 & 5 W. & M. c. 18, the Act of Settlement, and the Irish Act, 1 Car. 1, c. 1), and even in comparatively modern Acts (see, e.g., 3 & 4 Vict. c. 77, 9 & 10 Vict. c. 48), often extended to very great length, are now very frequently discontinued; and in Statute Law Revision Acts passed since 1888, Parliament has repealed preambles of statutes still in force, but Lord Halsbury, L.C., in *Powell* v. *Kempton Park Race Course,* 1899, A. C. 143, affirming the Court of Appeal (*S.C.,* 1897, 2 Q. B. 242), referred to a preamble so repealed by the Statute Law Revision Act, 1892, and in his *Laws of England,* tit. '*Statute,*' declared that 'the repeal of a preamble by a Statute Law Revision Act will in no way affect the future construction of the Act.'

Pre-audience, the right of one to be heard before another; as of the Attorney-General and Solicitor-General before King's Counsel, of King's Counsel before other barristers, and of barristers generally in the order of their call.

Prebend, a stipend granted in cathedral churches *ad præbendum,* to maintain a priest; also, but improperly, the priest himself. A simple prebend is merely a revenue; a prebend, with dignity, has some jurisdiction attached to it. The term 'prebend' is generally confounded with canonicate; but there is a difference between them. The former is the stipend granted to an ecclesiastic in consideration of his officiating and serving in the church; whereas the canonicate is a mere title or spiritual quality which may exist independently of any stipend.—2 *Steph. Com.*

Prebenda, or **Probanda,** provisions.

Precariæ, or **Preces,** day-works which the tenants of certain manors are bound to give their lords in harvest time. *Magna precaria* was a great or general reaping day.

Precarium, a contract by which the owner of a thing, at another's request, gives him the thing to use as long as the owner shall please. This was distinguished from an ordinary gratuitous loan, and in the Roman Law gave rise to different obligations on the part of the borrower.—See *Storey on Bail.,* ss. 227, 253 *b.*

Precatory Words, expressions in a will, praying or recommending that a thing be done; e.g., that property bequeathed to a legatee be disposed of by him for the benefit of other persons, the question then arising whether the legatee was meant to take absolutely or merely as a trustee for such other persons. The general rule is that such words will create a precatory trust if they are capable of being construed as imperative, but the cases are numerous and conflicting. In former times the Court was very apt to construe words of recommendation as imperative, but of late years the tendency has been the other way; see *Hill* v. *Hill,* 1897, 1 Q. B. 483; *Williams* v. *Williams,* 1897, 2 Ch. 12; *Re Oldfield,* 1904, 1 Ch. 549; *Comiskey* v. *Bowring-Hanbury,* 1905, A. C. 84.

Precedence, or **Precedency,** the act or state of going before; adjustment of place.

The rules of precedence may be reduced to the following list, in which those marked * are entitled to the rank here allotted them by 31 Hen. 8, c. 10; marked † by 1 W. & M. c. 1; marked ‖ by letters-patent, 9, 10 & 14 Jac. 1, which see in *Seld. Tit. of Hon.* ii. 5, 46; marked ‡ by ancient usage and established custom.—*Camden's Brit.,* tit. '*Ordines*'; *Milles's Cat. of Hon.* 1610; and *Chamberlayne's Prest. St. of Eng.,* b. 3, c. iii; see 1 *Bl. Com.* 404.

* The King's children and grandchildren.
* The King's consort.
* The King's uncles.
* The King's nephews.
* Archbishop of Canterbury (*a*).
* Lord High Chancellor or Keeper, if a baron.
* Archbishop of York.

Prime Minister.

By royal warrant dated December, 1905.

* Lord Treasurer.
* Lord President of the Council. } barons.
* Lord Privy Seal.

(*a*) The judges of assize, while on circuit, take precedence of every subject.

* Lord Great Chamberlain. But see Private Stat. 1 Geo. 1, c. 3.
* Lord High Constable.
* Lord Marshal.
* Lord Admiral.
* Lord Steward of the Household.
* Lord Chamberlain of the Household.

(above all peers of their own degree.)

* Dukes.
* Marquesses.
‡ Dukes' eldest sons.
* Earls.
‡ Marquesses' eldest sons.
‡ Dukes' younger sons.
* Viscounts.
‡ Earls' eldest sons.
‡ Marquesses' younger sons.
* Secretary of State, if a bishop.
* The Bishop of London.
* The Bishop of Durham.
* The Bishop of Winchester.
* Bishops.
* Secretary of State, if a baron.
* Barons.
† Speaker of the House of Commons.
† Lords Commissioners of the Great Seal.
‡ Viscounts' eldest sons.
‡ Earls' younger sons.
‡ Barons' eldest sons.
|| Knights of the Garter.
|| Privy Councillors.
|| Chancellor of the Exchequer.
|| Chancellor of the Duchy of Lancaster.
|| Lord Chief Justice of England.
|| Master of the Rolls.

For the present precedence of the Judges of the Court of Appeal and of the High Court of Justice, see Jud. Act, 1925, s. 16, replacing Jud. Act, 1873, s. 11, and Jud. Act, 1875, s. 6.

|| Knights Bannerets, royal.
|| Viscounts' younger sons.
|| Barons' younger sons.
|| Baronets.
|| Knights Bannerets.
‡ Knights of the Bath.
‡ Attorney-General.
‡ Solicitor-General.
‡ The King's Advocate-General.
‡ Serjeants-at-law.
‡ Knights Bachelors.
‡ County Court Judges.
|| Baronets' eldest sons.
|| Knights' eldest sons.
|| Baronets' younger sons.
|| Knights' younger sons.
‡ Colonels.
‡ Doctors, with whom, it is said, rank barristers.
‡ Esquires.
‡ Gentlemen.

Precedence, Patent of, a grant from the Crown to such barristers as it thinks proper to honour with that rank of distinction, whereby they are entitled to such rank and pre-audience as are assigned in their respective patents.—3 *Steph. Com.* (*Discontinued*).

Precedent Condition, such as must happen or be performed before an estate can vest or be enlarged, or an obligation be performed. See CONDITION PRECEDENT.

Precedents, authorities or examples to be followed by Courts of justice. Each of the three superior Courts of Common Law was by the practice of the law bound to follow a decision of its own or of either of the others on a point of law, and a decision of its own on a point of practice; but it was not bound to follow the decisions of another co-ordinate Court on a point of practice. The same rules prevailed in the Courts of Equity. The Divisions of the High Court being parts of one and the same Court, each Division ordinarily considers itself bound by the decision of the other Divisions upon points of practice as well as of law; and so of each Divisional Court; but in more than one case where there was no appeal, a Divisional Court, inclined to disagree with a prior judgment of another Divisional Court upon the same point, has been strengthened in number, and so strengthened, has declined to follow such prior judgment. See *Winyard* v. *Toogood*, (1882) 52 L. J. M. C. 25.

The House of Lords is absolutely bound by its own prior decisions, although decided, on an equality of votes, in the negative, and nothing but an Act of Parliament will remove them (*London Tramways Co.* v. *London County Council*, 1898, A. C. 75). The decisions of a judge at Nisi Prius are not considered binding.

The decisions of the Judicial Committee of the Privy Council are not binding on the High Court, though of course treated with great respect.

Scottish (see *Hoyle* v. *Hitchman*, (1879) 4 Q. B. D. 423) and Irish (see *London and North Western Ry. Co.* v. *Skerton*, (1864) 33 L. J. M. C. 158) decisions are treated with respect in the English Courts and differed from with reluctance. The differing from the Scots decision in *Hoyle* v. *Hitchman* led to the passing of s. 2 *a* of the Sale of Food and Drugs Act, 1879. In *London and North Western Ry. Co.* v. *Skerton* three judges of the Court

of Queen's Bench, being themselves in doubt as to the construction of s. 46 of the Railways Clauses Consolidation Act, 1845, followed two Irish cases. In *Chislett* v. *Macbeth & Co.*, 1909, 2 K. B. at p. 815, Farwell, L. J., said: 'It is desirable that the decisions in the Scottish Court and in the Courts of this country should, if possible, be uniform'; approved by Lord Shaw, *ib.*, 1910, A. C. at p. 224. Consult *Mews's Digest*, tit. '*Decided Cases*,' and *Chitty on Contracts*.

The term 'precedents' is also used to designate the collections of pleadings, such as *Bullen and Leake's Precedents of Pleadings*, or of forms of wills, settlements, leases, mortgages, and other documents in ordinary use which are made and published from time to time as models which a practitioner can safely follow, after adaptation so far as necessary to his own particular case. See *Davidson's Precedents in Conveyancing; Bythewood and Jarman; Key and Elphinstone, Prideaux, Encyclopædia of Forms and Precedents*, and others. For an historical notice of Forms of Assurance and Precedents, see *Davidson's Prec. in Conveyancing*, vol. i. ch. i. For precedents of documents in company matters, see *Palmer's, Stiebel's*, or *Gore-Brown's Company Precedents*.

Precept, a rule authoritatively given; a mandate: (1) A command in writing by a justice of the peace or other officer, for bringing a person or record before him; the direction of the sheriff to the proper officer to proceed to the election of members of parliament; a command to a sheriff to empannel a jury; also a provocation whereby one incites another to commit a felony.

(2) Under the Rating and Valuation Act, 1925, as amended by the Local Government Act, 1929, the mandate, styled 'precept to be sent' by the precepting authority to the rating authority to levy the general rate to a specified amount; and see Local Government Act, 1933, s. 193, for power of a parish council to issue precepts to its rural district council to meet certain expenses.

Preces, primariæ, or **Primæ,** a right of the Crown to name the first prebend that becomes vacant after the accession of the sovereign in every church of the empire. This right was exercised by the Crown of England in the reign of Edward I.—2 *Steph. Com.*

Precinct. 1. A constable's district. 2. The immediate neighbourhood of a palace or court.

Precipe. See PRÆCIPE.

Precludi non (not to be barred) was the technical name of the commencement of a replication to a plea in bar (1 *Chit. Pl.* 627, 752), abolished by C. L. P. Act, 1852, s. 66.

Precognition, in Scotland, is the 'proof' of a witness committed to writing for use upon his examination. In criminal cases, the preliminary examination of witnesses usually conducted under the superintendence of the procurator fiscal.

Preconization [fr. *præconium*, Lat., the office of a crier], proclamation.

Pre-contract. Where one of the parties to a marriage was under a prior agreement to marry a third person, such prior agreement was called a pre-contract. It was a canonical impediment to the marriage of either party. The Ecclesiastical Courts would formerly enforce this agreement, by compelling the parties to a public marriage, and if one of them had already married, such marriage would be void *ab initio*; but until thus avoided it was good. See 32 Hen. 8, c. 28, and 2 & 3 Edw. 6, c. 23, s. 2; *Bishop on Marriage and Divorce*, s. 53. But pre-contract is no longer a cause for dissolving a marriage in England; see 26 Geo. 2, c. 33; *Co. Litt.* 79 *b*, and Hargrave's note (4).

Predecessor, one who has preceded another. The word predecessor has a technical signification in law, answering to successor in the case of a corporation sole, as ancestor does to heir in the case of a natural person (*Burt. Comp. pl.* 378); the correlative of successor under the Succession Duty Act, 1853, s. 2.

Under the Landlord and Tenant Act, 1927 (17 & 18 Geo. 5, c. 36), defined in relation to a tenant or landlord, as any person through whom either respectively has derived title by assignment, will, intestacy, or operation of law.

Predial. See PRÆDIAL.

Predicament, the condition of things concerning which a logical proposition may be stated.

Predicate, that which is said concerning the subject in a logical proposition, as, 'The law is the perfection of common sense'; perfection of common sense, being affirmed concerning the law (the subject), is the predicate or thing predicated.

Predicate, to affirm logically.

Pre-emption, Right of, the power of buying a thing before others, as superfluous lands under the Lands Clauses Consolidation Act, 1845, s. 128, which must before sale be offered to the persons from whom they were originally taken, or to the adjoining owners; as to registration of contracts or deeds giving

the right of pre-emption as estate contracts, see Land Charges Act, 1925, s. 10. Compare the right of pre-emption which a county council has by virtue of s. 12 (4) of the Small Holdings and Allotments Act, 1908. Also, a privilege formerly allowed to the royal purveyor, but abolished by 12 Car. 2, c. 24. See OPTION TO PURCHASE.

Prefer, to apply, to move for; as 'to prefer for costs' is a phrase for 'to apply for costs.'

Preferences, Fraudulent. See FRAUDULENT PREFERENCES.

Preferential or **Preference Shares** or **Stock,** shares or stock in a company having priority as to payment of dividends of a fixed amount, and, in some cases, of capital upon a winding-up, over the ordinary shares. The dividends are usually contingent upon the profits of each year or half-year. In some cases, however, the arrears of dividend form an accumulating debt by the ordinary to the preference shareholders, the preference being in that case described as a 'non-contingent' or a 'cumulative' preference. And see DEFERRED STOCK.

Preferential Payments, in bankruptcy, administration of estates of persons dying insolvent, and winding up of a company:— One year's rates and taxes, four months' salaries of clerks up to fifty pounds, and two months' wages of labourers or workmen, up to twenty-five pounds (labourers in husbandry paid partly in a lump sum at the end of the year of hiring to have the whole or proportionate part of that sum). Also sums due under the Workmen's Compensation Acts, the National Insurance Acts (Health and Unemployment and Contributory Pensions). These debts rank equally between them unless the assets are insufficient, in which case they are to abate in equal proportions. By the Bankruptcy Act, 1914 (see s. 34), the preference was extended to apprentices. See the Bankruptcy Act, 1914, s. 33, and the Companies Act, 1929, s. 264, by which these debts are directed to be paid in priority to all others; and by s. 264 (4) (*b*) of the Companies Act, 1929, these debts are to have priority over the claims of holders of debentures or debenture stock under any floating charge created by a company. The debts are a first charge on goods or proceeds distrained upon within three months of the date of the receiving order or winding-up order, but if the landlord pays the debts he is to have a first charge for the debts on the goods or proceeds (Bankruptcy Act, 1914, s. 35, and Companies Act, 1929, s. 264 (6); and see also County Courts Act, 1933, ss. 134 and 153, as to administration of small estates; *Cairney* v. *Back*, 1906, 2 K. B. 746; *Re Beeton*, 1913, 2 Ch. 279; *Re Havana Co.*, 1916, 1 Ch. 8, and *Lewis Merthyr Collieries, Ltd., Lloyds Bank* v. *The Company*, 1929, 1 Ch. 498; and STANNARIES.

As to *improper* preferential payments, see FRAUDULENT PREFERENCES.

Pregnancy, the state of being with child. It may be an 'illness' preventing the attendance of a witness (*Reg.* v. *Wellings*, (1878) 3 Q B. D. 426).

Pregnancy, Plea of. When a woman is capitally convicted, and pleads her pregnancy, execution will be respited until she be delivered. See JURY OF MATRONS.

Prejudice, Without, is a term given to overtures and communications between parties in the course of negotiation, or between litigants before action, or after action, but before trial or verdict. The words import an understanding that if the negotiation fails, nothing that has passed shall be taken advantage of thereafter; so, if a defendant offer, 'without prejudice,' to pay half the claim, the plaintiff must not rely on the offer as an admission of his having a right to *some* payment.

The rule is that nothing written or said 'without prejudice' can be considered at the trial without the consent of both parties—not even by a judge in determining whether or not there is good cause for depriving a successful litigant of costs (*Walker* v. *Wilsher*, (1889) 23 Q. B. D. 335; *Hulton* v. *Chadwick*, 35 T. L. R. 620). There must, however, be an existing dispute for the rule to apply (*Re Daintrey*, 1893, 2 Q. B. 116). The word is also frequently used without the foregoing implications in statutes and *inter partes* to exclude or save transactions, acts and rights from the consequences of a stated proposition and so as to mean 'not affecting,' 'saving,' or 'excepting.'

Prelate, an archbishop or bishop.

Prelector, reader; a lecturer.

Preliminary Act, a document stating the time and place of a collision between vessels, the names of the vessels, and other particulars required to be filed by each solicitor in actions for damage by such collision. See R. S. C. 1883, Ord. XIX., r. 28.

Premier, a principal minister of State. See PRIME MINISTER.

Premises (*præmissa*), in logic, propositions antecedently supposed or proved. In a deed the 'premises' are all the parts preceding the habendum. The word properly applies to what has been previously described or

mentioned, and is used only in that sense in well-drawn instruments (*Dav. Prec. in Conveyancing*, vol. i.). It is, however, often used as meaning land or houses.

For the statutory meaning, see particular statutes, e.g., Public Health Act, 1875, s. 4, where ' premises ' includes messuages, buildings, lands, easements, tenements and hereditaments of any tenure.

Premium, a consideration; something given to invite a loan or a bargain; the consideration paid to the assignor by the assignee of a lease, or to the transferor by the transferee of shares or stock, etc.

Also the name given to the annual or other payment for renewal of a policy of assurance.

Premunire. See PRÆMUNIRE.

Prender [fr. *prendre*, Fr.], to take anything as of right before it is offered.

Prender de baron (to take a husband).

Prepense, forethought, preconceived, contrived beforehand. See MALICE.

Prerogative, a peculiar or exclusive privilege. Especially, all the rights which by law the King has as chief of the kingdom and as entrusted with the execution of the laws. The prerogative of the Crown cannot be taken away even by an Act of Parliament unless the Act contains express words to that effect; see *Re Wi Matua's Will*, 1908, A. C. 448, and *A.-G.* v. *De Keyser's Royal Hotel, Ltd.*, 1920, A. C. 508, and under Statute of Westminster, *British Coal Corporation* v. *Regem*, 1935, A. C. 500. Also *Moore* v. *A.-G. for Irish Free State*, 1935, A. C. 484. See KING; REGALIA.

Prerogative Court. The two archbishops have each of them a prerogative court. The appeal is to the Privy Council.—2 & 3 Wm. 4, c. 92. See now Jud. Act, 1925, ss. 20 (*a*), 107, replacing Court of Probate Act, 1857, s. 4, which took away their jurisdiction in testamentary matters.—2 *Steph. Com.*

Prerogative of Mercy. In early times the operation of the Royal Prerogative of Mercy was far wider than at the present day, as it was not only extended to some persons who in later ages would not be considered to have incurred any criminal responsibility, e.g., persons who had committed homicide by misadventure or in self-defence (*Pollock and Maitland's Hist. Engl. Law*, vol. ii., pp. 476 *et seq.*), but was even extended to jurors who had been attainted for an oath that, though not false, was fatuous: *ibid.* p. 661. The power of pardoning offences is stated by Blackstone to be one of the great advantages of monarchy in general above every other form of government, and which cannot subsist in democracies. Its utility and necessity are defended by him on all those principles which do honour to human nature: see 4 *Bl. Com.* c. 31, p. 397. In early times, again, there were fewer offences that did not admit of being pardoned. In appeals (i.e., private accusations of felony) which were not the suit of the King, but of the party injured, the prosecutor might release, but the King could not pardon: 3 *Inst.* 237. Appeals by wager of battel (see that title) were abolished in 1819 by 56 Geo. 3, c. 46, in consequence of *Ashford* v. *Thornton*, (1818) 1 B. & A. 405. Blackstone observes that the King could not pardon a common nuisance while it remains unredressed, or so as to prevent an abatement of it; though afterwards he might remit the fine, because, though the prosecution is vested in the King to avoid multiplicity of suits, yet (during its continuance) this offence savours more of the nature of a private injury to each individual in the neighbourhood than of a public wrong. The King cannot pardon some offences against a popular or penal statute, after information brought: 3 *Inst.* 238. By the passing of the Habeas Corpus Act, 1679 (31 Car. 2, c. 2), *Chit. Stat.* tit. '*Habeas Corpus*,' the offence of sending a subject to a foreign prison against s. 12 of that enactment was made unpardonable by the King. The Prerogative of Mercy was frequently invoked to alter the sentence, either to obviate the necessity for the literal execution of the sentence in cases of high treason, or to change the sentence of death by hanging for felony into one of decapitation: cf. advice given by the judges to James II. in *Lady Lisle's case*, 11 How. St. Tr. 297, 378. In the eighteenth century conditional pardons for felony were regularly granted in order that the offender might transport himself for a term of years. Formerly free pardons were only grantable under the Great Seal, but by s. 13 of the Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28) (see *Chit. Stat.* tit. '*Criminal Law*'), the King may grant a free pardon for felony by sign manual. The practice of obtaining a free pardon before 1848 was fully explained in a letter to the Home Secretary by the judges who formed the Special Commission before whom Frost and others were tried for high treason in 1839: see *The Queen* v. *Frost*, (1839) 4 St. Tr. (N. S.) 85, 479, 480.

The anomaly of pardoning either an innocent or guilty man on the ground of his innocence, protested against by Lord Denman, L.C.J., and Parke and Alderson, BB., before a Select Committee of the House of

Lords in 1848 (*Parl. Pap.* Session 1847-48, cd. 523), and by the Beck Commission in 1904 (*Parl. Pap.* 1904, cd. 2315, Rep.), may, if he thinks fit, be avoided under the provision in the Criminal Appeal Act, 1907, s. 19, by which the Home Secretary may, if he thinks fit, refer the case to the Court of Criminal Appeal (as upon an appeal) or refer any point to that Court (see also s. 4, *ibid.*). This is the direct adoption of a suggestion made by Sir James Graham to Baron Parke more than sixty years before. Cf. *Parl. Pap.* 1847-48, cd. 523, p. 5. The Prerogative of Mercy is not affected by the Act (see s. 19). See PARDON.

Prerogative Writs, processes issued upon extraordinary occasions on proper cause shown. They are the writs of *procedendo*, *mandamus*, prohibition, *quo warranto*, *habeas corpus*, and *certiorari*.

Presbyter, a priest, elder, or honourable person.

'New Presbyter is but old Priest writ large.'—*Milton*.

Presbyterian, a presbytery; that part of the church where divine offices are performed, applied to the choir or chancel, because it was the place appropriated to the bishop, priest, and other clergy, while the laity were confined to the body of the church.—*Dugd. Mon.* i. 243.

Presbyterian Church of England, a Protestant Church constituted under the 'Book or Order' of that Church.

Presbyterian Church of Scotland. The established Church of Scotland. See Will. 1 & Mary, c. 5, the Union of Scotland Act, 1706 (6 Ann. c. 11), and *Free Church of Scotland (General Assembly)* v. *Overtoun (Lord)*, 1904, A. C. 515.

Presbyterians, a sect of Christians chiefly to be found in Scotland and Ireland (see 34 Vict. c. 24), who do not acknowledge the authority of bishops. In England the term 'Presbyterian' originally designated a distinct body of Protestant Dissenters. The Presbyterian form of worship was established in England during the Commonwealth, and when the Presbyterian ministers who filled the churches were ejected by the Act of Uniformity in 1662 they spread over the country and founded Presbyterian churches in almost every part of it. In process of time, however, many of these Presbyterian congregations gradually changed their views, some becoming Independents, others Baptists, and not a few became Unitarians; see *A.-G.* v. *Bunce*, (1868) L. R. 6 Eq. 563.

Prescription [fr. *præscribo*, Lat.], title produced and authorized by long usage. It is known in the Roman Law as *usucapio*.

Title by prescription arises from a long-continued and uninterrupted possession of property, and is thus defined by Sir Edward Coke (*Co. Litt.* 113 *b*), *Præscriptio est titulus ex usu et tempore substantiam capiens ab authoritate legis.* (Prescription is a title taking his substance of use and time allowed by the law.)

Every species of prescription, by which property is acquired or lost, is founded on the presumption that he who has had a quiet and uninterrupted possession of anything for a long period of years is supposed to have a just right, without which he would not have been suffered to continue in the enjoyment of it. For a long possession may be considered as a better title than can commonly be produced, as it supposes an acquiescence in all other claimants; and that acquiescence also supposes some reason for which the claim was foreborne.—1 *Cruise's Dig.*, tit. xxxi., '*Prescription*,' c. i., s. 4, p. 421.

There are two kinds of prescription, viz.: (1) *negative*, which relates to realty or corporeal hereditaments, whereby an uninterrupted possession for a given time gives the occupier a valid and unassailable title, by depriving all claimants of every stale right and deferred litigation, now mainly governed by the Real Property Limitation Act, 1833, (3 & 4 Wm. 4, c. 27); as amended by the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57); and (2) *positive*, which relates to incorporeal hereditaments, and originated at the Common Law from immemorial or long usage only.

Positive prescription has been greatly modified by the Prescription Act, 1832 (2 & 3 Wm. 4, c. 71).

The most important rules of the Common Law concerning *positive* prescription were these:—

(1) The only property claimable by positive prescription is an incorporeal hereditament.

(2) It must be founded on actual usage or enjoyment; for a mere claim will not establish the right.

(3) The use or enjoyment must have been continuous and peaceable; although an interruption of comparatively short duration will not destroy it.

(4) The usage must have been from time immemorial, or from time whereof the memory of man runneth not to the contrary, which is held to be from the beginning of the reign of Richard I.

(5) The prescription must be certain and reasonable.

Blackstone, however, states the rules as to prescription somewhat differently; see 2 *Bl. Com.*, pp. 263 *et seq.*

The Prescription Act, 1832 (2 & 3 Wm. 4, c. 71) (Lord Tenterden's Act), for shortening the time of prescription in certain cases enacts in substance as follows :—

(1) Claims to right of common and other profits *à prendre* (except tithes and rent) are *primâ facie* indefeasible after thirty years' uninterrupted enjoyment, and absolutely indefeasible after sixty years, except by showing that the enjoyment was by some agreement in writing.

(2) Claims to ways or 'other' easements or use of water are *primâ facie* indefeasible after twenty years' uninterrupted enjoyment, and absolutely indefeasible after forty years, except by showing that the enjoyment was by some agreement in writing.

(3) Claims to light for a building uninterruptedly enjoyed for twenty years are absolutely indefeasible after twenty years' enjoyment, except by showing that the enjoyment was by some agreement in writing. See *Richardson* v. *Graham*, 1908, 1 K. B. 39, and LIGHT.

By s. 4 of the Prescription Act, 1832, the periods are to be taken to be the period next before some suit or action relating to the right in dispute, and no act or matter shall be deemed to be an 'interruption' within the meaning of the statute unless the same shall have been submitted to or acquiesced in for one year.

See *Gale on Easements; Goddard on Easements: Dalton* v. *Angus*, (1881) 6 App. Cas. 740; WAY and *addenda*.

Prescription, Corporations by, those which have existed beyond the memory of man, and therefore are looked upon in law to be well created, such as the City of London and many others.—1 *Bl. Com.* 473.

Presentation, the offering by the patron of a benefice to the ordinary of a person to be instituted to the benefice. It must be in writing (29 Car. 2, c. 3), and is in the nature of letters-missive to the ordinary.

The sovereign, as *protector ecclesiæ*, is the patron paramount of all benefices which do not belong to other patrons, and usually presents by letters-patent (26 Hen. 8, c. 1; 1 Eliz. c. 1).

As to other patrons, the right of presentation is sometimes confounded with that of nomination; but presentation is the offering a person to the bishop, while nomination is the offering such a person to the patron. These two rights may co-exist in different persons; thus where an advowson is vested in trustees or mortgagees they have the right of presentation, while the right of nomination is in the *cestui que trust*, or mortgagors, but the trustees or the mortgagee must judge of the qualification of the nominee.—*Mirehouse on Advowsons*, 136.

A bishop has, by Canon 95 (which abridged the period from two months), 28 days for inquiry before instituting (see INSTITUTION) the clergyman presented by the patron.

All persons seised in fee, in tail, or for life, or possessed of a term for years of a manor to which an advowson is appendant, or of an advowson in gross, may present; and his right descends by course of inheritance, from heir to heir, or passes to a devisee or purchaser, unless the benefice become vacant in the lifetime of the patron, when the void turn devolves upon the personal representatives (*Mirehouse* v. *Rennell*, (1833) 7 Bli. 241), being, indeed, a personal right or interest dis-annexed from the estate in the advowson, and vested in the patron simply as an individual. And where the incumbent is also a patron, if he died seised of the advowson, without having devised it, his heir, not his executor, is entitled to present, because the descent of heir and the fall of the avoidance to the executor happening at the same time, the elder right prevails. If a bishop die, a church being vacant in his lifetime, the Crown exercises its prerogative to present.—*Co. Litt.* 388 *a*.

Joint-tenants and tenants in common should present jointly; and if co-parceners cannot agree, the eldest sister is entitled to the first turn, the second sister the second turn, *et sic de cæteris*, every one in turn according to seniority, and this part which the oldest thus takes by virtue of her priority of age is called the *enitia pars*.

By 7 Anne, c. 18, s. 2, if co-parceners, or joint-tenants, or tenants in common, be seised of an estate of inheritance in the advowson of any church, or vicarage, or other ecclesiastical promotion, and a partition is made between them, to present by turns, every one shall be taken to be seised of his separate part to present in his turn.

An infant at any age may nominate or present (*Hearle* v. *Greenbank*, (1749) 3 Atk. at p. 710; *Arthington* v. *Coverly*, (1733) 2 Abr. Cas. Eq. 518). The position now appears to be doubtful, an advowson or right to fill a church and benefice is now 'land' (Law of Property Act, 1925, s. 205), and

previously was an incorporeal hereditament, but if the benefice has become vacant, the nature of the right of presentation is altered: it becomes a personal right or chattel. In the latter case an infant is not incapacitated from owning or exercising the right. See *Hals. L. E.*, tit. '*Eccl. Law.*'

A corporation aggregate presents by the corporate name under their common seal.

A patron may present himself (*Walsh* v. *Bishop of Lincoln*, (1875) L. R. 10 C. P. 518).

The sale of the right of next presentation is invalidated by s. 1 of the Benefices Act, 1898 (61 & 62 Vict. c. 48), which Act also (see BENEFICE) greatly enlarges the powers of the bishop to refuse to institute.

A presentation may be revoked or varied before admission and institution, since it does not vest any right, and does not confer, before institution, any interest whatever.

The right of a Roman Catholic to present devolves upon the Universities of Oxford or Cambridge: see 3 & 4 Jac. 1, c. 5; 1 W. & M. c. 26; 12 Anne, st 2, c. 14; 11 Geo. 2, c. 17, and the mode of exercising this devolved right is regulated by s. 7 of the Benefices Act, 1898; the right of presentation of a person professing the Jewish religion, in right of any office held by him in the gift of the Crown, devolves on the Archbishop of Canterbury (Jews Relief Act, 1858 (21 & 22 Vict. c. 49), s. 4).

See *Chit. Stat.* tit. '*Church and Clergy*'; 1 *Br. & Had. Com.* 470: *Fox* v. *Bp. of Chester*, (1829) 3 *Bl. N. S.* 123; *Tud. L. C. in R.P.* See ADVOWSON.

Presentative Advowson. See ADVOWSON.

Presenter, one who presents a presentee to a benefice.

Presentment, a very comprehensive term, including not only presentments properly so called, but also inquisitions of office, and indictments by a grand jury; properly speaking, the notice taken by a grand jury of any offence, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the Crown; as the presentment of a nuisance, a libel, and the like, upon which the officer of the Court must afterwards frame an indictment before the party presented can be put to answer it.

Presentments are also made in courts-leet and courts-baron, before the stewards.—1 *Steph. Com.*

Presentment of Bill of Exchange, Cheque, or Promissory Note, the presenting of a bill by the holder to the drawee for acceptance, or to the acceptor or an indorser for payment of, a cheque to the banker for payment, and of a note to the maker or indorser for payment.

The law on this subject is regulated by the Bills of Exchange Act, 1882, as follows:—

Presentment of Bill for Acceptance.—Presentment is necessary if the bill be payable after sight or if it be expressly stipulated for by the bill, or if it be drawn payable elsewhere than at the residence or place of business of the drawee, but in no other case (s. 39). When a bill payable after sight is negotiated, the holder must either present or negotiate it within a reasonable time (s. 40).

'The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue.' Presentment must be made to each of many drawees, not being partners or having authorized one to accept for all. 'Where authorized by agreement or usage, a presentment through the post is sufficient.' Presentment is excused by the death or bankruptcy of the drawee, or 'where, after the exercise of reasonable diligence, such presentment cannot be effected,' but 'the fact that the owner has reason to believe that the bill, on presentment, will be dishonoured, does not excuse presentment' (s. 42).

Presentment of Bill for Payment.—Unless a bill be duly presented for payment, or presentment for payment be dispensed with by the drawee being a fictitious person, or by waiver or impracticability of presentment, the drawer and indorsers are discharged.

'Where the bill is not payable on demand, presentment must be made on the day it falls due.' A bill payable on demand must be presented within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable. Presentment must be made at the proper place at a reasonable hour on a business day. 'Where authorized by agreement or usage, a presentment through the post-office is sufficient' (ss. 45, 46).

Presentment of Cheque for Payment.—A cheque must be presented within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable (ss. 45, 46, 73); and all the provisions of the Bills of Exchange Act, 1882, applicable to a bill of exchange *payable on demand* apply to a cheque also (s. 73). A reasonable time is, in general, if customer and banker reside in the same place, the day

after the cheque is received (*Alexander* v. *Burchfield*, (1842) 7 M. & G. 1061).

Presentment of Note for Payment.—Presentment within a reasonable time of indorsement is necessary in order to render an indorser liable, but not in order to render the maker liable, unless the note be made payable at a particular place (ss. 86, 87).

Presentment in relation to Copyholds. In order to give effect to a surrender out of Court it was formerly necessary that due mention or 'presentment' of the transaction should be made at some subsequent Court.

The surrender, and every other document relating to the title, on being presented in court, had to be endorsed thus:—'Presented and enrolled at a court held for the manor of ——, the —— day of ——,' and then undersigned by at least two of the homage. The ceremony was dispensed with by the Copyhold Act, 1841, s. 89.

Presents. '*These presents*' is the phrase by which reference is made in a deed to the deed itself; e.g., 'And whereas the parties to these presents have agreed, etc.'

Present Use, one which had an immediate existence, and was at once operated upon by the Statute of Uses.

President, one placed in authority over others; one at the head of others; a governor; a chairman.

President of the Council, a great officer of state; a member of the Cabinet. He attends on the sovereign, proposes business at the council-table, and reports to the sovereign the transactions there.—1 *Bl. Com.* 230.

Press. By the Local Authorities (Admission of the Press to Meetings) Act, 1908 (8 Edw. 7, c. 43), passed in consequence of the decision in *Tenby Corporation* v. *Mason*, 1908, 1 Ch. 457, the expression 'representatives of the Press' means duly accredited representatives of newspapers and duly accredited representatives of news agencies which systematically carry on the business of selling and supplying reports and information to newspapers. Though the Act gives a general right of admission, there is power by resolution temporarily to exclude the Press. See LOCAL AUTHORITY.

There is no longer any censorship of the Press in this country, and any man may write and publish whatever he pleases concerning another, subject only to this—that he must take the consequences, if a jury should deem his words defamatory (*Odgers on Libel*, p. 10). 'The liberty of the Press consists in printing without any previous licence, subject to the consequences of law' (*R.* v. *Dean of St. Asaph*, (1784) 3 T. R. 431, *n.*, per Lord Mansfield, C.J.).

The case of *Stockdale* v. *Hansard*, (1839) 9 A. & E. 1, led to the passing of the Parliamentary Papers Act, 1840 (3 & 4 Vict. c. 9), which Act made reports published by order of Parliament absolutely privileged, and the printing of any extract or abstract of such report, subject to qualified privilege; if found published *bonâ fide* and without malice, a verdict of 'not guilty' is to be entered.

See the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), whereby (s. 4) a court of summary jurisdiction may make inquiry as to newspaper libel being for public benefit or being true; and the Law of Libel Amendment Act, 1888 (51 & 52 Vict. c. 64), extended the privilege to reports of proceedings in court, public meetings, etc.; and requires the leave of a judge before criminal proceedings can be brought against the Press. See also CONTEMPT OF COURT; LIBEL.

Pressing Seamen. See IMPRESSING MEN.

Pressing to Death. See PEINE FORTE ET DURE.

Prest, a duty in money that was to be paid by the sheriff on his account in the Exchequer, or for money left or remaining in his hands. Abolished by 2 & 3 Edw. 6, c. 4.

Prestation-money, a sum of money paid by archdeacons yearly to their bishops; also purveyance.

Prestimony, or **Præstimonia,** a fund or revenue appropriated by the founder for the subsistence of a priest, without being erected into any title or benefice, chapel, prebend, or priory. It is not subject to the ordinary; but of it the patron, and those who have a right from him, are the collators.—*Canon Law.*

Prest Money, a payment which binds those who receive it.

Presumptio juris et de jure. See next title.

Presumption, a supposition, opinion, or belief previously formed.—*Wood's Inst.* 599.

Presumptions have been said to be either: (1) *juris et de jure* (irrebuttable); or (2) *juris* (rebuttable); or (3) *hominis vel judicis* (rebuttable, of fact). (1) The presumption *juris et de jure* is that where law or custom establishes the truth of any point, on a presumption that cannot be overcome by contrary evidence; thus, that a child under seven is incapable of committing a felony. (2) The *præsumptio juris* is a presumption established in law till the contrary be proved.

as the property of goods is presumed to be in the possessor; every presumption of this kind must necessarily yield to contrary proof. (3) The *præsumptio hominis vel judicis* is the conviction arising from the circumstances of any particular case. See *Best on Evidence*.

Presumption of Life or Death. Where a person is once shown to have been living, the law will in general presume that he is still alive, unless after a lapse of time considerably exceeding the ordinary duration of human life; but if there be evidence of his continued unexplained absence from home and of the non-receipt of intelligence concerning him for a period of seven years, the presumption of life ceases and he is presumed to be dead at the end of the seven years. But the law raises no presumption as to the *time* of his death. And, therefore, if any one has to establish the precise time during those seven years at which such person died, he must do so by evidence; see *Doe* v. *Nepean*, (1833) 5 B. & Ad. 86; *Nepean* v. *Doe*, (1837) 2 M. & W. 894; *Re Rhodes*, (1887) 36 Ch. D. 586. See also 18 & 19 Car. 2, c. 11, by which the person on whose life a lease for lives depends is accounted dead if not proved alive after an absence of seven years, and the lessee may be ejected, with the proviso, however, that if he should turn out to be alive the lessee may be reinstated; and see, as to Scotland, the Presumption of Life Limitation (Scotland) Act, 1891, which fixes a like period of limitation generally with an absolute bar after thirteen years.

Presumption of Survivorship. Where two or more persons perish by the same calamity, the Civil Law presumes that the stronger survived. The common law of England recognized no such presumption, but by the Law of Property Act, 1925, s. 184, in all questions affecting title to property upon deaths in similar circumstances after 1925, the younger is presumed to have survived, subject to any order of the Court. See COMMORIENTES.

Presumptive Heir, one who, if the ancestor should die immediately, would be his heir: but whose right of inheritance may be defeated by the contingency of some nearer heir being born.

Presumptive Title. A barely presumptive title, which is of the very lowest order, arises out of the mere occupation or simple possession of property (*jus possessionis*, Lat.), without any apparent right, or any pretence of right, to hold and continue such possession. This may happen when one man disseises another; or where after the death of the ancestor, and before the entry of the heir, a stranger abates and holds out the heir. The law assumes that the actual occupant of land has the fee-simple in it, unless there be evidence rebutting such presumption, or his possession be properly explained and shown to be consonant with the right of the true proprietor of the reversionary fee. Such a presumption, in the absence of any satisfactory proof to the contrary, will sustain an action for a trespass by a wrongdoer, and will indeed be strengthened, by lapse of time, into a title complete and indefeasible.

This assumption is based on the well-known feudal maxim that seisin must be the basis or standpoint in the deduction of every title except in the case of descent.

Prêt a usage [Fr.], loan for use.

Pretensed Right: where one is in possession of land, and another, who is out of possession, claims and sues for it; here the pretensed right is said to be in him who so claims and sues.—*Mod. Cas.* 302.

By s. 2 of 32 Hen. 8, c. 9, no one might sell or purchase any title to land, unless the vendor had received the profits, or been in possession of the land, or of the reversion or remainder, for one whole year, on pain that both purchaser and vendor should each forfeit the value of such land to the King and the prosecutor; but a right of entry may be sold by virtue of the Real Property Act, 1845, s. 6, repealed by, and see now, Law of Property Act, 1925, s. 4 (2), and to recover under s. 2 of 32 Hen. 8, c. 9 (which is now repealed by s. 11 of the Land Transfer Act, 1897 (now repealed)), it had to be shown that the buyer knew the title to be bad (*Kennedy* v. *Lyell*, (1885) 15 Q. B. D. 491).

Preterition, the entire omission of a child's name in the father's will, which rendered it null—exheredation being allowed, but not preterition.—*Civ. Law, Colquhoun*, s. 1304.

Pretium affectionis, an imaginary value put on a thing by the fancy of the owner in his affection for it.—*Bell's Dict.*

Pretium sepulchri, mortuary, which see.

Pretium succedit in loco rei. 2 *Buls.* 321. —(The price succeeds in the place of the thing.)

Prevarication, a collusion between an informer and a defendant, in order to a feigned prosecution. Also, any secret abuse committed in a public office or private commission; also, the wilful concealment or misrepresentation of truth, by giving evasive or equivocating evidence.

Prevention [fr. *prævenio*, Lat.], the right

which a superior person or officer has to lay hold of, claim, or transact, an affair prior to an inferior one, to whom otherwise it more immediately belongs.—*Canon Law Term.*

Prevention of Crimes Act, 1871 (34 & 35 Vict. c. 112). This Act, which was amended by the Prevention of Crimes Act, 1879 (42 & 43 Vict. c. 55), and which repeals and replaces the Habitual Criminals Act, 1869, provides for the keeping of a register of criminals, and the photographing of all persons convicted of crime with a view to their identification, and for subjecting to the supervision of the police persons who have been twice convicted of crime, and for the amendment of the law with regard to licences under the Penal Servitude Acts. See also PREVENTIVE DETENTION ; BORSTAL INSTITUTION ; and PENAL SERVITUDE.

Preventive Detention. By the Prevention of Crime Act, 1908 (8 Edw. 7, c. 59), s. 10, as amended by the Indictments Act, 1915 (5 & 6 Geo. 5, c. 90), a person after three previous convictions after attaining sixteen years of age, can with the consent of the Director of Public Prosecutions (*R.* v. *Waller*, 1910, 1 K. B. 364) in certain cases be charged (*R.* v. *Smith*, 1910, 1 K. B. 17) with being an habitual criminal, and if the charge is established, he can, in addition to a punishment of penal servitude, receive a further sentence of not less than five years or more than ten years, called a sentence of preventive detention. During such detention the Secretary of State has power to let the person out on licence, if he is satisfied that there is a reasonable probability that he will abstain from crime and lead a useful and industrious life, or that he is no longer capable of engaging in crime. Unless the offender admits he is an habitual criminal the jury must determine whether he is or not and for this purpose can be sworn as on a trial for a misdemeanour (*R.* v. *Turner*, 1910, 1 K. B. 346). The jury is not bound to find that an offender is an habitual criminal because he has been previously so found (*R.* v. *Norman*, 40 T. L. R. 693).

Preventive Service, the Coastguard. See 19 & 20 Vict. c. 83.

Previous Conviction. The 11th section of the Criminal Law Act, 1827 (7 & 8 Geo. 4, c. 28), reciting that ' it is expedient to provide for the more exemplary punishment of offenders who commit felony after a previous conviction for felony,' empowered a court to inflict transportation for life and whipping for such subsequent conviction. Penal servitude has since been substituted for transportation, and the whipping is abolished. The Larceny Act, 1916 (6 & 7 Geo. 5, c. 50), by s. 37, authorizes the infliction of penal servitude up to ten years on those committing simple larceny after having been previously convicted of felony and up to seven years if previously convicted of an indictable misdemeanour punishable under the Act or twice summarily convicted of certain other offences ; males under sixteen are liable to whipping in addition.

Frequently statutes (see, e.g., Licensing Act, 1872, s. 12, as to drunkenness ; Road Traffic Act, 1930, s. 13 ; Truck Act, 1831, s. 9) in imposing penalties, increase them for second or subsequent offences.

Mentioning to Jury.—A previous conviction must in general not be mentioned to the jury on the trial of a subsequent offence until after conviction of it, unless (see CRIMINAL EVIDENCE ACT) the prisoner gives evidence of good character, in which case, or after conviction of the subsequent offence, it may be proved by production of documentary proof of the previous conviction and actual proof of the identity of the prisoner. See Previous Convictions Act, 1836. As to evidence of conviction within preceding five years of any offence involving fraud or dishonesty when prisoner is charged with receiving stolen goods, see Prevention of Crimes Act, 1871, s. 19.

A person convicted on indictment of any crime after having been previously convicted of any crime may be subjected, by the Court having cognizance of the crime, to police supervision for seven years or less, under s. 8 of the Prevention of Crimes Act, 1871. See *Faulkner* v. *R.*, 1905, 2 K. B. 76.

Multiplicatâ transgressione crescat pœnæ inflictio.—2 *Inst.* 479. And see PROBATION and PREVENTIVE DETENTION.

Prices Current, a list or enumeration of various articles of merchandise, with their prices, the duties (if any) payable thereon, when imported or exported, with the drawbacks occasionally allowed upon their exportation, etc.

Pricking for Sheriffs. See SHERIFFS.

Pride-gavel, a rent or tribute.—*Tayl. Hist. Gavelk.* 112.

Priest, a person in Holy Orders either in the Church of England or Rome. A person under twenty-four years of age cannot be ordained a priest.—44 Geo. 3, c. 43. See CLERGY.

Primæ, or Primariæ Preces. See PRECES PRIMARIÆ.

Primæ Impressionis. A case *primæ*

impressionis (of the first impression) is a case of a new kind, to which no established principle of law directly applies, and which must be decided entirely by reason as distinguished from authority. See COMMON LAW, and the remarks of Parke, B., in *Mirehouse* v. *Rennell*, (1832) 8 Bing. at p. 515.

Primâ facie Evidence, that which, not being inconsistent with the falsity of the hypothesis, nevertheless raises such a degree of probability in its favour that it must prevail if it be credited by the jury, unless it be rebutted, or the contrary proved; *conclusive* evidence, on the other hand, is that which excludes, or at least tends to exclude, the possibility of the truth of any other hypothesis than the one attempted to be established.

Prima tonsura (the first crop).

Primage, a certain allowance paid by the shipper or consignor of goods to the master of a vessel for loading them. See HATMONEY. The amount varies according to the custom of the place. See *Best* v. *Saunders*, M. & M. 208; *Charleton* v. *Cotesworth*, R. & M. 175; and *Caughey* v. *Gordon & Co.*, (1878) 3 C. P. D. 419.

Primaria Ecclesia, the mother church.—1 *Steph. Com.*

Primary Conveyances, original conveyances, sometimes opposed to secondary conveyances, such as release, surrender, etc., and see DERIVATIVE DEED, are:—

(1) Feoffments. (2) Grants. (3) Gifts. (4) Leases. (5) Exchanges. (6) Partitions. Consult 1 *Steph. Com.*

Primary Evidence, the best evidence as distinguished from secondary evidence.

Primate, a chief ecclesiastic; part of the style and title of an archbishop; thus the Archbishop of Canterbury is styled Primate of All England; the Archbishop of York is Primate of England.

Prime Minister. The statesman who in response to a summons from the King accepts the commission to form a Ministry; the Premier. The expression is of comparatively recent origin, dating from about the end of the eighteenth century. By a Royal warrant of December, 1905, he takes precedence directly after the Archbishop of York. See *Lord Morley's Walpole*, ch. vii., for an account of the position of the Prime Minister, and Ministers of the Crown Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 38).

Primer Election, first choice.

Primer Fine. On suing out the writ or *præcipe*, called a writ of covenant, there was due to the Crown, by ancient prerogative, a *primer fine*, or a noble for every five marks of land sued for; that was one-tenth of the annual value.—1 *Steph. Com.*

Primer Seisin, a feudal burthen, only incident to the King's tenants *in capite*, and not to those who held of inferior or mesne lords. It was a right which the King had, when any of his tenants *in capite* died seised of a knight's fee, to receive of the heir (provided he were of full age) one whole year's profits of the lands, if they were in immediate possession; and half a year's profits, if they were in reversion, expectant on an estate for life. It was incident to socage-tenants *in capite*, as well as those who held by knight-service. It was abolished by 12 Car. 2, c. 24.

Primicerius, the first of any degree of men. —*Dugd. Mon.* i. 838.

Primitiæ, the first fruits which were presented to the gods by the ancients; also, the profits of a living during the first year after avoidance, formerly taken by the Crown.—*Steph. Com.*, 7th ed., i. 199; ii. 532.

Primo Beneficio, a writ directing a grant of the first benefice in the sovereign's gift.

Primo excutienda est verbi vis, ne sermonis vitio obstruatur oratio, sive lex sine argumentis. *Co. Litt.* 68.—(The full meaning of a word should be ascertained at the outset, in order that the sense may not be lost by defect of expression, and that the law be not without reasons.)

Primogeniture, seniority, eldership, state of being first-born.

The right of primogeniture obtaining in the United Kingdom was that right whereby the eldest son succeeded to all the real estate of an intestate parent. An analogous right of succession is frequently given by will, and even more frequently given and preserved by marriage or other settlement. The right was not acknowledged by the Romans; sons and daughters all shared equally the property of their parents; and in continental countries exists in a modified form only, if at all. See *Eyre Lloyd's 'Rights of Primogeniture and Succession.'* In England the customs of gavelkind and Borough-English were almost the only exceptions to this Norman rule of inheritance.

The right, which was a corner-stone of the social structure in England, has been swept away by the land legislation of 1925. See DESCENT. Hereditary dignities and titles of honour are not affected. Cf. Law of Property Act, 1925, s. 201 (2).

Primum decretum, a provisional decree.

Prince [fr. *princeps*, Lat.], a sovereign; a chief ruler of either sex. 'Queen Elizabeth,

a *prince* admirable above her sex for her princely virtues.'—*Camden*.

Prince of Wales, the eldest son of the reigning sovereign, if so created. He is the heir-apparent to the Crown; he is created Earl of Chester, and is Duke of Cornwall by inheritance (during the life of the sovereign), without any new creation. See *Letters of Queen Victoria, Sir James Graham to Her Majesty*, 6th Dec. 1841. As to rights of the heir-apparent to submarine mines and minerals in Cornwall, see 21 & 22 Vict. c. 109; as to the obligation of his creditors to claim payment of debts within a short period of their being incurred on pain of the debts being barred, see 35 Geo. 3, c. 125.

Prince of Wales Island, Singapore and **Malacca.** Administered together as a British Colony. See Straits Settlements Act, 1866 (29 & 30 Vict. c. 115).

Princes of the Royal Blood, the younger sons and daughters of the sovereign and other branches of the royal family who are not in the immediate line of succession; see Civil List Acts.

Princess Royal. The title conferred by the sovereign on his eldest daughter. It would seem that the title is not held by more than one person at the same time. The present Princess Royal is Princess Mary, Countess of Harewood, daughter of George V.

Principal, a head, a chief; also, a capital sum of money placed out at interest; also, an heirloom, mortuary, or corse-present.

Principal and Accessory (or **Accessory**). (1) *Principals* in offences are of two degrees: (*a*) of the first degree, i.e., the actual perpetrators of the crime; (*b*) of the second degree, i.e., those who are present, aiding and abetting the act to be done.

Accessories are not the chief actors in the offence, nor present at its performance, but are in some way concerned therein, either before or after the fact is committed. See ACCESSORY.

Principal and Agent, he who being *sui juris*, and competent to do any act for his own benefit on his own account, employs another person to do it, is called the principal constituent, or employer, and he who is thus employed is called the agent, attorney, proxy, or delegate of the principal, constituent or employer. The relation thus created between the parties is termed an agency. The power thus delegated is called in law an authority. And the act, when performed, is often designated as an act of agency or procuration.—*Story on Agency*, 3. See AGENT; POWER OF ATTORNEY; VICARIOUS RESPONSIBILITY; and consult *Bowstead on Agency* or *Wright on Principal and Agent*.

Principal and Surety. See GUARANTY.

Principal Challenge, a species of challenge to the array made on account of partiality or some default in the sheriff or his under-officer who arrayed the panel. See CHALLENGE.

Print Works. Any premises in which any persons are employed to print figures, patterns, or designs upon any cotton, linen, woollen, worsted, or silken yarn, or upon any woven or felted fabric not being paper: placed first on the list of 'non-textile factories,' and regulated as such by the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), 'letter-press print works' being in the same list (Sched. vi.) described separately as 'any premises in which the process of letter-press printing is carried on.'

Printers. Every person who shall print anything which is meant to be published or dispersed, and shall not print upon the front or the first or last leaf, in legible characters, his name and usual place of abode or business, or who shall take any part in publishing or dispersing any printed matter without such name and address, shall forfeit for each copy a sum not more than five pounds (2 & 3 Vict. c. 12, s. 2); and see the Newspapers Printers and Reading Rooms Repeal Act, 1869 (32 & 33 Vict. c. 24), and enactments, including 1 & 2 Vict. c. 12, s. 2, contained in the second schedule thereto, as being excepted from the repeals effected thereby.

For compelling discovery of the printer of a newspaper, see *Dixon* v. *Enoch*, (1872) L. R. 13 Eq. 394.

Prior, chief of a convent, next in dignity to an abbot.

Priority, an antiquity of tenure in comparison with another less ancient; also that which is before another in order of time.

As to priority among creditors, see Administration of Estates Act, 1869, reproduced by ss. 32 to 34, Administration of Estates Act, 1925, and the First Sched., which provides that in the administration of the estate of any person who shall die on or after 1st January, 1870, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under seal, or is otherwise made or constituted a specialty debt.

The priority in legal and equitable assignments of equitable choses in action are determined according to the date of receipt of notice by the persons who are for the time

being owners of the legal interest in the property assigned. Before 1926 the notice might be verbal; after 1926 it must, for the purposes of establishing priority among competing claims, be in writing (Law of Property Act, 1925, s. 137; and see DEARLE *v.* HALL.

Subject to the Land Charges Act, 1925, the assignee of an equitable interest in land having notice will himself be bound to give effect to prior equitable claims of which he has notice, whether verbal or written, or actual or constructive (*Torkington* v. *Magee*, 1902, 2 K. B. 427). The notice does not, under the rule in *Dearle* v. *Hall*, affect the validity of the assignment (*Ward* v. *Duncombe*, 1893, A. C. 369); it merely establishes priority. Under the Law of Property Act, 1925, s. 137, important classes of property were swept into this rule, viz., all equitable interests in land (i.e., all estates for less than a fee simple absolute in possession or a term of years absolute and corresponding incorporeal hereditaments (see s. 1 of the Act)), as well as all equitable interests in capital money, and securities representing capital money. Before 1926 the priorities in regard to these were determined by the date and time of creation of the equitable interest and subject to the formalities required for the transfer. Special rules as to the persons, if any, to whom notice must be given and, in their absence, for the indorsement of a memorandum on the *trust instrument* are provided by the section (see DEARLE *v.* HALL).

In regard to mortgages: before 1926, puisne mortgagees to whom the equity of redemption was conveyed in succession obtained priority by the order in date of their mortgages, subject to the application of the doctrine of *tacking* or to equitable reasons (if any) for the postponement of their mortgages:—

After 1926 subsisting and future mortgages of the equity of redemption of a legal estate in its new and statutory meaning, i.e., a fee simple or a term of years absolute, but not mortgages of life interests or of an undivided share or of an estate in remainder or reversion were transformed into legal mortgages. Consequently the former rules of equity, based on the rule of equity '*qui prior in tempore potior est in jure*' ceased to apply. Priority among all mortgages, both legal and equitable, of a legal estate is now ascertained, if the mortgages were created or transferred after 1925:—

(*a*) By possession of the documents of title subject, presumably, to notice, actual or constructive, of equities affecting the security.

(*b*) By date of registration at the Red Lion Square office under the Land Charges Act, 1925, s. 10 (1), Class C., irrespectively of notice, except absence of documents of title (Law of Property Act, 1925, s. 97). If the mortgage is by trustees for sale, or a tenant for life as estate owner, or personal representatives or other persons referred to in the Law of Property Act, 1925, s. 2, and is made in accordance with the statutory requirements, the mortgagees as *purchasers*, whether registered or not, will not be affected by equities which can be overreached under that section, or otherwise under the legislation of 1925.

(*c*) Registered land, according to date of registration (Land Registration Act, 1925, s. 29), and see REGISTRATION OF TITLE.

The priorities (*b*) and (*c*), above mentioned, are subject to the provisions of the Law of Property Amendment Act, 1926, s. 4, and the Land Registration Act, 1925, s. 144, respectively, relating to PRIORITY NOTICES.

In regard to property locally situate in Middlesex and Yorkshire, before 1926 priorities in Yorkshire were effected by registration; after 1884, in the Yorkshire Registries but not in Middlesex, under the Middlesex Registry Act, 1708 (*q.v.*), and it does not seem clear that the law has been altered by s. 97 of the Law of Property Act, 1925, in regard to memorials registered in the Middlesex Registry until 1936.

Priorities in respect of equitable charges by a tenant for life or *statutory owner* for death duties and other estate liabilities discharged by him, and subject to these equitable charges which are not protected by possession of the documents of title or which do not affect interests under a trust for sale or settlement, are, if created or conveyed after 1925, determined by date of their registration under Class C., Land Charges Act, 1925, s. 10.

In regard to equitable mortgages and other charges upon land, or any interest therein created before 1926, which have not been transferred or conveyed after 1925, the rule *qui prior est tempore potior in jure* prevails if equities are equal, and a purchaser is still affected with notice of these and cannot gain priority by registration, but registration, if available (as in the case of any mortgage), amounts to notice. See also PREFERENTIAL PAYMENTS; ASSETS.

Priority Caution. See CAUTION. This form of caution is not available at the Land Registry except for the protection of persons

entitled to 'minor interests' (see LAND REGISTRATION), and does not affect a purchaser for value. Consult *Fortescue-Brickdale and Stewart-Wallace, Land Registration Act*, 1925.

Priority Notice. A form of notice providing temporary protection for an application about to be made for first registration of land at the Land Registry (see Land Registration Rules, 1925); also a notice protecting the priority of an intended dealing in registered land; the notice must be accompanied by the land certificate or charge certificate, and is usually effective for fourteen days after lodgment. See r. 88, Land Registration Rules, 1925, and *Fortescue-Brickdale and Stewart-Wallace* on the *Land Registration Act*, 1925.

Priority Notice of charge under Land Charges Act, 1925. By the Law of Property (Amendment) Act, 1926, s. 4, persons intending to register a charge, instrument or matter under the Land Charges Act, 1925, may give notice at the Land Charges Department of the Land Registry at least two days before the registration, and the effect of the notice is to relate the date of registration of the charge, instrument or matter as provided by s. 4 if the application to register is presented within fourteen days after the date of entry of notice, and refers to the notice: thus protecting the person intending to register from incumbrances created subsequently to the notice and before application to register.

Prisage or **Butlerage,** a custom whereby the prince challenges out of every bark laden with wine, two tuns of wine, at his own price. Abolished by 51 Geo. 3, c. 15. Also, that share, usually a tenth part, which belongs to the sovereign or admiral out of such merchandises as are taken at sea, by way of lawful prize.—2 *Steph. Com.* and 1 *Br. & Had. Com.* 375.

Priso, a prisoner taken in war.

Prison, a place of confinement for the safe custody of persons; a gaol.—3 *Steph. Com.*

The erection, maintenance and regulation of prisons are provided for by several Acts of Parliament, for which see *Chitty's Statutes*, tit. '*Prison*.' And for Scotland see the Prisons (Scotland) Acts, 1860 to 1909.

The Prison Act, 1877, transferred the management of prisons from counties and boroughs to the government, and put an end to the obligation theretofore existing on the part of the counties and boroughs to maintain prisons of their own, and the Prison Act, 1898, c. 41 (for which and for extracts from the Prison Rules, 1899, under it, see *Chitty's Statutes*, tit. '*Prison*'), has constituted the Prison Commissioners Directors of Convict Prisons, established three divisions of prisoners, not sentenced to penal servitude or hard labour, and restricted the authorization of corporal punishment. Both these Acts have been amended in certain respects by the Criminal Justice Administration Act, 1914, which see.

Prisonam frangentibus, Statute de, 1 Edw. 2, st. 2 (in the Revised Statutes, 23 Edw. 1), a still unrepealed statute, whereby it is felony for a felon to break prison, but misdemeanour only for a misdemeanant to do so. —1 *Hale, P. C.* 612.

Prisoner, one who is being tried for felony: one who is confined in a prison. As to legal aid for a prisoner, see POOR, and as to the forcible feeding of a prisoner, see *Leigh* v. *Gladstone*, (1909) 26 T. L. R. 139. As to the temporary discharge of prisoners on account of the condition of their health, see Prisoners (Temporary Discharge for Ill-health) Act, 1913.

Private Acts of Parliament, Acts operating upon particular persons and private concerns, as Naturalization Acts, Divorce Acts, and Change of Name Acts. They are generally not printed, but copies of them can be obtained at the Copyists' Office, House of Lords, on payment of fees. See ACT OF PARLIAMENT.

Private Bill Office, an office of parliament where the business of obtaining private Acts of Parliament is conducted.

Private Chapels Act, 1871, by which the bishop may license a clergyman to serve any college, school, hospital, etc., chapel, whether consecrated or unconsecrated, but not to solemnize marriages therein.

Private Company. A 'private company' is defined by s. 26 of the Companies Act, 1929, as follows:—

> 26.—(1) For the purposes of this Act the expression 'private company' means a company which by its articles—
> (*a*) restricts the right to transfer its shares; and
> (*b*) limits the number of its members to 50, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were, while in that employment and have continued after the determination of such employment to be, members of the company; and
> (*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company.
> (2) Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section, be treated as a single member.

Sect. 27, *ibid.*, provides that if a company alters its articles so that the provisions of s. 26 for the constitution of a private company are not included, the company ceases upon such alteration to be a private company and must deliver to the registrar of companies a prospectus or statement in lieu of prospectus (see those titles) within fourteen days, and if the company makes default in complying with those provisions, although contained in its articles, the same section (27) withdraws the privileges and exemptions of private companies to be found in, e.g. s. 40 (statement in lieu of prospectus and allotment of shares), s. 94 (commencement of business), s. 139 (number of directors), or s. 113 (statutory meeting and report), which do not apply to private companies.

Privateers. See LETTERS OF MARQUE.

Privation [an abbreviation, by aphæresis, of the word *deprivation*], a taking away or withdrawing.—*Co. Litt.* 239.

Privement ensient, pregnancy in its earlier stages.—*Wood's Inst.* 662.

Privies, those who are partakers or have an interest in any action or thing, or any relation to another. They have been said to be of six kinds :—

(1) Privies in blood, such as the heir to his ancestor, or between coparceners.

(2) Privies in representation, as executors or administrators to their deceased testator or intestate.

(3) Privies in estate, as grantor and grantee, lessor and lessee, assignor and assignee, etc.

(4) Privities, in respect of contract, are personal privities, and extend only to the persons of the lessor and lessee, or the parties to the contract or assignees upon a fresh contract or novation with the assignee.

(5) Privies, in respect of estate and contract together, as where the lessee assigns his interest, but the contract between lessor and lessee continues, the lessor not having accepted the assignee in substitution.

(6) Privies in law, as the lord by escheat, a tenant by the courtesy, or in dower, the incumbent of a benefice, a husband suing or defending in right of his wife, etc. See *Jac. Law Dict.* ; *Co. Litt.* 271 *a.*

Privilege, an exceptional right or advantage ; an exemption from some duty, burthen, or attendance, to which certain persons are entitled, from a supposition of law, that the stations they fill or the offices they are engaged in, are such as require all their care ; and that, therefore, without this indulgence, it would be impracticable to execute such offices so advantageously as the public good requires.

The separate privileges of either House of Parliament are extensive, but they are at the same time uncertain and indefinite. Amongst those privileges are, the power of committing persons to prison ; the power of publishing matters which, if not issuing from such high authority, might become the subject of proceedings in a court of law ; the power of directing the Attorney-General to prosecute persons accused of offences against the law or affecting the privilege of parliament ; and finally, a power vested in each House, respectively of doing anything not directly contravening an Act of Parliament which may be necessary for the vindication or protection of itself in the exercise of its own constitutional functions. In the daily proceedings of parliament questions of privilege take precedence of all other business.

The privileges of individual members of parliament are, freedom of speech and person, including freedom from arrest and seizures, under process from the courts of justice ; this, however, does not extend to indictable offences, to actual contempts of the courts of justice, or to proceedings in bankruptcy. Members of parliament are exempt from serving the office of sheriff, from obeying *subpœnas*, and serving on juries. 'Privilege of parliament' continues to peers at all times, and to commoners for a 'convenient' time after prorogation and dissolution. Peers are exempt from attending courts-leet or the *posse comitatus ;* when arraigned for any criminal offence it must be before their peers, who return a verdict, not upon oath, but upon honour ; they have the privilege of sitting covered in courts of justice.

Barristers are privileged from arrest, *eundo, morando et redeundo,* going to, coming from, and abiding in court—this includes judge's chambers ; so clergymen as to divine service. See also the following titles and DISTRESS ; LIBEL.

Privilege, Writ of, a process to enforce or maintain a privilege.

Privileged Communication, a communication which a witness cannot be compelled to divulge, such as that which takes place between husband and wife (see the Evidence Amendment Act, 1853 (16 & 17 Vict. c. 83), s. 3, and Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1), between a client and his legal adviser, and which cannot be disclosed without the client's consent ; secrets of

State, etc. See also CONFESSION. Also a communication which cannot be made the ground of an action for defamation, either (*a*) absolutely, or (*b*) without a malicious motive, such as that which is made truthfully and *bonâ fide* by a master respecting the character of a servant to a person intending to employ him. Incidental publication will not affect the privilege: *Edmondson* v. *Birch*, 1907, 1 K. B. 371. Consult *Odgers on Libel*. See LIBEL.

Privileged Copyholds, customary copyholds, which see.

Privileged Debts, debts which an executor may pay in preference to all others, such as funeral expenses, etc. And see PREFERENTIAL PAYMENTS.

Privilegia, or **Laws ex post facto,** laws which are enacted after an act is committed declaring it for the first time to have been a crime, and inflicting a punishment upon the person who has committed it. Compare *Cicero Pro Domo*, 17.

Privilegium clericale, the benefit of clergy, which is abolished by 7 & 8 Geo. 4, c. 23. See BENEFIT OF CLERGY.

Privilegium, property propter, a qualified property in animals *feræ naturæ*, i.e., a privilege of hunting, taking, and killing them, in exclusion of others.—2 *Bl. Com.* 394; 2 *Steph. Com.*

Privilegium est beneficium personale, et extinguitur cum personâ. 3 *Buls.* 8.—(A privilege is a personal benefit, and dies with the person.)

Privilegium est quasi privata lex. 2 *Buls.* 189.—(Privilege is, as it were, a private law.)

Privity, participation in interest or knowledge. See PRIVIES.

Privy [fr. *privé*, Fr.], having a participation in some Act, so as to be bound thereby, see the word in this sense in the statutory implied covenant in Part vi. of the Second Sched. of the Law of Property Act, 1925, and *Woodhouse* v. *Jenkins*, (1832) 9 Bing. 441. Also a participation in interest or knowledge. See PRIVIES. Also sanitary accommodation. The Public Health Acts (see PUBLIC HEALTH) aim at securing proper sanitary accommodation for every house. See *Tracey* v. *Pretty*, 1901, 1 K. B. 444.

Privy Council, a great Council of State held by the sovereign with his councillors, to concert matters for the public service, and for the honour and safety of the realm.

The sovereign nominates privy councillors, and no patent or grant is necessary. The number of the Council is indefinite, and is dependent upon the royal will. It is summoned on a warning of forty-four hours, and never held without the presence of a Secretary of State; the junior delivers his opinion first, and the sovereign, if present, last; it is dissolved six months after the demise of the Crown, unless sooner determined by the successor.

Privy councillors, on taking the necessary oaths, become immediately privy councillors, with the title of 'Right Honourable,' during the life of the sovereign who chooses them, but subject to removal at the royal discretion, See *R.* v. *Speyer*, 1916, 1 K. B. 595.

Their duties are: (1) To advise the sovereign according to the best of their cunning and discretion. (2) To advise for the sovereign's honour and good of the public; without partiality through affection, love, need, doubt, or dread. (3) To keep the sovereign's counsel secret. (4) To avoid corruption. (5) To help and strengthen the execution of what shall be resolved. (6) To withstand all persons who would attempt the contrary. (7) To observe, keep, and do all that a true and good counsellor ought to do to his sovereign.—2 *Steph. Com.* See also JUDICIAL COMMITTEE.

Privy Purse, the income set apart for the sovereign's personal use. See CIVIL LIST.

Privy Seal and **Privy Signet.** The Privy Seal (*privatum sigillum*) is a seal of the sovereign under which charters, pardons, etc., signed by the sovereign, pass before they come to the Great Seal, and also used for some documents of less consequence which do not pass the Great Seal at all, such as discharges of recognizances, debts, etc. The Privy Signet is one of the sovereign's seals, used in sealing his private letters, and all such grants as pass his hand by bill signed, which seal is always in the custody of the King's secretaries. There were formerly four clerks of the Signet Office, but by 14 & 15 Vict. c. 82, s. 3, the offices of the clerks of the signet and of the privy seal are abolished. The practice as to the passing of letters under these seals was altered and simplified by the same statute.

Privy Tithes, small tithes.

Prize Commission. See ADMIRALTY COURT.

Prize Court. This is an international tribunal, existing only by virtue of a special commission under the Great Seal, during war or until the litigations incident to war have been brought to a conclusion. It is frequently confounded with the Court of Admiralty, in consequence, perhaps, of the same judge having usually presided in both courts; but this is a mistake, for the whole

system of litigation and jurisprudence in the prize court, though exceedingly important, is peculiar to itself, and is governed by rules not applying to the Instance Court of the Admiralty (now part of the High Court), which is a mere civil tribunal.

The old Court of Admiralty had in fact from very ancient times two separate and distinct jurisdictions—the Instance Jurisdiction and the Prize Jurisdiction, though the real origin of the latter is wrapped in obscurity. When the High Court of Admiralty became merged in the High Court of Justice, Jud. Act, 1925, s. 23, replacing the Jud. Act, 1891, s. 4, provided that the High Court should be a Prize Court within the meaning of the Naval Prize Acts, 1864 to 1916, as amended by any subsequent enactment, and should have all such jurisdiction on the high seas and throughout His Majesty's dominions and in every place where His Majesty has jurisdiction as under any Act relating to naval prize or otherwise the High Court of Admiralty possessed when acting as a Prize Court. But see ss. 1, 6, and 10 of the Statute of Westminster, 1931. Subject to rules of court all jurisdiction as a Prize Court is assigned to the Probate, Divorce and Admiralty Division of the High Court (Jud. Act, 1925, s. 56 (3)). The procedure and practice in the Prize Court are regulated by the Prize Court Rules, 1914, made under Prize Court (Procedure) Act, 1914, which repealed those sections of the Naval Prize Act, 1864, which dealt with the practice and procedure of Prize Courts ; and see the Naval Prize (Procedure) Act, 1916. The Act of 1914 excepted ships of war. See also the Prize Courts Acts, 1894 and 1915, and as to Vice-Admiralty Courts, in the Colonies, the Colonial Courts of Admiralty Act, 1890.

The law administered in the Prize Court is ' the course of Admiralty and the law of nations,' the questions arising being those relating to captures, prize, and booty (being prize on shore). There is an appeal from this court to the Privy Council.

It is sometimes supposed that if, when a prize has been captured, she is condemned, the prize belongs to the captors, but this is not quite accurate. It is true that under the old practice the captors applied for a condemnation of the ship, but if a decree of condemnation was made it decreed a good and lawful prize to the Crown, and it was by a subsequent Act of the Royal Judgment and Discretion that the proceeds of the prize might be distributed among the captors. At the present day the conditions of naval warfare have become so altered that though the old principle that if a prize is taken and condemned it is condemned to the Crown is still maintained, the distribution of the proceeds exclusively among the actual captors has been modified and some share of the proceeds will go to the men who, though rendering services of incalculable value, have had no opportunity of actually capturing enemy ships.

See, generally, the speech of Sir John Simon, A.-G., at the first sitting of the Prize Court on September 4, 1914, *Times*, 5th September, 1914 ; *Chile*, 1914, P. 212 ; *Berlin*, *ib.* 265 ; *Kim*, 1915, P. 215 ; *Roumanian*, 1916, A. C. 124.

Prize of War. See Booty of War and Prize Court.

Prizefighting. Public prizefighting is an affray and an indictable misdemeanour on the part of both combatants and backers (see *Reg.* v. *Coney*, (1882) 8 Q. B. D. 534, in which it was held that the *mere presence* of persons at a prizefight was not enough to sustain a conviction for assault), and railway companies providing trains for any prizefights are liable to heavy penalties under the Regulation of Railways Act, 1868, s. 21. If death ensue, the surviving combatant is guilty of manslaughter.

Pro [for, or in respect of], in the grant of an annuity, *pro consilio*, showing the cause of a grant, amounts to a condition ; but in a feoffment or lease for life, etc., it is the consideration, and does not amount to a condition ; for the state of the land by the feoffment is executed, and the grant of the annuity is executory.—*Plowd.* 412.

Proamita, a great paternal aunt, the sister of one's grandfather.

Proamita magna, a great great-aunt.

Proavia, a great-grandmother.

Proavunculus, a great-uncle.

Proavus, a great-grandfather.

Probandi necessitas incumbit illi qui agit.—(The necessity of proving lies upon him who commences proceedings.)

Probate, official proof of a will. This is obtained by the executor in the Probate Division of the High Court of Justice, and is either *in common form*, where the will is undisputed and quite regular, or *per testes*, in solemn form of law, where it is disputed or irregular. When the will is proved, the original is deposited in the registry of the Court, a copy being delivered to the executor with a certificate of its having been made out under seal of the Court, all which together

is usually styled the *probate*. Consult *Tristram and Coote, Prob. Pr.*, 17th ed.

Probate, Court of, a tribunal established by the Court of Probate Act, 1857, to which the former jurisdiction of the ecclesiastical courts in testamentary matters was transferred. By Jud. Act, 1873, it was merged in the Supreme Court of Judicature, *q.v.* See WILLS.

Probate Duty, a tax (now merged in estate duty) on the gross value of the personal property of the deceased testator. For amount from 1815 to 1880, see schedule to the Stamp Act, 1815 (55 Geo. 3), s. 184. In 1880 a new scale of duties was imposed by 43 Vict. c. 14, s. 9, and in 1881 a further increased scale by the Customs and Inland Revenue Act, 1881 (44 & 45 Vict. c. 12). By 55 Geo. 3, c. 184, s. 37, a penalty of 100*l.* and 10 per cent. additional duty is payable by a person acting as executor and not obtaining probate within six months.

The Finance Act, 1894, substitutes an estate duty, to which both real property and personal property are liable, for probate duty. See ESTATE DUTY.

Probation. (1) Proof generally. (2) Suspension of a final appointment to an office until a person temporarily appointed (who is called a ' probationer ') has by his conduct proved himself to be fit to fill it. (3) Treatment of an offender under the Probation of Offenders Act, 1907 (7 Edw. 7, c. 17).

By s. 1 of this Act where any person is charged before a court of summary jurisdiction and the court thinks that the charge is proved, but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any real punishment, or that it is expedient to release the offender on probation, the court may make an order either (1) dismissing the charge ; or (2) discharging the offender conditionally.

Where any person has been convicted of any offence punishable with imprisonment, and the court is of opinion that, having regard to the like circumstances, it is inexpedient to inflict any real punishment, or that it is expedient to release the offender on probation, the court may discharge him conditionally.

The court may, in addition to any such order, order the offender to pay damages and costs, and if the offender is under the age of sixteen years, and the parent or guardian of the offender has conduced to the commission of the offence, the court may order payment of such damages and costs by such parent or guardian. See Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12), s. 86.

The Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86) provides for the appointment of probation officers for every probation area. A recognizance under this Act cannot contain a condition to abstain from intoxicating liquor (*R.* v. *Davies*, 1909, 1 K. B. 892). The 1907 Act has been amended by the Criminal Justice Administration Act, 1914, ss. 7–9, and the Criminal Justice Acts, 1925 and 1926.

Probator, an examiner ; an accuser or approver, or one who undertakes to prove a crime charged upon another. See 4 *Steph. Com.*

Probatory Term, a term for taking testimony.

Probatum est (it is tried or proved).

Probi et legales homines [Lat.] (good and lawful men).

Proc., short for Procuration, which see.

Procedendo, a writ which issued out of the Common Law jurisdiction of the Court of Chancery, when judges of any subordinate court delayed the parties, for that they would not give judgment either on the one side or on the other, when they ought so to do. In such a case, a writ of *procedendo ad judicium* was awarded, commanding the inferior court in the King's name to proceed to judgment, but without specifying any particular judgment ; for that, if erroneous, might be set aside by proceedings in error, or by writ of false judgment ; and upon further neglect or refusal, the judges of the inferior court might be punished for their contempt by writ of attachment, returnable in the courts at Westminster.—3 *Bl. Com.* 109. It also lay where an action had been removed from an inferior to a superior court by *habeas corpus*, *certiorari*, or any like writ, and it appeared to the superior court that it was removed on insufficient grounds. A suit once so remanded could not afterwards be removed before judgment in any court whatever.—21 Jac. 1, c. 23. Procedendo still lies, though disused.

Procedendo on Aid Prayer. If one pray in aid of the Crown in real action, and aid be granted, it shall be awarded that he sue to the sovereign in Chancery, and the justices in the Common Pleas shall stay until this writ of *procedendo de loquelâ* come to them. So also on a personal action.—*New N. B.* 154.

Procedure, the mode in which the successive steps in litigation are taken. The procedure of the Common Law courts was regulated by the C. L. P. Acts of 1852, 1854, and 1860; as to which see *Day's C. L. P. Acts.* As to the procedure in equity, consult *Daniell's Chancery Practice*, and *Morgan's Chancery Acts and Orders.* The procedure in actions in the High Court of Justice and the Court of Appeal is now governed under the Judicature Act, 1925, for the most part by the Rules of the Supreme Court, based on the rules in the schedule to the Judicature Act, 1875; but where no other provision is made by the Acts or those rules, the former procedure remains in force. See PRACTICE.

Proceeds, the sum, amount, or value of land, investments, or goods, etc., sold, or converted into money.

Proceres, chief magistrates. *Dom Proc., Domus Procerum*; House of Lords.

Procès verbal [Fr.], an authentic minute of an official act, or statement of acts.

Process. It is largely taken for all the proceedings in any action or prosecution, real or personal, civil or criminal, from the beginning to the end; strictly, the summons by which one is cited into a court, because it is the beginning or principal part thereof, by which the rest is directed.—*Britt.* 138.

At Common Law the three superior Courts at Westminster, in personal actions, differed greatly, before the Uniformity of Process Act, 1832, in their modes of process, and even the same court admitted a considerable variety of methods, according to the circumstances of the case. The ordinary process in Chancery suits was service of a copy of the bill or claim, with an endorsed citation, which required the defendant to appear on a certain day.

The process now for the commencement of all actions is the same in all the Divisions of the High Court of Justice, and is called a writ of summons. See SUMMONS.

Processum continuando, a writ for the continuance of process after the death of the chief justice or other justices in the commission of *oyer* and *terminer.*—*Reg. Brev.* 128.

Prochein amy [*proximus amicus*, Lat.], the next friend or next of kin to a child in his nonage, who in that respect is allowed to deal for the infant in the management of his affairs; as to be his guardian if he hold land in socage, and in the redress of any wrong done to him. Consult *Jac. Law Dict.* See NEXT FRIEND.

Prochein avoidance, a power to appoint a minister to a church when it shall next become void.

Prochronism (fr. πρόχρονος, Gk., anterior], an error in chronology; dating a thing before it happened.

Proclamation, publication by authority; a notice publicly given of anything whereof the King thinks fit to advertise his subjects. Proclamation is used particularly in the beginning or calling of a court, and at the discharge or adjourning thereof, for the attendance of persons and dispatch of business.—*Jac. Law Dict.*

Proclamation, Fine with. To render a fine more universally public and less liable to be levied by fraud or covin, it was directed by 4 Hen. 7, c. 24 (in confirmation of a previous statute), that a fine after engrossing should be openly and solemnly read and proclaimed in court (during which all pleas should cease), sixteen times, viz., four times in the term in which it was made, and four times in each of the three succeeding terms, which was reduced to once in each term by 31 Eliz. c. 2, and these proclamations were endorsed on the record. Abolished by the Fines and Recoveries Act, 1833.

Proclamator, an officer of the Court of Common Pleas.

Pro confesso. See CONFESSO, BILL TAKEN PRO.

Proconsules, justices in eyre.

Proctor [fr. *procurator*, Lat.], a manager of another person's affairs; also a university official at Oxford or Cambridge having disciplinary powers over members of the university.

Proctors in the Ecclesiastical and Admiralty Courts formerly discharged duties similar to those of solicitors and attorneys in other courts, as and being a separate body of practitioners. The title still survives, but the separation no longer exists. Owing to the abolition of the jurisdiction of the Ecclesiastical Courts in causes matrimonial and testamentary, the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), ss. 43, 105, 106, and c. 85, s. 69, awarded compensation to the proctors, and admitted them to practise, not only in the Probate and Divorce Courts, but also in the Courts of Equity and Common Law. The Solicitors Act, 1877, s. 17, allows solicitors to practise as proctors; the Jud. Act, 1925, s. 256 (1), replacing Jud. Act, 1873 (s. 87), gives them the title of 'Solicitors of the Supreme Court'; and the Solicitors Act, 1932, s. 44, allows solicitors to appear as proctors in ecclesiastical courts and exercise the former rights of proctors.

Proctors of the Clergy, they who are chosen and appointed to appear for cathedral or other collegiate churches, as also for the common clergy of every diocese, to sit in the convocation-house in the time of parliament.

Procuratio est exhibitio sumptuum necessariorum facta prælatis, qui diœceses peragrando, ecclesias subjectas visitant. *Dav.* 1. —(Procuration is the providing necessaries for the bishops, who, in travelling through their dioceses, visit the churches subject to them.)

Procuration, an agency, the administration of the business of another; also moneys which parish priests pay yearly to the bishop or archdeacon, *ratione visitationis;* these are also called *proxies,* and it is said that there are three sorts—*ratione visitationis, consuetudinis, et pacti.*—*Hardr.* 180.

Bills of exchange may be drawn, accepted, or endorsed by procuration, i.e., by an agent who has an authority for such a purpose, and 'a signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.'—Bills of Exchange Act, 1882, s. 25. The words 'per pro.' or 'p.p.' (by procuration) usually follow the signature of an agent, and by s. 26 of the Bills of Exchange Act, a person signing a bill and adding words indicating that he signs in a representative capacity is not personally liable on the bill.

Procuration Fee, a sum of money or commission taken by scriveners on effecting loans of money. See 12 Anne, st. 2, c. 16, s. 2, repealed by 17 & 18 Vict. c. 90.

Procuration of Women, the providing of women for the purposes of illicit intercourse. If the woman be under twenty-one and not a common prostitute, the offence is a misdemeanour punishable by imprisonment for not more than two years under the Criminal Law Amendment Act, 1885, amended by the Criminal Law Amendment Act, 1912. Conspiring to procure is a misdemeanour at Common Law; see *Reg.* v. *Mears,* (1851) 20 L. J. M. C. 59.

Procurationem adversus nulla est præscriptio. *Dav.* 6.—(There is no prescription against procuration.)

Procurator, one who has a charge committed to him by any person; an agent.

Procurator Fiscal. Each of the inferior (Sheriff's) Courts in Scotland has its Procurator Fiscal, who acts, with deputies if necessary, as Public Prosecutor; and to make inquiry into suspected offences in his area; under guidance of Crown Office Regulations. There are no coroners in Scotland.

Procuratores ecclesiæ parochialis, churchwardens.—*Paroch. Antiq.* 562.

Procuratorium, the instrument by which any person or community constituted or delegated their proctor to represent them in any court or cause.

Procuratory of Resignation, a proceeding in the law of Scotland, by which a vassal authorizes the fee to be returned to his superior, either to remain the property of the superior, in which case it is said to be a resignation *ad emanentiam,* or for the purpose of the superior's giving out the fee to a new vassal or to the former vassal and a new series of heirs, which is termed a resignation *in favorem.* It is somewhat analogous to the surrender of copyholds in England. See *Bell's Scots Law Dict.*

Prodes homines, the barons of the realm.

Prodition, treason, treachery.

Proditor, a traitor. Obsolete.

Proditorie (treasonably).

Producent, the party calling a witness under the old system of the Ecclesiastical Courts.

Pro eo quo (for this that).

Pro falso clamore suo, a nominal amercement of a plaintiff 'for his false claim,' which used to be inserted in a judgment for the defendant. Obsolete.

Profaneness. See BLASPHEMY.

Profane Swearing. See SWEARING.

Profer [fr. *proférer,* Fr.], to produce; an offer to endeavour to proceed in an action.

Profert in curiâ (he produces in court). Where either party alleged any deed, he was generally obliged, by a rule of pleading, to make *profert* of such deed; that is, to produce it in court simultaneously with the pleading in which it was alleged. This, in the days of oral pleading, was of course an actual production in court. Since then it consisted of a formal allegation that he showed the deed in court, it being, in fact, retained in his own custody. See OYER. Abolished by C. L. P. Act, 1852, s. 55.

Profession, calling, vocation, known employment; divinity, physic, and law are called the learned professions.

Profit à prendre, a right for a man, in respect of his tenement, to take some profit out of the tenement of another man. Except in the case of a copyholder no claim of a *profit à prendre in alieno solo* can be made by custom, nor can it be claimed by a fluctuating

body such as the inhabitants of a place (*Williams on Rights of Common*, p. 194). See LAMMAS LANDS. A prescription in a que estate for a *profit à prendre in alieno solo* without stint and for commercial purposes is unknown to the law (*Harris* v. *Chesterfield* (*Earl*), 1911, A. C. 623). As to a demise of a *profit à prendre*, see *Radcliff* v. *Hayes*, 1907, 1 Ir. R. 101. A *profit à prendre in gross* is a right of property which may be dealt with and transferred in the manner appropriate to the right (*Welcome* v. *Upton*, (1840) 6 M. & W. 536). Consult *Gale on Easements*, and *Hall on Profits à Prendre*.

Profit and Loss, the gain or loss arising from goods bought or sold, or from carrying on any other business, the former of which, in book-keeping, is placed on the creditor's side, the latter on the debtor's side. *Net Profit* is the gain made by selling goods at a price beyond what they cost the seller, and beyond all costs and charges.

Profits, the advantages which land yields in the shape of rent, issues, or other emoluments; also gains, pecuniary advantage, from whatever source derived.

Pro formâ, as a matter of form.

Pro hâc vice, for this occasion.

Prohibitio de vasto, directa parti, a judicial writ which used to be addressed to a tenant, prohibiting him from waste, pending suit.—*Reg. Jud.* 21; *Moor*, 917.

Prohibition, a writ to forbid any court to proceed in any cause there depending, on the suggestion that the cognizance thereof belongs not to such court. It is a remedy provided by the Common Law against the encroachment of jurisdiction.

This writ issued not only out of the King's Bench, but also out of the Courts of Chancery, Exchequer, and Common Pleas, and now issues out of the High Court of Justice, on application by motion supported by affidavits for a rule to show cause (Rules 70, 71, of Crown Office Rules, 1906), to any inferior court concerning itself with any matter not within its jurisdiction. If either the judge or a party proceed after such prohibition, an attachment may be had against them for contempt, at the discretion of the Court that awarded it; and an action for damages will lie against them, by the party injured.

Sometimes the point is too doubtful to be decided upon motion, and the party applying is directed to declare in prohibition, setting forth concisely so much of the proceeding in the court below as may be necessary to show the ground of the application; this procedure has been directed since the Jud. Act, 1873 (see *South-Eastern Ry. Co.* v. *Railway Commissioners*, (1880) 5 Q. B. D. 217), but where the prohibition applied for is to a county court, it is expressly dispensed with by County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), s. 112, replacing County Courts Act, 1888, s. 128. Where a want of jurisdiction is apparent on the face of the proceedings in an inferior court, the High Court is bound to grant a prohibition, although the applicant has acquiesced in the proceedings of the inferior court (*Farquharson* v. *Morgan*, 1894, 1 Q. B. 552); and the writ of prohibition may issue even though there is an alternative remedy (*Channel Coaling Co.* v. *Ross*, 1907, 1 K. B. 145).

Pro indiviso (as undivided), the possession or occupation of lands or tenements belonging to two or more persons, whereof none knows his several portion; as coparceners before partition.

Pro interesse suo, in respect of his interest.

Project, the draft of a proposed treaty or convention.

Pro læsione fidei. See LÆSIONE FIDEI.

Prolem ante matrimonium natam, ita ut post legitimam, lex civilis succedere facit in hæreditate parentum; sed prolem, quam matrimonium non parit, succedere non sinit lex Anglorum. *Fort.* c. 39.—(The Civil Law permits the offspring born before marriage, provided such offspring be afterwards legitimized, to be the heirs of their parents; but the law of the English does not suffer the offspring not produced by the marriage to succeed.) See LEGITIMATION; MERTON.

Proles, progeny. See **S. P.**

Proletarius, a person who had no property to be taxed, but paid a tax only on account of his children.—*Civil Law.*

Prolicide [fr. *proles*, Lat., offspring, and *cædo*, to kill], the destruction of human offspring. It is either fœticide or infanticide, which see.—*Dunglison's Med. Lex.*

Prolixity, an unnecessary, too long, or impertinent statement, discouraged by Rules of Court; see, e.g., R.S.C. Ord. XXXVIII., r. 2, as to affidavits, and Ord. XIX., r. 1, as to pleadings: in each case the costs may have to be borne by the party in fault.

Prolocutor, the foreman; the speaker of a convocation.

Prolocutor of the Convocation House, an officer chosen by ecclesiastical persons publicly assembled in convocation by virtue of the sovereign's writ; at every parliament there are two prolocutors, one of the upper house of convocation, the other of the lower

house, the latter of whom is chosen by the lower house, and presented to the bishops of the upper house as their *prolocutor*, that is, the person by whom the lower house of convocation intends to deliver its resolutions to the upper house, and have its own house especially ordered and governed: his office is to cause the clerk to call the names of such as are of that house, when he sees cause, to read all things propounded, gather suffrages, etc.—*Jac. Law Dict.*

Prolytæ, students of the Civil Law during the fifth and last year of their studies.

Promatertera, a maternal great-aunt; the sister of one's grandmother.

Promatertera magna, a great-great-aunt.

Promise, an engagement for the performance or non-performance of some particular thing, which may be made either by deed, or without deed, when it is said to be by parol; 'promise' is usually applied when the engagement is by parol only, for a promise by deed is technically called a covenant. See CONTRACT.

A simple promise, i.e., a promise not under seal, made voluntarily and without a legal consideration, is not binding either at law or in equity; see *Re Whitaker*, (1889) 42 Ch. D. 119; *Tweddle* v. *Atkinson*, (1861) 1 B. & S. 393.

Promisee, one to whom a promise has been made.

Promisor, one who makes a promise.

Promissory Note, defined in the Bills of Exchange Act, 1882, s. 83, as 'an unconditional promise in writing, made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.' The note can require payment at a particular place (*Josolyne* v. *Roberts*, 1908, 2 K. B. 349). The person who makes the note is called the 'maker,' and the person to whom it is payable is called the 'payee': when it is negotiated by the indorsement of the payee, he is called the 'indorser,' and the person to whom the note is transferred is called the 'indorsee.' The Bills of Exchange Act, 1882, codifies the law relating to promissory notes, and by s. 89 of that Act all the provisions of the Act (with few exceptions) which relate to bills of exchange relate also to promissory notes. See BILL OF EXCHANGE.

Promissory Oaths. See OATH.

Promoter, a term anciently sometimes applied to a common informer generally (see 5 *Inst.* 191), but in modern times applied only to the prosecutor of an ecclesiastical suit, as in *Combe* v. *Edwards*, (1878) 3 P. D. 103.

Those who obtain, or take steps for obtaining, the passing of a private Act of Parliament, or the incorporation of a company under the Companies Acts, are called the promoters. In many respects promoters stand in a fiduciary capacity towards the company which they are engaged in forming, see *Twycross* v. *Grant*, (1877) 2 C. P. D. 469; *Lagunas Nitrate Co.* v. *Lagunas Syndicate*, 1899, 2 Ch. 392, and also OMNIUM; *Electric Palace* v. *Baines*, 1914, 1 Ch. 532, where the position of promoter vendors was discussed. The promoters usually pay the registration fees, and the company is under no liability to repay them (*Re National Motor Co.*, 1908, 2 Ch. 515).

As to the liability of promoters of a company for any untrue statements in the prospectus, see s. 37 of the Companies Act, 1929, and 4th Sched., par. 12, under which the prospectus must disclose the amount paid within the two preceding years or intended to be paid to any promoter and the consideration for any such payment.

See PROSPECTUS; DIRECTOR; MISFEASANCE.

Promulgation, publication; open exhibition.

Promutuum, a *quasi*-contract, by which he who receives a certain sum of money, or a certain quantity of fungible things, delivered to him through mistake, contracts the obligation of restoring as much.

It resembles the contract of *mutuum*: (1) That in both a sum of money or some fungible things are required. (2) That in both there must be a transfer of the property in the thing. (3) That in both there must be returned the same amount or quantity of the thing received.—*Civ. Law.*

Pronepos, a great-grandson.

Pronotary, first notary. See PROTHONOTARIES.

Pronurus, the wife of a great-grandson.

Proof, evidence, testimony, convincing token, means of conviction. Also standard strength of spirituous liquids.

See BURDEN OF PROOF; EVIDENCE; BANKRUPTCY; WINDING-UP.

Pro partibus liberandis, an ancient writ for partition of lands between co-heirs.—*Reg. Brev.* 316.

Propatruus magnus, a great-great-uncle.

Proper Feuds, the original and genuine feuds held by pure military service.

Property, the highest right a man can have

to anything, being used for that right which one has to lands or tenements, goods or chattels, which does not depend on another's courtesy.

Property is of three sorts: absolute, qualified, and possessory.

Property in realty is acquired by entry, conveyance, descent, or devise; and in personalty, by many ways, but most usually by gift, bequest, or bargain and sale. Under the Law of Property Act, 1925, s. 205, 'Property' includes anything in action and any interest in real or personal property. There must be a definite interest, a mere expectancy as distinguished from a conditional interest is not a subject of property.

Consult *Williams on Real Property: Williams on Personal Property.*

Property Qualification, for Members of Parliament, abolished by 21 & 22 Vict. c. 26; for members of municipal corporations and local governing bodies, by 43 Vict. c. 17.

Property-tax, an annual tax, called also 'Income Tax,' on the income of every person, except where below a certain figure. See INCOME TAX and *Chit. Stat.*, tit. '*Property Tax*'; and consult the works of *Dowell*, or *Robinson*.

Prophecies. See FALSE PROPHECIES.

Propinqui et consanguinei, the nearest of kin to a deceased person.

Propinquity, kindred, parentage.

Proponent, the propounder of a thing.—*Eccl. Law.*

Proportum, intent or meaning.

Proposal, a statement in writing of some special matter submitted to a master in the Chancery Division of the High Court, pursuant to an order made upon an application *ex parte*, or a decretal order of the Court. It is for maintenance of an infant, appointment of a guardian, placing a ward of Court at the university, or in the army, or apprentice to a trade; for the appointment of a receiver; the establishment of a charity, etc. See R. S. C. Ord. LI., 1 *a*.

Proposition, a single logical sentence.

Propositus, the person proposed; the person from whom a descent is traced. Also the name by which a testator is referred to on propounding his will in the Probate Division.

Propound, to produce (e.g., a will) as authentic.

Proprietary, he who has a property in anything.

Proprietary Chapels, those belonging to private persons who have purchased or erected them with a view to profit or otherwise. See Private Chapels Act, 1871 (34 & 35 Vict. c. 66).

Proprietary Medicines. See PATENT MEDICINE.

Proprietas verborum est salus proprietatum. *Jenk. Cent.* 16.—(Propriety of words is the salvation of property.)

Proprietate probandâ, de, a writ addressed to a sheriff to try by an inquest in whom certain property, previous to distress, subsisted.—*Finch L.* 316.

Proprietor, owner. In s. 93 of the Patents and Designs Act, 1907, as amended by the Act of 1932 (see LETTERS PATENT), the following definition occurs:—

'Proprietor of a new and original design,'—
(*a*) Where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed; and
(*b*) Where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and
(*c*) In any other case, means the author of the design; and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

Proprio vigore [Lat.] (by its own force).

Pro querente [abbrev. *pro quer.*] (for the plaintiff).

Pro ratâ, or **Pro ratâ parte** (in proportion).

Pro re natâ, to meet the emergency.

Prorogated jurisdiction, a power conferred by consent of the parties upon a judge who would not otherwise have adjudicated.—*Bell's Scots Law Dict.*

Prorogation, prolonging or putting off to another day.

A prorogation is the continuance of the parliament from one session to another, with the effect that bills, whatever stage they have reached, drop and have to be taken up from the beginning in a succeeding session; an adjournment is a continuation of the session from day to day.

Prorogation never extends beyond eighty days, but fresh prorogations may take place from time to time by proclamation. See PARLIAMENT.

Pro salute animæ [for the good of his soul]. All prosecutions in the ecclesiastical courts are *pro salute animæ*.

Prosecution, a proceeding either by way of indictment or information, in the criminal courts, in order to put an offender upon his trial. In all criminal prosecutions the King

is nominally the prosecutor. See titles PUBLIC PROSECUTOR and ADVOCATE, LORD.

Prospectus, is defined by s. 380 of the Companies Act, 1929, as any prospectus, notice. circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of a company. By s. 35 of the Act every prospectus issued by or on behalf of a company or engaged or interested in its formation, must state the matters specified in Part I. of the 4th Schedule and set out the reports specified in Part II. of that Schedule, subject as to both parts to the provisions of Part. III. *ibid.*, and otherwise comply with the requirements of the Act. Any condition waiving compliance with this provision is void. The issue of any form of application for shares or debentures of a company unaccompanied by a prospectus is prohibited except in an offer to underwriters or not to the public, or to existing members or debenture holders of the company. By s. 36, contracts referred to in a prospectus are not to be varied without the approval of the statutory meeting (*q.v.*). As to the liability of directors or others for statements in the prospectus, see s. 37, DIRECTORS and DECEIT. These requirements extend to offers by the purchasers of shares or debentures offered by the company to them with a view to sale by them to the public under s. 38, which was enacted in order to include offers by such purchasers which had not previously been deemed to be prospectuses. The statutory requirements as to dating and registering the prospectus are set out in s. 34, and among the provisions of the 4th Schedule (see *supra*), prospectuses, published as newspaper advertisements, need not include the contents of the memorandum and ancillary details. Under Part III. of the Schedule, the memorandum and similar details and some other particulars may be omitted from a prospectus which is issued more than two years after the company is entitled to commence business. As to prospectuses by companies incorporated outside Great Britain, see s. 354.

Sect. 356 prohibits house-to-house hawking of shares. Where shares are offered in writing for sale to any individual the offer must be accompanied by a statement complying with the requirements of that section. These requirements do not apply to offers of shares, dealings in which have been permitted by any recognized Stock Exchange in Great Britain or to shares allotted with a view to sale to the public under s. 38, or offers to persons whose regular business it is to buy and sell shares. Consult *Palmer's Company Law.*

Prostitute. A woman who indiscriminately consorts with men for hire. Solicitation by prostitutes is punishable in towns by the Town Police Clauses Act, 1847, s. 28 (in cases where the town is subject to a special Act incorporating that Act); in London by the Metropolitan Police Act, 1839, s. 54, and generally by the Vagrancy Act, 1824.

A licensed retailer of intoxicating liquor permitting his premises to be the habitual resort of reputed prostitutes, whether their object be prostitution or not, is, if he allows them to remain longer than is necessary for the purpose of obtaining reasonable refreshment, liable to a penalty under the Licensing Act, 1910, s. 76.

A man who lives on the earnings of prostitution may be dealt with as a 'rogue and a vagabond' by the Vagrancy Act, 1898, amended by the Criminal Law Amendment Act, 1912. See VAGRANTS.

As to the sending of children associating with prostitutes to approved schools, etc., see Children's Act, 1933, s. 62.

Words imputing that a woman or girl is a prostitute are actionable without proof of special damage; see the Slander of Women Act, 1891.

As to the repealed Contagious Diseases Acts, see that title.

Protectio trahit subjectionem, et subjectio protectionem. *Co. Litt.* 65 *a.*—(Protection begets subjection, and subjection protection.)

Protection Order. 1. A wife deserted by her husband may obtain from a magistrate or the Divorce Court an order to protect property acquired and to be acquired by her since desertion, as if she were a *feme sole;* after the order is granted, she sues and is sued as a *feme sole.* The husband may apply to the magistrate who made the order, or his successor, for the discharge thereof.—20 & 21 Vict. c. 85, s. 2; 27 & 28 Vict. c. 44, s. 1; 28 & 29 Vict. c. 43 (Ireland). See DESERTION; MARRIED WOMEN'S PROPERTY. 2. An order obtained under s. 88 of the Licensing Act, 1910, from the justices authorizing the transferee of a justices' licence to carry on business and to sell intoxicating liquors until the next licensing sessions.

Protectorate, (1) the period during which Oliver Cromwell ruled in this country under the title of the 'Lord Protector of the Commonwealth of England, Scotland and Ireland and of the Dominions and Territories thereunto belonging'; (2) also the office of

protector; (3) territories placed under the protection of the British sovereign generally by treaty with the native ruler or chiefs administered on the same lines as Crown Colonies (*Hals. L. E.*, tit. '*Dependencies, Colonies and British Possessions*).

Protector of the Settlement. The person whose consent is required to enable a remainderman in tail to bar the entail. In the absence of such consent the remainderman can only bar his own issue and create a Base Fee (see that title). Under the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), s. 32, the settlor might appoint a special protector. In the absence of this 'special' protector, the statutory protector, i.e., the owner of the first (sufficient) estate in possession, e.g., the tenant for life under the same settlement, was and is a statutory protector. The special protector was to be appointed as stated in substitution for the old tenant to the *præcipe*, whose concurrence in barring estates-tail in remainder was required in order to preserve, under certain modifications, the control of the tenant for life over the remainderman. The statutory protector might be excluded by the settlor, who by the settlement creating the entail might appoint not more than three persons *in esse*, and not being aliens, to be (special) protector, in which case the office survived and the last surviving protector could exercise it (*Sugd. R. P. Stat.*, pp. 201, 204; *Cohen* v. *Bayley-Worthington*, 1908, A. C. 97). Under the provisions of the Law of Property Act, 1925, Sched. vii., repealing s. 32 of the Fines and Recoveries Act, 1833, special protectors have been abolished in settlements made after 1925. As to married women acting alone as protectors of a settlement, see s. 3 of the Married Woman's Property Act, 1907 (7 Edw. 7, c. 18), as amended by the Law Reform (M. W. & T.) Act, 1935 (25 & 26 Geo. 5, c. 30).

The office of Protector is not assignable and if the protector is tenant for life under the settlement he may make terms in consideration of his consent (ss. 36 and 37, F. & R. Act, 1833) (*Banks* v. *Le Despencer*, (1843) 11 Sim. 508).

Protest, a solemn declaration of opinion, generally of dissent. Each peer has a right, when he disapproves of the vote of the majority of the House of Lords, to enter his dissent on the Journals of the House, with his reasons for such dissent, which is usually styled his protest.

Also, a notification written by a notary upon a foreign bill of exchange of non-acceptance or non-payment; as to this, see Bills of Exchange Act, 1882, s. 51, by which a foreign bill, dishonoured by non-acceptance or non-payment, must be duly protested, otherwise the drawer and indorsers are discharged. All protests made in England must, by the Stamp Act, 1891 (see schedule), be stamped, otherwise they cannot be given in evidence without payment of a penalty.

The following is a form of protest for non-payment:—

On the —— day of ——, at the request of A. B., bearer of the original bill of exchange, whereof a true copy is on the other side written, I [notary's name], of [address], notary public, by lawful authority duly admitted and sworn, did exhibit the said bill.

[*Here the presentment is stated, and to whom made, and the reason, if assigned, for non-payment.*]

'Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest as well against the drawer, acceptor, and indorsers of the said bill of exchange, as against all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interests suffered and to be suffered, for want of payment of the said original bill. Thus done and protested in the presence of E. F. and G. N., witnesses.'

Which I attest

[signature],

Notary public of

There may be a protest by a householder when the services of a notary cannot be obtained.

[*Here is set out an exact copy of the bill with all indorsements.*]

Also, a writing attested by a justice of the peace or consul, drawn up by a master of a ship, stating the circumstances under which an injury has happened to the ship, or to the cargo, or other circumstances calculated to affect the liability of the shipowner or the charterer, etc.

Also, an objection made to a proceeding in which the person protesting is by force of circumstances obliged to take part against his will (see *Voinet* v. *Barrett*, (1885) 55 L. J. 39, and DURESS).

Upon a payment under protest or under duress of more than is legally due, the excess can be recovered (see *Baxendale* v. *London and South Western Ry. Co.*, (1866) L. R. 1 Exch. 137; CARRIERS).

Protestando, a word made use of to avoid

double pleading in actions; it prevented the party that made it from being concluded, by the plea he was about to make, that issue could not be joined upon it; and it was also a form of pleading, where one would not directly affirm or deny anything alleged by another or himself. It was formally abolished by Rule of Court in 1834, whereby it was rendered unnecessary.—*Chit. Pl.* 646.

As to protestation in equity pleadings, consult *Story's Eq. Pl.*; *Daniell's Chancery Practice*.

Protestant. This term does not occur in the Canons of 1603, or in the Thirty-nine Articles, or in the Acts of Uniformity, but appears in many statutes of later date, notably in the Act of Settlement of 1700 (12 & 13 Wm. 3, c. 2), in which, by way of making further provision (in addition to that made by the Bill of Rights in 1688) 'for the succession of the Crown in the Protestant line,' the Crown was settled, in default of issue of Princess Anne of Denmark (afterwards Queen Anne) and William III., on the Princess Sophia and the heirs of her body, 'being Protestants'; it being added that 'whosoever shall hereafter come to the possession of this Crown shall join in communion with the Church of England as by law established.'

The Bill of Rights (1 W. & M. sess. 2, c. 2), after reciting that 'it hath been found by experience that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a popish prince or by any king or queen marrying a papist,' debars such from succession to the Crown, and entails the succession on such person or persons being Protestants as would have succeeded in case the person reconciled to or holding communion with the Church of Rome or professing the popish religion or marrying a papist were dead, and also required every sovereign on the first day of the meeting of his first parliament or on coronation, which shall first happen, to make a declaration taken from 30 Car. 2, st. 2 (repealed by the Parliamentary Oaths Act, 1866), and expressed therein to be 'in the plain and ordinary sense of the words as they are commonly understood by English Protestants,' against transubstantiation, invocation of saints, and the sacrifice of the Mass as used in the Church of Rome. For the declaration that now has to be made by the sovereign, see BILL OF RIGHTS.

The Union with Scotland Act, 1706, confirms the English succession to the Crown of the heirs of the body of the Electress Sophia, 'being Protestants,' and so did the Union with Ireland Act, 1800, though not in express terms; the 5th Article of that Union, however, provided for the union of the churches of England and Ireland into one 'Protestant Episcopal Church'—a union dissolved by the Irish Church Act, 1869.

The term was originally applied to those who 'protested' against a decree of the Emperor Charles V. and the Diet held at Spires in 1529. See ROMAN CATHOLIC.

Prothonotaries, officers in the Courts of Common Pleas and Exchequer, who were superseded by the masters.—7 Wm. 4 & 1 Vict. c. 30; 1 *Steph. Com.* They were, however, continued in the Courts of Common Pleas at Durham and Lancaster. See now DISTRICT REGISTRARS.

Protocol [fr. *πρῶτος*, Gk.; and *κόλλη*], the original copy of any writing.

An original is styled the *proctocol* or *scriptura matrix.*—*Encyc. Londin.*

The term is usually applied to writings of a diplomatic character.

Protutor, a *quasi* tutor.—*Civil Law.*

Prout patet per recordum (even as it appears by the record). The omission of the words '*per recordum*' is but form, and so it was twice adjudged, viz., in *Hancocke* v. *Prowd*, and *Clegat* v. *Bambury*, 2 Sid. 16; 1 Saund. 337 *b*, *n* (4). Rendered unnecessary by the Criminal Procedure Act, 1851, s. 24.

Prover, an approver (*q.v.*).

Provident Societies. See INDUSTRIAL AND PROVIDENT SOCIETIES.

Province, the district over which the jurisdiction of an archbishop extends. England is divided into two provinces, Canterbury and York; the province of York comprises all north of the Humber, i.e., Yorkshire and Lancashire, etc., and Cheshire; all the rest of the island is in the province of Canterbury. A county; an outlying county governed by a deputy or lieutenant. *Metaphorically*, the sphere of duty: as the province of the judge and the province of the jury.

Provincial Constitutions, the decrees of provincial synods held under divers archbishops of Canterbury, from Stephen Langton, in the reign of Henry III., to Henry Chichele, in the reign of Henry V., and adopted also by the province of York in the reign of Henry VI.—*Lynd. Provinciale.*

Provincial Courts, the several archiepiscopal courts in the two ecclesiastical provinces of England.

Provinciale, a work on ecclesiastical law, by William Lyndwode, official principal to

Archbishop Chichele in the reign of Edward IV.—4 *Reeves*, c. xxv. 117.

Provision of food for school children; see Education Act, 1921, ss. 82–85.

Provisional Assignees, those who (under a former system of the bankruptcy law) were appointed under fiats in bankruptcy in the country to take charge of bankrupts' estates, etc., until the creditors' assignees were appointed.

Provisional Committee, a committee, appointed for a temporary occasion.

Provisional Order, an order by a Government department, called 'provisional' because it is of no force unless and until it is confirmed by Act of Parliament. In some cases, these orders are to have effect unless petitioned against or objected to by Parliament.

Procedure by provisional order has been increasingly and necessarily used in modern times for a very great variety of purposes; but the tendency in these orders to confer arbitrary powers upon the executive without appeal or with an appeal to the same executive exclusively has been severely commented upon by the judiciary and publicists: see LORD HEWART, L.C.J., and next title.

Provisiones, those Acts of Parliament which were passed to curb the arbitrary power of the Crown.—*Mat. Paris.*

Proviso, stipulation, caution, a condition, inserted in any deed, on the performance whereof the validity of the deed depends. As to the proviso for re-entry in a lease, see FORFEITURE (5); CONDITION; USUAL COVENANTS.

The terms *proviso* and *condition* are synonymous, and signify some quality annexed to a real estate by virtue of which it may be defeated, enlarged, or created upon an uncertain event. Such qualities annexed to personal contracts and agreements are generally called conditions. A proviso or condition differs from a covenant in this, that the former is in the words of, and binding upon, both parties; whereas the latter is in the words of the grantor only. At the same time a proviso or condition may be construed as a covenant or agreement if the proviso involves the consideration upon which the benefit is obtained *a fortiori*, where words such as 'provided that, and it is hereby agreed' are used. But if no intention that the proviso was intended to be obligatory can be gathered from the deed or contract, the proviso merely amounts to a qualification of the grant or promise. See *Halsbury, L.E.*, tit. '*Interpretation of Deeds.*'

Proviso est providere præsentia et futura non præterita. *Co.* 72.—(A proviso is to provide for the present or future, not the past.)

Proviso for Redemption. The condition in a conveyance upon mortgage whereby if the mortgagor pays to the mortgagee the principal, interest, and any other moneys secured by the mortgage on a specified day, the mortgagee becomes bound to reconvey the mortgaged property to the mortgagor at any time at his request and cost. By the Law of Property Act, 1925, s. 115, a receipt of the person entitled to give a receipt (see statutory form) for the moneys secured by the mortgage endorsed on or written at the foot of, or annexed to the mortgage operates as a surrender or release of the mortgagee's term or as a reconveyance of all the mortgaged interest or property, and in either case a discharge of all the moneys secured by the mortgage without any other reconveyance, surrender or release. See MORTGAGE.

Proviso, Trial by. Where the plaintiff after issue joined, did not proceed to trial when he ought to have done so, the defendant might, under the practice before the Judicature Acts, have the action tried by proviso; he might give the plaintiff notice of trial, make up the record, carry it down and enter it, and proceed to the trial as if he were proceeding as plaintiff. The right to try by proviso was expressly saved by C. L. P. Act, 1852, s. 116, but a defendant seldom tried by proviso, as the better course was to take proceedings under the repealed s. 101 of the C. L. P. Act, 1852; see now R. S. C. Ord. XXVII.

Provisor, a purveyor; also one who sued to the Court of Rome for a provision or prearrangement that a particular benefice when it should fall vacant should be bestowed, for an immediate payment by the provisor, on a particular person.

Various statutes, called generally 'Statutes of Provisors,' were passed in ancient times to suppress such persons. In 25 Hen. 8, c. 20, s. 7, the first and most important of them, 25 Edw. 3, st. 5, c. 22, is called 'the Statute of the Provision and Præmunire.' See PRÆMUNIRE.

Provocation. In law no provocation whatever can render homicide justifiable, but it may reduce the offence to manslaughter. Generally speaking, words do not amount to sufficient provocation to reduce homicide to manslaughter. To reduce homicide upon provocation to manslaughter, the wounding,

etc., must have been inflicted immediately upon the provocation being given and before anger has had time to subside, and the provocation must be of a kind which would deprive an ordinary man of self-control. See ASSAULT.

Provost, the principal magistrate of a royal burgh in Scotland ; a governing officer of a university or college.

Provost-Marshal, an officer of the royal forces who has the charge of military prisoners.—13 Car. 2, c. 9, and *Manual of Military Law.*

Proxeneta, a kind of broker or agent.

All contracts for marriage (commonly called marriage-brokage contracts), by which a party engages to give another a compensation if he will negotiate an advantageous marriage for him, are void, as being injurious to or subversive of the public interest ; see *Hermann* v. *Charlesworth,* 1905, 2 K. B. 123. But the Civil Law does not seem to have held contracts of this sort in such severe rebuke : for it allowed *proxenetæ,* or match-makers, to receive a reward for their services to a limited extent.—1 *Story's Eq. Jurisp.,* s. 260.

Proxies, annual payments by the parochial clergy to the bishop, etc., on visitation.

Proximate Cause. See CAUSA CAUSANS.

Proxy, a person appointed, usually by written authority, by a person entitled to vote personally, to vote at the discretion of the proxy. See *Harben* v. *Phillips,* (1883) 23 Ch. D. p. 35.

As to voting by proxy under the Companies Clauses Consolidation Act, 1845 (8 & 9 Vict c. 16), see ss. 76, 77 of that Act ; amended in the case of a company being shareholder, by the Companies Clauses Acts, 1888 and 1889.

A letter ' for the sole purpose of appointing or authorizing a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more,' must bear a penny stamp, must specify the day on which the meeting is to be held, and is to be available only at the meeting so specified, and any adjournment thereof (Stamp Act, 1891, and First Schedule). The Standing Orders of Parliament (L. S. O. 62 and C. S. O. 62) prohibit the sending out of stamped proxies in connection with extension bills. Directors, acting in good faith in the interests of the company, may do what they think advisable to get shareholders to vote either in favour of or against a resolution, e.g., they may send out stamped forms at the company's expense (*Peel* v. *L. & N. W. Ry. Co.,* 1907, 1 Ch. 5, overruling *Studdert* v. *Grosvenor,* (1886), 33 Ch. D. 528).

On a show of hands, a proxy has only one vote, however many persons he may represent ; see *Ernest* v. *Loma Gold Mines,* 1897, 1 Ch. 1, in which case it was also held that a blank date of the meeting in the proxy paper might be filled up by the secretary of the company before the paper was lodged.

Voting by proxy at the meetings of the creditors of a bankrupt is regulated by the Bankruptcy Act, 1914, s. 13, and First Schedule thereto ; and at the meetings of the creditors and contributories of companies being wound up, by rules 139–149 of the Companies (Winding-up) Rules, 1909.

Pryk, a kind of tenure. Blount says it signifies an old-fashioned spur with one point only, which the tenant, holding land by this tenure, was to find for the King.

Psalter, the table of Psalms. See 34 & 35 Vict. c. 37, amending the law relating to the Tables of Lessons and Psalter contained in the Prayer-book.

Pseudograph, false writing.

Pubertas. See AGE.

Puberty [fr. *pubertas,* Lat.), the age of fourteen in men and twelve in women ; when they are held fit for and capable of contracting marriage.

Public Accounts, the accounts of the expenditure of the nation. They are rendered to the Comptroller and Auditor-General under 29 & 30 Vict. c. 39, and the amending Act, 11 & 12 Geo. 5, c. 52.

Public Act. See ACT OF PARLIAMENT.

Public Analyst is an analyst appointed by a local authority under the Food and Drugs (Adulteration) Act, 1928 (18 & 19 Geo. 5, c. 31).

Public Appointments, Sale of, is contrary to the policy of the law : see OFFICE.

Public Auditors and Valuers, persons appointed by the Treasury for the purpose of audits and valuations under the Friendly Societies Act, 1896, s. 30, and under the Industrial and Provident Societies Act, 1893, s. 72. Their duties and remuneration are as prescribed from time to time by the Treasury. In the case of the latter class of Society, audit by a public auditor is now compulsory (Industrial and Provident Societies Act, 1913, s. 2). See also Industrial Insurance Act, 1923 (13 & 14 Geo. 5, c. 8), s. 15.

Public Authorities, Protection of. Very numerous statutes have from time to time protected justices of the peace, constables,

surveyors of highways, local boards and other public authorities from vexatious actions for things done in pursuance of the Acts. This protection was given by requiring the plaintiff to give notice of action, by compelling him to try the action in the place where the cause of it arose, by requiring him to bring his action within a short limit of time, by enabling defendants to plead the general issue (see GENERAL ISSUE) and to tender amends, and by enacting that the plaintiff if unsuccessful should pay double or treble costs. These varying enactments were reduced into one by the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61), which applies to common law as well as to statutory duties, to individuals as well as to public authorities, and to acts of omission as well as to acts of commission. This Act provides (1) six months as the limit of time for the action, but does not apply to an action *in rem* (*The Burns*, 1907, P. 137); or if the cause of action alleged is fraud (*Pearson* v. *Dublin Corporation*, 1907, A. C. 351), or if there is a continuance of the injury or damage (*Hague* v. *Doncaster Rural Council*, (1909) 100 L. T. 121; *Brownlie* v. *Barrhead Magistrates*, 1923, S. C. 915); and (2) costs as between solicitor and client if judgment given for defendant; and also (3) deprives a plaintiff of costs if he fail to recover more than the sum tendered or paid into court by the defendant; besides (4) empowering the Court to award costs as between solicitor and client to the defendant if the plaintiff has not given the defendant a sufficient opportunity of tendering amends. These provisions only apply to an action, prosecution or other proceeding against any person for any act done in pursuance or execution or intended execution of any Act of Parliament or any public duty or authority or in respect of any alleged neglect or default in the execution of any such act, duty or authority. See *Bradford Corporation* v. *Myers*, 1916, 1 A. C. 242, and also *Betts* v. *Receiver, Metropolitan District* and *Betts* v. *Carter Paterson & Co.*, 1932, 2 K. B. 595, for the meaning of 'intended execution of a public duty.' The Act repeals all prior enactments by which in any proceeding to which it applies the proceeding is to be commenced in any particular place, or within any particular time, or notice of action is to be given, or the defendant is to be entitled to or the plaintiff deprived of costs, or the defendant may plead the general issue. As to taxation in the county court of solicitor and client costs under this Act, see *Tory* v. *Dorchester Corporation*, 1907, 1 K. B. 393. For discussion on the Act, see *Pearson* v. *Dublin Corporation*, 1907, A. C. 351; *Bradford Corp.* v. *Myers*, 1916, A. C. 242; and as to 'public authority' *The Johannesburg*, 1907, P. 65; *The Wilhelmina*, 1923, P. 112. See also CROWN JUSTICES; NUISANCE.

Public Chapels are chapels founded at some period later than the church itself; they were designed for the accommodation of such of the parishioners as in course of time had begun to fix their residence at a distance from its site: and chapels so circumstanced were described as *chapels of ease*, because built in aid of the original church.—3 *Steph. Com.*

Public Companies. See COMPANY.

Public Elementary School. See EDUCATION.

Public Funds. See FUNDS.

Public Health. The first Public Health Act was passed in 1848 (11 & 12 Vict. c. 63); this was an adoptive Act not applying to London, and forms the foundation of modern sanitary legislation. It was followed by some twenty-nine amending Acts which were repealed and consolidated by the Public Health Act, 1875 (the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), repeals certain sections of this Act, re-enacting them with amendments), which thus formed a sanitary code for England outside the metropolis. This Act has been since amended and extended by subsequent statutes. The latest is the Public Health Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 49), which, as from 1st October, 1937, consolidates many of the provisions of earlier legislation, without, however, repealing parts of the Public Health Acts of 1875, 1890, 1907 and 1925. The Act repeals and replaces among other enactments and as from various dates respectively provided by the Act: the whole of the Baths and Wash-houses Acts, 1846–1899 and Part IX. of the P. H. Act, 1925, and parts of the Local Government Acts, 1871 and 1894, relating to the same subject; the greater part, if not the whole, of the previous legislation relating to Infectious Diseases Acts—i.e., the Prevention (1883), Notification (1889 and 1899) and Treatment, (1913), Tuberculosis (1921, except s. 6) Acts; the Cleansing of Persons Act, 1897; Isolation of Hospitals Acts, 1893 and 1901; Nursing Homes Registration Act, 1927; Notification of Births Acts, 1907 and 1915; Maternity and Child Welfare Act, 1918; Part I. of the Children Act, 1908, and consequential

legislation; Canal Boats Acts, 1877 and 1884; and many of the Public Health Acts (Water, 1878); (Fruit Pickers' Lodgings, 1882); (Ships, etc., 1885); (Ports, 1896); Smoke Abatement, except ss. 4 and 12, 1926; and the Public Health Act, 1904. The Act of 1936 is voluminous, containing 347 sections and 3 Schedules. It is generally directed to promote healthy and sanitary surroundings and sanitation for the general population under the following heads: Port health authorities, building from the sanitary point of view, sewage and sewers, drains and cesspools, filthy or verminous premises or persons, public conveniences, nuisances, offensive trades, smoke, water supply (works, wells, charges, supply, waste); prevention, notification and treatment of diseases; preventing spread of infection, disinfection of premises and removal of infected persons, tuberculosis, blindness, medicine, medical assistance and instruction, hospital and nursing cases, laboratories, ambulances and mortuaries; notification of births, child welfare and life protection, baths, wash-houses, bathing places, lodging-houses, canal boats, water-courses, ditches, ponds, ships and boats, tents, vans and sheds, hop-pickers. The Act is administered by the Minister of Health, either directly, as in the case of regulations for the prevention, etc., of disease, or relating to canals, or by the county councils or local authorities, or under bye-laws of such local authorities. The Ministry of Health Act, 1919, established a Ministry of Health to exercise in England and Wales powers with respect to health and local government; the Ministry superseded the Local Government Board. The Law as to public health in London is mainly governed by the Public Health (London) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 50). Consult the works on public health of *Lumley*, *Glen* or *Chambers*.

Public-House. See PUBLICANS.

Public-House Closing Act, 1864 (27 & 28 Vict. c. 64), an 'adoptive' Act whereby public-houses and refreshment houses, till then allowed to be open all night, were closed in boroughs and Improvement Act districts between 1 and 4 A.M. The Act has been repealed, and the matter is now dealt with by ss. 54–63 and Sched. VI. of the Licensing (Consolidation) Act, 1910, and amending Acts under the collective title, Licensing Acts, 1910 to 1934. See also REFRESHMENT HOUSE.

Public Libraries. See LIBRARIES.

Public Meeting, a meeting which any person may attend. Any number of persons may meet in any place for any lawful purpose with the consent of the owner of that place; but without such consent, and in any case in the public streets, which are lawfully used for the purpose of passing and repassing only (see the ruling of Charles, J., in the *Trafulgar Square case* in 1887, and *Ex parte Lewis*, (1888) 21 Q. B. D. 191), there is no 'right of public meeting' known to English law.

Political meetings within a mile of Westminster Hall during the session of Parliament are prohibited by the Seditious Meetings Act, 1817. As a result of disturbances created by persons advocating the extension of the parliamentary franchise to women there was passed the Public Meeting Act, 1908, which by s. 1 provides as follows:—

1.—(1) Any person who at a lawful public meeting acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together shall be guilty of an offence, and, if the offence is committed at a political meeting held in any parliamentary constituency between the date of the issue of a writ for the return of a member of Parliament for such constituency and the date at which a return to such writ is made, he shall be guilty of an illegal practice within the meaning of the Corrupt and Illegal Practices Prevention Act, 1883, and in any other case shall, on summary conviction, be liable to a fine not exceeding five pounds, or to imprisonment not exceeding one month.

(2) Any person who incites others to commit an offence under this section shall be guilty of a like offence.

(And, as amended by the Public Order Act, 1936, s. 6).

(3) If any constable reasonably suspects any person of committing an offence under the foregoing provisions of this section, he may if requested so to do by the chairman of the meeting, require that person to declare to him immediately his name and address and, if that person refuses or fails so to declare his name and address or gives a false name and address he shall be guilty of an offence under this sub-section and liable on summary conviction thereof to a fine not exceeding forty shillings, and if he refuses or fails to declare his name and address or if the constable reasonably suspects him of giving a false name and address, the constable may without warrant arrest him.

Newspaper reports of public meetings (unless such report or publication was published or made maliciously) are 'privileged' (see LIBEL) by the Law of Libel Amendment Act, 1888, which, for the purposes of that Act, defines a public meeting as

'any meeting *bonâ fide* and lawfully held for a lawful purpose, and for the furtherance and discussion of any matter of public concern, whether the admission thereto be general or restricted.'

Consult *Odgers on Libel*.

As to public meetings of limited bodies, see MEETING. Consult *Crewe, Procedure at Pub. and Co. Meetings.*

Public Mischief. Conduct causing or tending to cause public mischief constitutes a misdemeanour at common law. Prosecutions for this offence have become increasingly frequent of late years, and as to what constitutes the offence, see *R.* v. *Munley*, 1932, 1 K. B. 529 (false information to Police), *Kerr* v. *Hill, Duncan* v. *Jones*, 1936, 1 K. B. 218 (public meeting, apprehension of breach of the peace); and see Public Meeting Act, 1908 (8 Edw. 7, c. 66), and title *infra.*

Public Officer. The general name for any authorized officer acting in a public capacity under the Crown or public authority, more particularly a person appointed by joint-stock banking companies, etc., under 7 Geo. 4, c. 46, s. 9, or otherwise to sue and be sued on behalf of a company. As to the punishment of frauds committed by such persons, see the Larceny Act, 1861, ss. 81–84, and the Larceny Act, 1916, s. 20.

Public Order Act, 1936 (1 Edw. 8 & 1 Geo. 6, c. 6). An Act to prohibit the wearing of uniforms in connection with political objects and the maintenance by private persons of associations of military or similar character, and to make further provision for the preservation of public order on the occasion of public processions and meetings and in public places.

Sect. 1.—Prohibition of uniform in connection with political objects.

Sect. 2.—Prohibition of quasi-military organizations.

Sect. 3.—Confers powers for the preservation of public order on the occasion of processions.

Sect. 4.—Prohibition of offensive weapons at public meetings and processions.

Sect. 5.—Prohibition of offensive conduct conducive to breaches of the peace.

Sect. 6.—Amendment of Public Meeting Act, 1908; see PUBLIC MEETING.

Sect. 7.—Enforcement.

Sect. 8.—Application to Scotland.

Sect. 9.—Interpretation.

Sect. 10.—Short title and extent.

A person who commits an offence under s. 2 is liable on summary conviction to a maximum of 6 months' imprisonment or a fine up to 100*l.* or both; and on conviction on indictment to a maximum of 2 years or 500*l.* or both.

For any other offence, on summary conviction, imprisonment up to 3 months or a fine up to 50*l.* or both.

Public Parks. See PARK, and also 22 Vict. c. 27, and 34 & 35 Vict. c. 13. See also OPEN SPACES; PLEASURE GROUNDS.

Public Place. A public place would seem to include a place to which the public are accustomed to resort without being interfered with, though there is no legal right to do so; see per Lord Coleridge, C.J., in *R.* v. *Wellard*, (1884) 14 Q. B. D. at p. 66. But for criminal purposes the attribute 'public' will apply to many other places, e.g., the roof of a private house within the view of many persons (*R.* v. *Thallman*, (1863) 33 L. J. M. C. 58); and a railway carriage at the time it is used for the purposes of travel is an 'open and public place' (*Langrish* v. *Archer*, (1882) 10 Q. B. D. 44).

As to the meaning of 'public place' in connection with the offence of betting, see the Street Betting Act, 1908.

Public Policy, the principles under which the freedom of contract or private dealings is restricted by law for the good of the community. See, e.g., the titles CHAMPERTY; RESTRAINT OF MARRIAGE; RESTRAINT OF TRADE; MORTMAIN.

Thus it is against public policy to allow an action to be brought on a promise to marry made by a man who at the time of making it was known to be married (*Wilson* v. *Cranley*, 1908, 1 K. B. 729).

Public policy, however, said an eminent judge, 'is a very unruly horse, and when once you get astride it you never know where it will carry you' (*Richardson* v. *Mellish*, (1824) 2 Bing. p. 252). The term in fact does not admit of any precise definition and is not easily explained; see *Davies* v. *Davies*, (1887) 36 Ch. D. p. 364; *Besant* v. *Wood*, (1879) 12 Ch. D. p. 620, per Jessel, M.R.; *Egerton* v. *Earl Brownlow*, (1853) 4 H. L. C. 1, where a condition subsequent in a will was held to be void on the ground of public policy.

Public Prosecutor, the King, in whose name criminals are prosecuted, because all offences are said to be against the King's peace, his Crown and dignity. By the Prosecution of Offences Act, 1879, an officer called the 'Director of Public Prosecutions' may be appointed with six assistants, and such an officer (the late J. B. Maule, Esq., Q.C.), with one assistant, was appointed shortly after the commencement of the Act in 1880; but the Prosecution of Offences Act, 1884, revoked all appointments made under the Act of 1879, and constituted the Solicitor to the Treasury Director of Public Prosecutions. This fusion of offices, however, was

subsequently done away with by the Prosecution of Offences Act, 1908 (8 Edw. 7, c. 3). By the Act of 1884 (47 & 48 Vict. c. 58), s. 3, the chief officer of every police district becomes bound to give information from time to time to such Director with respect to indictable offences alleged to have been committed within his district.

As to Scotland, see PROCURATOR FISCAL; ADVOCATE, LORD.

Public Records. The general Records of the Realm are in the custody of the Master of the Rolls (see RECORD), and may be proved by a copy purporting to be carried by the deputy keeper of these Records (see the Public Record Office Acts, 1838–1898). As to public documents, see *Mercer* v. *Denne*, 1905, 2 Ch. 538.

Public Right. A right enjoyed by the public as distinguished from private or personal rights attached to the personalty of an individual. Public rights exist at Common Law, such as the right of the public to pass along a highway, or they may be conferred by statute in either case if the statute does not provide a remedy; the remedy for infringement is by indictment or information filed by the Attorney-General either directly or upon the relation of an individual (relator) who becomes liable for the costs, but if the individual has suffered special damage or some private right has been interfered with specially, the Attorney-General is not an essential party to the action though he is often joined as a party. See *Boyer* v. *Paddington Borough Council*, 1903, 1 Ch. 109; and *David* v. *Britannic Merthyr Coal Co.*, 1909, 2 K. B. 146. See NEGLIGENCE; NUISANCE.

Public Schools, schools open to all, subject to the terms of their foundation and the regulations of some governing body, private schools being only open to such pupils as the proprietor or head master chooses to admit. The term has in some modern statutes been confined to the larger public schools, such as Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby, and Shrewsbury, the governing bodies of which were, by the Public Schools Act, 1868 (31 & 32 Vict. c. 118), empowered to make new regulations for their constitution and management, requiring confirmation by Order in Council. See generally, *Birkenhead School* v. *Dring*, (1926) 43 T. L. R. 48.

Public Sewer. By the Public Health Act, 1936, s. 20, sewers, which by virtue of the section continue to be or become vested in a local authority, shall be known as public sewers, provided that a sewer constructed by a local authority after the 1st October, 1937, for draining their own property shall not be deemed public sewers for the purposes of the Act until so declared. Public sewers include combined drains which would have vested in a local authority as sewers but for some Act or statutory scheme for the construction of combined drains or order made thereunder; all sewers and sewage disposal works constructed by the local authority at their expense or acquired by them; and for other instances, see the section. See DRAIN.

Public Statues. See the Public Statues (Metropolis) Act, 1854 (17 & 18 Vict. c. 33), which placed public statues in the metropolitan police district under the control of the Commissioners of Works and Public Buildings; and for punishment for damage, see the Malicious Damage Act, 1851, s. 29.

Public Stores. By the Public Stores Act, 1875 (38 & 39 Vict. c. 25), various provisions are made for the protection of public stores and the punishment of persons improperly obtaining the same or obliterating the marks thereon, and see Army and Air Force Acts.

Public, True, and Notorious, the old form by which charges in the *allegations* in the ecclesiastical courts were described at the end of each particular.

Public Trustee. The office of Public Trustee was established by the Public Trustee Act, 1906, which came into force on 1st January, 1908. The Public Trustee is a corporation sole, and may if he thinks fit act in the administration of estates of deceased persons if under one thousand pounds; act as custodian trustee (see that title, and *Re Cherry's Trusts*, 1914, 1 Ch. 83); act as an ordinary trustee; be appointed to be a judicial trustee (see that title); be appointed administrator of the property of a convict under the Forfeiture Act, 1870; and he may also be appointed an executor and obtain a grant of probate (s. 5). He may be appointed a trustee whether the trust instrument came into operation before or after the Act, and either as an original or a new trustee, or as an additional trustee, in the same cases and manner and by the same persons or court as if he were a private trustee, with this addition—that he may be appointed sole trustee although the trustees originally appointed were two or more; but he cannot be appointed a new or additional trustee when the trust instrument directs the contrary unless the court otherwise

order, and notice of any proposed appointment must be given to the beneficiaries ; see s. 5. The Public Trustee may decline to accept any trust, but not on the ground only of the small value of the trust property ; and he cannot, except under certain conditions (see r. 7), accept a trust which involves the carrying on of any business, nor a trust under a deed of arrangement, nor the administration of an insolvent estate, nor a trust exclusively for religious or charitable purposes (s. 2, sub-ss. (3), (4), (5)). The Consolidated Fund is, speaking generally, liable to make good all sums required to discharge any liability which the Public Trustee, if he were a private trustee, would be personally liable to discharge (s. 7). By s. 13 an investigation and audit of trust accounts may be made at the instance of any trustee or beneficiary, by some agreed solicitor or accountant, and in default of agreement by the Public Trustee or some person appointed by him ; and there is an important provision in s. 3 (4), under which the Public Trustee can take the opinion of the Court on any question arising in the course of his administration of an estate. The Act does not extend to Ireland or Scotland (s. 17 (2)), and the Public Trustee cannot accept the trusteeship of any settlement other than an English one (*Re Hewitt's Settlement*, 1915, 1 Ch. 228). For the Act and the Rules made thereunder, see *Ann. Pr.* The head office is situate in Kingsway, W.C., and there is a branch office in Albert Square, Manchester. A pamphlet giving full information as to the work of the Department can be obtained on application at the head office, or at any Post Office.

The Public Trustee is the person in whom the legal estate is (in the first instance) to vest in certain cases of undivided shares, in land and infancy subsisting on the 1st January, 1926, under the transitory provisions of the Law of Property Act, 1925, s. 39, and see 1st Sched.

For the Powers of the Public Trustee in opening accounts in the Post Office Savings Bank, see Post Office Savings Bank (Public Trustee) Act, 1908.

Banks and insurance companies of great financial strength act as trustees at charges somewhat lower than those payable to the Public Trustee, and, it is believed, with equal efficiency. See CUSTODIAN TRUSTEE ; TRUST CORPORATION.

Public Ways, highways.

Public Works Loans Act, 1875, which repeals twenty-seven previous statutes on the same subject, makes provision for the constitution of a body to be called 'The Public Works Loan Commissioners,' who are authorized to make loans for certain public purposes which are enumerated in the first schedule to the Act. They are appointed every five years : see the Public Works Loans Act, 1930 (20 & 21 Geo. 5, c. 49). The Act of 1875 has been extended and amended by numerous Acts.

Among the works for the purposes of which the Commissioners were authorized to lend money are as follows : Baths and washhouses provided by local authorities ; burial grounds provided by burial boards or, in Scotland, by either burial or parochial boards ; construction or improvement of canals ; conservation or improvement of rivers of main drainage ; docks, harbours, and piers, and any work for which the Public Works Loan Commissioners are authorized to lend by s. 3 of the Harbour and Passing Tolls Act, 1861 ; improvement of towns ; housing of the Working Classes (Housing Act, 1925 (15 Geo. 5, c. 14), s. 89), as amended by s. 95 of the Housing Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 51) ; lighthouses, floating and other lights for the guidance of ships ; buoys and beacons ; mental hospitals of any county or borough in Great Britain, or of any district or parochial board in Scotland; police stations and justices' rooms of any county or borough in Great Britain, and the offices connected therewith, also sheriff court buildings in Scotland ; prisons, public libraries and museums ; any school-house or work for which a school-board is authorized to borrow under the Education Acts, or under the Education (Scotland) Act, 1872 (35 & 36 Vict. c. 62) ; waterworks established or carried on by a sanitary or other local authority ; workhouses or poor-houses, and any work for which the council of a county, borough, district or parish are authorized to borrow ; see also P. W. Loans Act, 1896 (59 & 60 Vict. c. 42), or in Scotland the appropriate authority ; see also the Public Health Acts, 1875-1936, and any work for which the Commissioners are authorized to lend by any Act passed after the passing of this Act. For the numerous Public Works Loans Acts passed since 1875, see *Chitty's Statutes*, tit. *'Loans.'*

Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85). By this Act—which proceeds on the preamble that it is expedient that in certain cases further regulations should be made for the administration of the laws relating to the performance of divine service according to the use of the

Church of England—it was provided that whensoever a vacancy should occur in the office of official principal of the Arches Court of Canterbury (see ARCHES COURT), the judge appointed under that Act should become *ex officio* such official principal, and all proceedings thereafter taken before the judge in relation to matters arising within the province of Canterbury should be deemed to be taken in the Arches Court of Canterbury. The Court may be set in motion on representation by one archdeacon, or churchwarden, or any three parishioners declaring themselves to be members of the Church of England : (1) that in any church any alteration in or addition to the fabric, ornaments, or furniture thereof has been made without lawful authority, or that any decoration forbidden by law has been introduced into such church ; or (2) that the incumbent has within the preceding twelve months used or permitted to be used in such church or burial ground any unlawful ornament of the minister of the church, or neglected to use any prescribed ornament or vesture ; or (3) that the incumbent has within the preceding twelve months failed to observe, or to cause to be observed, the directions contained in the Book of Common Prayer relating to the performance in such church or burial ground of the services, rites, and ceremonies ordered by the said book, or has made or permitted to be made any unlawful addition to, alteration of, or omission from, such services, rites, and ceremonies. Rules and Orders have been issued under the Act. Lord Penzance was appointed judge shortly after its passing. The Act has been set in motion upon but few occasions, and the meaning and effect of it has been vigorously contested upon each of them, sometimes on very technical points. See, e.g., *Hudson* v. *Tooth*, (1877) 3 Q. B. D. 46, and *Ex parte Dale*, (1881) 6 Q. B. D. 376, in which latter case the Rev. T. P. Dale, after having been committed to prison by Lord Penzance, was discharged by writ of Habeas Corpus granted by the Court of Appeal. The Rev. S. F. Green, however, was imprisoned by a valid sentence, and discharged only upon his benefice becoming void (see s. 13 of the Act). See WORSHIP.

Publicans, persons authorized by licence to keep a public-house and retail therein, for consumption on or off the premises where sold, all intoxicating liquors. Publicans (who are also termed 'licensed victuallers') are subjected to a number of restrictions by a series of Acts called the Licensing Acts. See INTOXICATING LIQUORS, and as to the duties and the responsibility of innkeepers, see INNKEEPERS.

Publicatio, confiscation.—*Civ. Law.*

Publication, divulgation ; proclamation ; also 'the communication of defamatory words to some person or persons other than the person defamed' (*Odgers on Libel*).

The publication of fair reports of legal proceedings in court (other than *ex parte* proceedings) is a Common Law right exempt from proceedings for libel.

As to the publication of an apology for libel in a newspaper, see LIBEL.

It is essential in an action of defamation that the publication be to a third person, though the law is otherwise in Scotland. Thus, there can be no publication as between husband and wife (*Wennhak* v. *Morgan*, (1888) 20 Q. B. D. 635) ; but publication can be made to either husband or wife respecting the other (*Jones* v. *Williams*, (1885) 1 T. L. R. 572). The third party to whom the matter is published may be in the position of a servant or clerk (*Edmondson* v. *Birch & Co.*, 1907, 1 K. B. 371), but see *Osborn* v. *Boulter & Son*, 1930, 2 K. B. 226 ; but must be able to understand the defamatory character of the matter (*Sadgrove* v. *Hole*, 1901, 2 K. B. 1). It is no defence that the publication was unintentional unless without negligence the person charged with 'publishing' was in fact ignorant of the contents of the document (*M'Leod* v. *St. Aubyn*, 1899, A. C. 549) ; but the onus of proving this lies on the defendant (*Vizetelly* v. *Mudie's Library*, 1900, 2 Q. B. 170). In criminal libel, publication to the prosecutor is sufficient.

For the purposes of the Copyright Act, 1911, publication means the issue of copies of a work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but the issue of photographs and engravings of works of sculpture and architectural works of art is not to be deemed to be publication of such works (s. 1 (3)).

As only a new and original invention can be patented, publication before protection defeats the inventor's right to protection by patent, unless the publication be without the knowledge or consent of an inventor who has not been guilty of unreasonable delay in obtaining protection. An invention covered by any patent is not deemed to have been anticipated by reason only of,

inter alia, its publication in a specification left pursuant to an application made in the United Kingdom not less than fifty years before the patent, or of its publication in a provisional specification of any date not followed by a complete specification (Patents and Designs Act, 1932, s. 13 and Sched., substituting the scheduled section for s. 41 of the Patents and Designs Act, 1907). Similarly, prior publication of a design (*q.v.*) prevents registration, but publication by exhibition at industrial and international exhibitions and exhibition elsewhere without the proprietor's privity or consent does not operate as a publication so as to defeat registration, provided that the conditions imposed are complied with (*ibid.*, ss. 49 and 59, as amended by the Act of 1932).

Publication of evidence in Chancery is no longer practised, as all parties attend the examination of witnesses.

Publication of a citation in two newspapers is frequently ordered by the Court for Divorce and the Court of Probate as a step to entering an appearance for a party.

As to publication of banns of marriage, see MARRIAGE.

Publication of a will is no longer necessary, the proper attestion of two witnesses taking the place of the 'publication,' i.e., the declaration by the testator in the presence of witnesses that it was his will (Wills Act, 1837, s. 13). See REPUBLICATION.

Publicist, a writer on the law of nations.

Publisher. A publisher of libellous matter is liable both civilly and criminally in respect of any such matter he may publish, and his civil liability exists even though the publication takes place without his knowledge. 'Not only the party who originally prints, but every party who sells, who gives, or who lends a copy of an offensive publication will be liable to be prosecuted as a publisher' (*R.* v. *Mary Carlile*, (1819) 3 B. & Ald. p. 169, per Bayley, J.). If the publisher of a book becomes bankrupt, an author to whom royalties are due is not in any more favourable position than other creditors, and can only prove for the damages he has sustained by the breach of contract (*Re Grant Richards*, 1907, 2 K. B. 33).

As to the duty of publishers to send a copy of every book published in the United Kingdom to the British Museum and other libraries, see Copyright Act, 1911 (1 & 2 Geo. 5, c. 46), s. 15, and the British Museum Act, 1932 (22 & 23 Geo. 5, c. 34), also BRITISH MUSEUM.

Pudzeld, to be free from the payment of money for taking wood in a forest.—*Co. Litt.* 233 *a.* See WOODGILD.

Puerilia, the age from seven to fourteen.

Puffer, one who attends a sale by auction, to bid on the part of the owner, for the purpose of raising the price and exciting the eagerness of the bidders.

The Sale of Land by Auction Act, 1867 (30 & 31 Vict. c. 48), regulates the employments of puffers at an auction for the sale of *land*, and enacts that all sales of land where a puffer has bid shall be illegal unless a right of bidding on behalf of the owner shall have been reserved; that the conditions of sale shall state whether the sale is to be without reserve, or subject to a reserved price, or whether a right to bid is reserved; that if it be stated that the sale is to be without reserve, a puffer is not to be employed; that if a right to bid be reserved, the seller or one puffer may bid; and that the practice of opening biddings, formerly sanctioned by courts of equity, shall be discontinued. As to sale of *goods* by auction, see similar provisions, s. 58 of the Sale of Goods Act, 1893, and see AUCTION.

Pugilism. See PRIZEFIGHTING.

Puis darrein continuance, Plea of. In olden times, when the pleadings were each entered separately on the record, every entry after the first was called a *continuance*. When the matter of defence arose after writ, but before plea or continuance, it was said to be pleaded 'to the further maintenance' of the action. When it arose after plea or continuance it was called a plea of *puis darrien continuance*—since the last continuance; see 1 H. & C. 697 (*Odgers on Pleading*, 7th ed., p. 232).

'Pleading after action' is now regulated by Order XXIV. of the Rules of the Supreme Court.

Puisne [fr. *puisné*, Fr.], junior, inferior, lower in rank. The several judges and barons of the former Common Law Courts at Westminster, other than the chiefs, were called *puisne*. By s. 5 of the Judicature Act, 1877, a puisne judge of the High Court means, for the purposes of that Act, a judge of the High Court other than the Lord Chancellor, the Lord Chief Justice of England, and their successors respectively. Puisne judges of the High Court shall be styled Justices of the High Court (Jud. Act, 1925, s. 2 (4)). The term is also used as meaning later or subsequent with reference to mortgagees and the like, e.g., puisne mortgagees.

Puisne Mortgage. In the legal phraseology

which was used before 1926 meant a mortgage subsequent to the mortgage of a legal estate, but for the purposes of the Land Charges Act, 1925, s. 10 (1) (Class C.), it is enacted that 'puisne mortgage' means any legal mortgage (including the first) of a legal estate not being a mortgage protected by a deposit of documents relating to the legal estate affected and (if the whole of the land affected is within the jurisdiction of a local deeds registry) not registered there. These mortgages, if created after 1925, must be registered at the Land Charges Registry, Red Lion Square, or they will lose priority; see, further, MORTGAGE CHARGE. Mortgages created before 1926 may be registered before transfer. This amounts to notice, but even this notice will not prevent tacking on further advances by a prior mortgagee if that mortgagee has not seen the register at the date of the first advance or has no other actual or direct notice. See TACKING.

Under the transitional provisions of the Law of Property Act, 1925, 1st Sched., Part VII. (6) and Part III. (5), puisne mortgages not protected by a deposit of documents or registered as a land charge became mortgages of a legal estate, but as against a purchaser in good faith without notice, the mortgages are to remain an equitable interest. Registration as a land charge is not compulsory but advisable, as it amounts to notice. See NOTICE; LAND CHARGES; MORTGAGE.

Pulsator [fr. *pulso*, Lat., to accuse], the plaintiff or actor.

Punchayet, an arbitration.—*Indian.*

Punctually. Payment 'punctually' means payment on the day fixed for payment (*Leeds and Hanley Theatre of Varieties* v. *Broadbent*, 1898, 1 Ch. 343). Payment 'duly' does not necessarily mean 'punctually' (*Starkey* v. *Barton*, 1909, 1 Ch. 284).

Punctuation has no place in deeds or weight in Acts of Parliament. See *Maxwell on Stat.*

Pund-brech, pound-breach.

Pundit, an interpreter of the Hindoo law, a learned Brahmin.—*Indian.*

Punishment, the penalty for transgressing the law: in England usually left within very wide limits to the discretion of the Court. Too great severity has frequently led to refusals of juries to convict, especially where the punishment is death, as it was down to 1810, for the offence of stealing goods to the value of forty shillings from a dwelling-house, and down to 1832 for forgery. In the former case the jury would falsely find the value of the goods stolen to be thirty-nine shillings; in the latter, a petition of bankers hastened the mitigation of a punishment which failed to protect them.

Pupil, a ward, one under the care of a guardian. In Scotland, a male under 14 and a female under 12. During that period, the disabilities are somewhat similar to those of an infant in English law. A pupil cannot sue except by his or her tutor. The word 'minor' (*q.v.*) is sometimes loosely used to include the word 'pupil.'

Pur autre vie, Tenant. See AUTRE VIE.

Purchase (fr. *perquisitio*, or *conquæstus*, Lat., according to the feudists], in its popular sense, an acquisition of land, obtained by way of bargain and sale, for money or some other valuable consideration; in its legal acceptation, an acquisition of land in any lawful manner, other than by descent, or the mere act of law, and including escheat, occupancy, prescription, forfeiture, and alienation. See 2 *Br. and Had. Com.* 408 *et seq.* It is possession to which a man cometh not by title of descent; see *Co. Litt.* 18 *b.*

Purchase, Words of, those by which, taken absolutely without reference to or connection with any other words, an estate first attaches, or is considered as commencing in point of title, in the person described by them. 'It is a rule in law, known as the rule in *Shelley's case*, when the ancestor by any gift or conveyance takes an estate of freehold, and in the same gift or conveyance an estate is limited either mediately or immediately to his heirs in fee or in tail, that always in such cases "the heirs" are words of limitation of the estate and not words of purchase' (1 *Rep.* 104 *a*; *Van Grutten* v. *Foxwell*, 1897, A. C. 658). The rule has been abolished in regard to all conveyances executed after 1925. In a limitation to an ancestor for life, then to his heir or any class of heirs or issue, the words heirs or issue are now words of purchase and not of limitation (Law of Property Act, 1925, s. 131). See HEIR, and SHELLEY'S CASE. At the same time, a grant to A. and his heirs may still be used to limit an estate in fee simple in law, but *any* words of limitation other than the conveyance to the grantee simply are unnecessary for that purpose (L. P. Act, 1925, s. 60).

Purchaser, a buyer, a vendee; also the root of descent, from whom, under the Inheritance Act, 1833, the descent was in every case to be traced, before 1926, and now,

as to a limitation to the heir taking effect as purchaser (see previous title, and L. P. Act, 1925, s. 132).

The statute enacts that in every case descent shall be traced *from the purchaser;* and to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require, *the person last entitled to the land* (which expression extends to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof (s. 1)), is, for the purposes of the Act, to be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same; and, in like manner, the last person from whom the land shall be proved to have been inherited will in every case be considered to have been the purchaser, unless it shall be proved that he inherited the same (s. 2).—*Sugd. Real Property Stat.*, 256.

For various meanings of the word 'purchaser,' see the dissenting judgment of Buckley, L.J., in *I. R. C.* v. *Gribble*, 1913, 3 K. B. p. 218, in which the majority of the Court held that the word 'purchase' in s. 14 (1) of the Finance (1909–10) Act, 1910, meant 'buy' in the ordinary commercial sense: and the same meaning was attributed to in s. 27 of the Law of Property Amendment Act, 1859 (*Re Lawley*, 1911, 2 Ch. 530).

Under the Law of Property Act, 1925, s. 205, 'purchaser' means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property except that in Part I. (ss. 1 to 39) of the Act, purchaser only means a person who acquires an interest in or charge on property for money or money's worth. Valuable consideration includes marriage but does not include a nominal consideration in money. On the other hand, the Land Charges Act, 1925, does not import 'good faith' in the word purchaser, and a distinction between purchaser and purchaser for money or money's worth is made (see ss. 13 and 14, *ibid.*).

Purchaser for Value without Notice. As to the position of such a purchaser, see the judgment of Lord Westbury, L.C., in *Phillips* v. *Phillips*, (1862) 4 De G. F. & J. 208, and see NOTICE; LAND CHARGE.

Purgation, the clearing a man's self of a crime of which he was publicly suspected, and accused before a judge. It was either *canonical*, which was prescribed by the canon law, the form whereof, used in the spiritual court, was that the person suspected took his oath that he was clear of the fact objected against him, and brought his honest neighbours with him to make oath that they believed he swore truly; or *vulgar*, which was by fire or water ordeal, or by combat. See *Jac. Law Dict.*; 3 *Bl. Com.* 100.

Purging Contempt, atoning for, or clearing oneself from contempt of court (*q.v.*).

Purificatio Beatæ Mariæ Virginis, the Purification of the Blessed Virgin Mary, which falls on the second day of February in every year.

Puritans. See DISSENTERS.

Purlieu [fr. *poirallée*, Fr.], land formerly added to an ancient forest by unlawful encroachment, and disafforested by the Charta de Forestâ.—4 *Inst.* 303. See *Williams on Rights of Common*, p. 233; *Manwood*, c. 20.

Purlieu-men, those who have ground within the purlieu to the yearly value of 40*s.* a year freehold, and are accordingly licensed to hunt in their own purlieus.—*Manwood*, c. 20, s. 8; *Williams on Rights of Common*, p. 233.

Purparty, share, part in a division.

Purpresture (*purprestura, porprestura*, Lat.). See POURPRESTURE.

Purprise [fr. *purprisum*, law Lat.], a close or inclosure; as also the whole compass of a manor.

Purpure, or **Porprin,** the colour commonly called purple, expressed in engravings by lines in bend sinister. In the arms of princes it was formerly called *Mercury*, and in those of peers, *Amethyst.—Heraldic term.*

Pursebearer to the Lord Chancellor. The Great Seal Office Act, 1874, s. 7, makes provision for the abolition of this office.

Pursuance, prosecution, process.

Pursuer, a plaintiff is so called in Scots law.

Pursuivant. See POURSUIVANT.

Purus idiota (a congenital idiot). See 2 *Steph. Com.*

Purveyance. See POURVEYANCE.

Purview, the body of a statute as distinguished from the preamble; the general scope and object of a statute.—2 *Inst.* 403; 12 *Rep.* 20.

Putage, Putagium, incontinence.—*Spelm.*

Putative, supposed, reputed; used of a man supposed to be the father of an illegiti-

mate child, and proceeded against as such by the mother under the Bastardy Laws Amendment Act, 1872 (35 & 36 Vict. c. 65).

Putts and Refusals, time-bargains or contracts for the sale of supposed stock on a future day. They were forbidden by the 7 Geo. 2, c. 3, s. 1 (the Stock Jobbing Act), repealed by 23 & 24 Vict. c. 28. See GAMING.

Puture, a custom claimed by keepers in forests, and sometimes by bailiffs of hundreds, to take man's meat, horse's meat, and dog's meat, of the tenants and inhabitants within the perambulation of the forest, hundred, etc. The land subject to this custom is called *terra putura*. Others, who call it *pulture*, explain it as a demand in general; and derive it from the monks, who before they were admitted, *pulsabant*, knocked at the gates for several days together.—4 *Inst.* 307.

Pyke, Paik, a foot-passenger; a person employed as a night-watch in a village, and as a runner or messenger on the business of the revenue.—*Indian.*

Pyx [fr. πυξις Gk., a box], the box in which sample coins are kept. For the purpose of ascertaining that coins issued from the Mint have been coined in accordance with law, a 'trial of the pyx' is held once at least in every year in which coins have been issued; see the Coinage Act, 1870 (33 & 34 Vict. c. 10), s. 12. The trial takes place before a jury of members of the Goldsmiths' Company.

Q.

Quâ, in the character of, in virtue of being.

Quâcunque viâ datâ, whichever way you take it.

Quadragesima, the time of Lent, because consisting of forty days. Quadragesima Sunday is the first Sunday in Lent.

Quadragesimals, offerings formerly made, on Mid-Lent Sunday, to the mother church.

Quadragesms, the third part of the year-books of Edward III., commencing with the 40th year of his reign.—2 *Reeves*, c. xvi. p. 436.

Quadrans, the fourth of a whole.—*Civ. Law.*

Quadrant, an angular measure of 90 degrees; an instrument used in astronomy and navigation for taking altitudes and angles.

Quadrantata terræ, a quarter of an acre, now called a rood.

Quadriennium utile, the term of four years allowed to a minor after his majority, in which he might by suit or action endeavour to annul any deed to his prejudice granted during his minority.—*Bell's Scots Law Dict.*

Quagripartite, having four parties; divided into four parts.

Quadruplatores, informers among the Romans, who, if their information were followed by conviction, had the fourth part of the confiscated goods for their trouble.

Quadruplicatio [Lat.], a surrebutter.—*Civ. Law.* See *Colquhoun's Rom. Civ. Law*, s. 2267.

Quæ est eadem (which is the same). In trespass and other actions, when the plea necessarily stated the trespass to have been committed at some other time, place, etc., than that laid in the declaration, it was usual, before the conclusion of the plea, to allege, that the supposed trespasses mentioned in the plea were the same as those whereof the plaintiff had complained. This allegation was usually termed *quæ est eadem*. It was equivalent to a traverse of the time and place named in the declaration.—1 *Chit. Pleading*, 581.

Quæ plura, a writ which lay where an inquisition had been taken by an escheator of lands, etc., of which a man died seised, and all the land was supposed not to be found by the office or inquisition; it was to inquire of *what more* lands or tenements the party died seised.—*Reg. Brev.* 293. Rendered useless by 12 Car. 2, c. 24.

Quærens non invenit plegium (the plaintiff has not found pledge), a return made by a sheriff upon certain writs directed to him with this clause: *Si A. fecerit B. securum de clamore suo prosequendo, etc.*—*Fitz. N. B.* 38.

Quæsta, an indulgence or remission of penance, sold by the pope.

Quæstio, a commission to inquire into a criminal matter.—*Civ. Law.*

Quæstionarii, those who carried *quæsta* about from door to door.

Quæstor, or **Questor,** a Roman magistrate.

Quæstus, that estate which a man has by acquisition or purchase, in contradistinction to *hæreditas*, which is what he has by descent.—*Glanv.* l. 7, c. 1.

Quaker, the statutory, as well as the popular, name of a member of the religious Society of Friends.

The society was founded by George Fox about the middle of the seventeenth century, and gained many adherents owing to the

discontent with the existing priestcraft of the day. There is no adherence to any definite or formal creed, and the tenets of the society are chiefly distinguishable from those of other Christian bodies in that the members disclaim any necessity for the outward observance of baptism or partaking of the Sacrament, and further believe that all war is contrary to Christian principles. Men and women alike share in the ministry and government of the religious body.

As to affirmations by Quakers instead of oaths, see AFFIRMATION. As to their marriages, see MARRIAGE.

Quale jus, a judicial writ, which lay where a man of religion had judgment to recover land, before execution was made of the judgment; it went forth to the escheator between judgment and execution, to inquire what *right* the religious person had to recover, or whether the judgment were obtained by the collusion of the parties, to the intent that the lord might not be defrauded.—*Reg. Judic.* 8. See 13 Geo. 1, st. 1, c. 32.

Qualification, that which makes any person fit to do a certain act; also, abatement, diminution.

An annual Act used to be passed indemnifying persons who had omitted to qualify themselves for certain offices and employments, and to extend the time limited for those purposes. See 26 & 27 Vict. c. 107. But by 29 & 30 Vict. c. 22, it is rendered unnecessary to make and subscribe declarations theretofore required as a qualification for offices and employments.

Qualification Act (22 & 23 Car. 2, c. 25), by which any person not having freehold land of the yearly value of 100*l.*, or for his life or for 99 years or more of the yearly value of 150*l.* 'other than the son and heir of an esquire or person of higher degree, or owners of parks or warrens, stocked with deer or conies for their necessary use in respect of the said parks and warrens,' was prohibited from having 'guns, bows, greyhounds, setting-dogs, ferrets, coney-dogs, lurchers, bags, nets, loubels, hare-pipes, gins, snares, or other engines,' for taking game—repealed, with many other Acts, by the Game Act, 1831. See GAME.

Qualified, a term applied to a person enabled to hold two benefices. See PLURALITY.

Qualified Fee. See BASE FEE.

Qualified Indorsement, an indorsement *sans recours*, i.e., without recourse to the indorser for payment.—*Byles on Bills*, 11th ed. 151.

Qualified Property, an ownership of a special and limited kind. It may arise either from the peculiar circumstances of the subject-matter, which render it incapable of being under the absolute dominion of any proprietor, as in the case of animals *feræ naturæ*, or from the peculiar circumstances of the possessor, as in the case of a bailment. See BAILMENT and POSSESSION.

Qualify, to become qualified.

Quality of Estate, the period when, and the manner in which, the right of enjoying an estate is exercised. It is of two kinds: (1) the period when the right of enjoying an estate is conferred upon the owner, whether at present or in future; and (2) the manner in which the owner's right of enjoyment of his estate is to be exercised, whether solely, jointly, in common, or in coparcenary.

Quamdiu se bene gesserit (as long as he shall behave himself well), a clause frequent in letters-patent or grants of certain offices, as that of judge or recorder, to secure them so long as the persons to whom they are granted shall not be guilty of abusing them—the opposite clause being *durante bene placito* (during the pleasure of the grantor), as that of town clerk, which office is held during the pleasure of the town council.

Quando acciderint (when they shall fall in). See PLENE ADMINISTRAVIT.

Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud. 5 *Rep.* 116.—(When anything is commanded, everything by which it can be accomplished is also commanded.)

Quantity of Estate, its time of continuance, or degree of interest, as in fee, during life, or for years. See QUALITY OF ESTATE.

Quantity Surveyor. A person whose business consists in taking out in detail the measurements and quantities from plans prepared by an architect for the purpose of enabling builders to calculate the amount for which they would execute the plans (*Taylor* v. *Hall*, 4 Ir. C. L. 476). See *Hudson on Building Contracts.*

Quantum damnificatus, Issue. This was directed by Chancery to be tried at law to fix the amount of compensation for damage, which prior to the Chancery Amendment Act, 1858 (see that title), could not be awarded in Chancery.

Quantum meruit (so much as he has earned), an action on the case, express or implied, grounded on a promise to pay the plaintiff for doing a thing as much as he has earned or merited. The term is still in use to meet the cases where a plaintiff failing to

prove a special contract to pay him a particular amount recovers what may be considered to be the value of his work, in which case he is said to recover on a *quantum meruit* (see *Craven Ellis* v. *Canons Ltd.*, 1936, 2 K. B. 403). As to when a plaintiff should base his claim on a special contract and when on a *quantum meruit*, see also *Cutter* v. *Powell*, 6 T. R. 320; 3 R. R. 185; and notes in *Smith's Leading Cases* thereunder.

A claim on a *quantum meruit* may be specially indorsed under R. S. C. Ord. III., r. 6 (*Lagos* v. *Gunwaldt*, 1910, 1 K. B. 41).

Quantum tenens domino ex homagio, tantum dominus tenenti ex dominio debet præter solam reverentiam; mutua debet esse dominii et homagii fidelitatis connexio. *Co. Litt.* 64.—(As much as the tenant by his homage owes to his lord, so much is the lord, by his lordship, indebted to the tenant, except reverence alone; the tie of dominion and of homage ought to be mutual.)

Quantum valebat (so much as it was worth). Where goods, etc., were delivered at no certain price, or for as much as they were worth in general, then *quantum valebat* lay, and the plaintiff was to aver them to be worth so much, as where the law obliged one to furnish another with goods or provisions, as an innkeeper to his guests, etc. Compare *quantum meruit* (*supra*).

Quarantine, or **Quarentaine.** 1. By Magna Charta, the widow shall not be distrained to marry afresh, if she choose to live without a husband, but she shall not, however, marry against the consent of the lord; and nothing shall be taken for assignment of her dower, but she shall remain in her husband's capital mansion-house for forty days after his death, during which time her dower shall be assigned. These forty days are called the widow's *quarantine*. Marriage during these forty days forfeits the dower. This right was enforced by writ of *Quarantinâ habendâ*. See 1 *Steph. Com.*

2. A quantity of land containing forty perches.—*Leg. Hen. I.*, c. 16.

3. A regulation by which communication with persons, ships, or goods arriving from places infected with the plague, or other contagious disease, or liable thereto, is interdicted for a certain period. The term is derived from the Italian *quaranta*, forty; it being supposed, that if no infectious disease break out within forty days or six weeks, no further danger need be apprehended.

Quarantine regulations were embodied in the Quarantine Act, 1825, and kept up by the Public Health Act, 1875, but the Public Health Act, 1896, repealed the Act of 1825, and was amended by the Public Health Act, 1904, 'to enable regulations to be made' by the Local Government Board (now the Ministry of Health) after consultation with the Board of Trade 'for carrying into effect conventions with respect to the prevention of danger arising to public health from vessels, and the prevention of the conveyance of infection by means of vessels.' Both these Acts are now repealed and replaced by the Public Health Act, 1936, which sets up and incorporates port health authorities which are to be established by order of the Minister of Health with jurisdiction over all waters within the area to which the order relates and the whole or part of the district of any riparian authority specified in the Order with any functions, rights, liabilities of a local authority under that or any unrepealed enactment contained in the Public Health Acts, 1875 to 1932 (s. 3); by s. 4, port sanitary districts and authorities constituted under any Act passed before the Act of 1936 are to be known and styled port health districts and port health authorities. The first Sched. provides for medical officers of health and sanitary inspectors of port health districts; see also s. 143, *ibid.*

Quare clausum fregit (wherefore he broke the close). Trespass is of three kinds: (1) to the person; (2) to the goods; and (3) to the lands of the plaintiff. The action for the third kind of trespass is often termed trespass *quare clausum fregit*, from the language of the old writ, which commanded the defendant to show *quare clausum querentis fregit* why he broke the close of the plaintiff. —*Steph. Com.*, bk. 5, chap. 7, s. 2. This was followed by the '*ac etiam*' (*q.v.*).

Quare ejecit infra terminum (wherefore he ejected within the term), a writ which lay by the ancient law where the wrongdoer or ejector was not himself in possession of the lands, but another who claimed under him.

Quare impedit (wherefore he hindered), a real possessory action, which could formerly be brought only in the Court of Common Pleas, and lies to recover a presentation, when the patron's right is disturbed, or to try a disputed title to an advowson.

Previous to the passing of the Common Law Procedure Act, 1860, the action was commenced by an original writ issuing out of Chancery, but s. 26 of that Act did away with this singularity of procedure, which is now the same as in other actions in the High Court.

The judgment is that the successful party

recover his presentation, and a writ issues to the bishop, commanding him to admit his presentee.

In cases where there is an appeal to the archbishop and a judge against a bishop's refusal to institute (see BENEFICE), *quare impedit* is abolished by s. 3 (5) of the Benefices Act, 1898.

Quare incumbravit, a writ which lay against a bishop, who, within six months after the vacation of a benefice, conferred it on his clerk, whilst two others were contending at law for the right of presentation. calling upon him to show cause why he had incumbered the church.—*Reg. Brev.* 32. Abolished by 3 & 4 Wm. 4, c. 27.

Quare intrusit, a writ that formerly lay where the lord proffered a suitable marriage to his ward, who rejected it, and entered into the land, and married another, for the value of his marriage not being satisfied to the lord. Abolished by 12 Car. 2, c. 24.

Quare non permittit, an ancient writ, which lay for one who had a right to present to a church for a turn against the proprietary.—*Fleta*, l. 5, c. 6.

Quare obstruxit, a writ which lay for him who, having a liberty to pass through his neighbour's ground, could not enjoy his right because the owner had obstructed it.—*Fleta*, l. 4, c. 26.

Quarentena terræ, a furlong.—*Co. Litt.* 5 *b.*

Quarrel, a dispute, contest ; also, an action real or personal.

Quarry. As any place, not being a mine in which persons work in getting slate, stone, coprolites or other minerals, quarries are comprised in the list of non-textile factories and workshops given in Part II. of Sched. VI. of the Factory and Workshop Act, 1901. See FACTORY. They are also subjected to inspection under the Metalliferous Mines Acts by the Quarries Act, 1894. As to the fencing of Quarries, see Quarry (Fencing) Act, 1887 ; *A.-G.* v. *Roe*, 1915, 1 Ch. 235. The powers of the Secretary of State were transferred to the Board of Trade by 10 & 11 Geo. 5, c. 50. See *Chitty's Statutes*, tit. '*Mines and Quarries.*'

Quart, the fourth part of a gallon. See Weights and Measures Act, 1878.

Quarter, a measure of eight bushels ; twenty-eight pounds—the fourth part of a hundredweight ; a length of four inches.

Quarter of a Year, ninety-one days.—*Co. Litt.* 135 *b.*

Quarter-days, the days which begin the four quarters of the year, viz., the 25th of March, or Lady-day ; the 24th of June, or Midsummer-day ; the 29th of September, or Michaelmas-day ; and the 25th of December, or Christmas-day. The half-quarter days are February 8, May 9, August 11, and November 11. The Scottish quarter-days are February 2, May 15, August 1, and November 11. In Northern Ireland the quarter-days are the same as for England.

Quartering Traitors. The judgment for high treason, as prescribed by 54 Geo. 3, c. 146, s. 1, was that the head of the person after death by hanging should be severed from his body, and the body, divided into four quarters, should be disposed of as the sovereign should think fit ; but this portion of the Act is repealed by the Forfeiture Act, 1870, s. 31.

Quarter-rating. The rating on only one-fourth part of the net annual value—a privilege enjoyed by owners of railways and other kinds of property under s. 211 of the Public Health Act, 1875. But now as to exemptions, total or otherwise, from rates in the case of agricultural, industrial and freight transport hereditaments, see the Rating and Valuation Acts, 1925 to 1932 ; *Bailey* v. *Stoke on Trent Assessment Committee, etc.*, 1931, 1 K. B. 385 ; the Rating and Valuation (Apportionment Act, 1928, and Local Government Act, 1929, ss. 67–73).

Quarter Seal, the seal kept by the director of the Chancery in Scotland. It is in the shape and impression of the fourth part of the Great Seal ; and is in the Scots statutes called the Testimonial of the Great Seal. Gifts of land from the Crown pass this seal in certain cases.—*Bell's Scots Law Dict.*

Quarter Sessions, the sittings of the whole body of the justices of the peace in a county, and of a recorder in a borough, having a separate court of quarter sessions, four times in each year, or oftener, to try certain indictable offences, and hear appeals from petty sessions. The holding of quarter sessions can be dispensed with or the time for holding them varied within certain limits by virtue of the Assizes and Quarter Sessions Act, 1908, as amended by the Crim. Justice Act, 1925 ; see ss. 18–23 and 1st Sched. Where by statute the decision of the Quarter Sessions is final, there is no power to state a case for the opinion of the High Court (*Kydd* v. *Liverpool Watch Committee*, 1908, A. C. 327). See SESSIONS OF THE PEACE.

Quarto die post, the fourth day inclusive after a return of a writ, and if a defendant appeared, then it was sufficient ; but this practice was afterwards altered.—1 *Tidd's Pr.* 107.

Quash [*cassum facere*, Lat.; *casser*, Fr.], to overthrow or annul—*Bracton*; as to quash an indictment, or order of justices, or a poor-rate. See CERTIORARI.

Quasi. This word prefixed to a noun means that although the thing signified by the combination of 'quasi' with the noun does not comply in strictness with the definition of the noun, it shares its qualities, falls philosophically under the same head, and is best marked by its approximation thereto. The titles next following furnish examples.

Quasi-contract, an act which has not the strict form of a contract, but yet has the effect of it; an implied contract.

Quasi-entail. An estate *pur autre vie* may be granted, not only to a man and his heirs, but to a man and the heirs of his body, which is termed a *quasi*-entail; the interest so granted not being properly an estate-tail (for the statute *De Donis* applies only where the subject of the entail is an estate of inheritance), but yet so far in the nature of an estate-tail, that it will go to the heir of the body as special occupant during the life of the *cestui que vie*, in the same manner as an estate of inheritance would descend, if limited to the grantee and the heirs of his body. And such estate may also be granted with a remainder thereon during the life of the *cestui que vie;* and the alienation of the *quasi* tenant-in-tail will bar not only his issue, but those in remainder. The alienation, however, for that purpose (unlike that of an estate-tail, properly so called), might, before 1926, have been effected by any method of conveyance, except a will; after 1926, these estates became equitable interests only and may be devised or barred by will. See AUTRE VIE.

Quasi-fee, an estate gained by wrong; for wrong is unlimited and uncontained within rules.

Quasi-personalty, things which are movable in point of law, though fixed to things real, either actually, as emblements (*fructus industriales*), fixtures, etc.; or fictitiously, as chattels-real, leases for years, etc.

Quasi-realty, things which are fixed in contemplation of law to realty, but movable in themselves, as heirlooms (or limbs of the inheritance), title-deeds, court rolls, etc.

Quasi-trustee, a person who reaps a benefit from a breach of trust, and so becomes answerable as a trustee.—*Lewin on Trusts.*

Quatuor maria, the four seas, which see.

Quatuorviri, magistrates who had the care and inspection of roads among the Romans.—*Civ. Law.*

Quays. As to erection of quays in or near to a public harbour, or river communicating therewith, see the Public Harbours Act, 1806 (46 Geo. 3, c. 153), amended by the Harbours Transfer Act, 1862 (25 & 26 Vict. c. 69), s. 15. See also the Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27).

By 9 & 10 Geo. 5, c. 20, the general powers over quays were transferred to the Ministry of Transport; and see HARBOURS.

Queen [fr. *cwen*, Sax., a wife], a woman who is sovereign of a kingdom. The queen regent, regnant, or sovereign is she who holds the Crown in her own right, and such queen of England has the same powers, prerogatives, rights, dignities, and duties as if she had been a king, the law being so expressly declared in 1554 by 1 Mary, sess. 3, c. 1. Consult *Jac. Law Dict.*

Queen Anne's Bounty. See BOUNTY OF QUEEN ANNE.

Queen Consort, the wife of the reigning King. She is a public person, exempt and distinct from the King, for she is of ability to purchase lands and to convey them, to make leases, to grant copyholds, and to do other acts of ownership, without the concurrence of her husband. She has separate courts and offices distinct from the King's, not only in matters of ceremony, but even of law; and her attorney and solicitor-general are entitled to a place within the bar of his Majesty's courts, together with the King's Counsel. She may likewise be sued and sue alone, without joining her husband; she is indeed considered as a *feme sole*, and not as a *feme covert*. See *Co. Litt.* 133 *a*; *Jac. Law Dict.*

Queen Dowager, the widow of a deceased king. She enjoys most of the privileges belonging to her as Queen Consort. (*Ibid.*)

Queen Gold. See AURUM REGINÆ.

Queen's Bench. See KING'S BENCH.

Queen's Bench Division. The jurisdiction of the Court of Queen's Bench was assigned, by s. 34 of the Jud. Act, 1873, to the Queen's Bench Division of the High Court of Justice; and by Order in Council under s. 32 of the same Act, the Common Pleas and Exchequer Divisions were, in February 1881, merged in the same 'Queen's Bench Division,' which began to be styled, after the death of the late Queen Victoria in January, 1901, the 'King's Bench Division.' As to assignment of business to, see Jud. Act, 1925, s. 56 (2).

Queen's Coroner and Attorney, an officer

on the Crown side of the Queen's Bench (6 & 7 Vict. c. 20), who by the Judicature (Officers) Act, 1879, became a 'Master of the Supreme Court.'

Queen's Counsel (abbreviated Q.C.). See KING'S COUNSEL (abbreviated K.C.). All Queen's Counsel at the death of the late Queen Victoria became King's Counsel without any new appointment.

Queen's Remembrancer, an officer on the revenue side of the Court of Exchequer. See the Queen's Remembrancer Act, 1859 (22 & 23 Vict. c. 21), and the Crown Suits Act, 1865 (28 & 29 Vict. c. 104). He became an officer of the Supreme Court by the Jud. Act, 1873, s. 77.

Que estate [*quorum statum*, Lat.], as much as to say, whose estate he has. Where prescriptive rights are claimed by reason of the continuous and immemorial enjoyment thereof by the claimant, a person seised in fee, and by all those whose estate he has, this is called a prescription in a *que estate*. The phrase is taken from the Norman-French: that he, and all those whose estate he has, have from time immemorial enjoyed the right—*tous ceux que estate il ad.*—*Williams on Rights of Common*, p. 16. A person cannot prescribe in anything by a *que estate* that lies in grant, and cannot pass without deed or fine; but in him and his ancestors he may, because he comes in by descent without any conveyance.—*Co. Litt.* 121 *a*; 2 *Bl. Com.* 264; 2 *Br. & Had. Com.* 419. A prescription in a *que estate* for a *profit à prendre in alieno solo* without stint and for commercial purposes is unknown to the law (*Harris* v. *Chesterfield* (*Earl*), 1911, A. C. 623). See PRESCRIPTION.

Que est le mesme [*quæ est eadem*, Lat.], a term used in actions of trespass, etc., for a direct justification of the very act complained of by the plaintiff as a wrong. See QUÆ EST EADEM.

Quem reditum reddit, a judicial writ which lay for him to whom a rent-seck or rent-charge was granted, by fine levied in the King's Court, against the tenant of the land who refused to attorn to him, thereby to cause him to attorn.—*Old N. B.* 126.

Querela, an action or declaration preferred in any court of justice. See DUPLEX QUERELA and AUDITA QUERELA.

Querela coram rege a concilio discutienda et terminanda, a writ by which one is called to justify a complaint of a trespass made to the King himself, before the King and his council.—*Reg. Brev.* 124.

Querele, a complaint to a court.

Querent [fr. *querens*, Lat.], a plaintiff, complainant, inquirer.

Quest, inquest, inquisition, or inquiry.

Question, interrogatory; anything inquired. 'Putting to the question,' i.e., torture.

Questions of Fact might be stated in an issue without pleadings by consent (C. L. P. Act, 1852, s. 42), and may now be so stated under R. S. C. Ord. XXXIV., r. 9.

In general when a jury is sworn it decides all the issues of fact; but if there arise in the course of the trial a question of fact preliminary to the decision of a point of law, etc., e.g., the genuineness of a document as necessary to its being admitted in evidence, that question of fact must be decided by the judge.

So in questions as to the competence of a witness to be sworn. See VOIR DIRE; WITNESS; OATH.

The law of a foreign country is a question of fact. See FOREIGN LAW.

Questions of Law. See last title. See also JUDGMENT; SPECIAL CASE; and TRIAL.

Questman, or **Questmonger,** starter of law-suits or prosecutions; also a person chosen to inquire into abuses, especially such as relate to weights and measures; also a church-warden.—See *Prid. Churchwarden's Guide.*

Questus, land which does not descend by hereditary right, but is acquired by one's own labour and industry. See PURCHASE.

Questus est nobis, a writ of nuisance which, by 15 Edw. 1, lay against him to whom a house or other thing that caused a nuisance descended or was alienated; whereas before that statute the action lay only against him who first levied or caused the nuisance to the damage of his neighbour.

Quia Emptores, Statute of (18 Edw. 1, st. 1, c. 1), A.D. 1290, West. the Third. It is entitled in the Parliament-roll, from the subject of it, *statutum regis de terris vendendis et emendis.* Prior to this statute any person might, by a grant of land, have created a tenure as of his person; but if no such tenure were reserved, the feoffee held of the feoffor by the same services by which the feoffor held of his superior lord. The consequence was, that all the fruits of tenure fell into the hands of the feoffors or mesne lords, to the prejudice of the superior lords of the fee; for remedy whereof it was by this statute enacted: 'That thenceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or part of them, so that the feoffee shall hold the same lands or tenements of the chief lord of the

same fee, by such service and customs as his feoffor held before.'—2 *Inst.* 500; 2 *Reeves*, c. 11, p. 223.

Quia improvide emanavit (because it issued mistakenly). A supersedeas to quash and nullify a writ erroneously issued.

Qui aliquid statuerit parte inauditâ alterâ, æquum licet dixerit, haud æquum fecerit. 6 *Co.* 52.—(He who decides anything, one party being unheard, though he should decide right, does wrong.) See AUDI ALTERAM PARTEM.

Qui alterius jure utitur eodem jure uti debet. *Pothier, Tr. de Change*, pt. 1, ch. 4, art. 5, s. 114; *Broom's Leg. Max.*—(He who is clothed with the right of another ought to be clothed with the very same right.)

Quia Timet Bill, a bill filed for the purpose of quieting a present apprehension of a probable future injury to property. In order to succeed in a *quia timet* action the plaintiff must prove imminent danger of a substantial kind, or that the apprehended injury, if it does come, will be irreparable (*Fletcher* v. *Bealey*, (1885) 28 Ch. D. 688; and *Colls* v. *Home and Colonial Stores*, 1904, A. C. 179).

Qui concedit aliquid, concedere videtur et id sine quo concessio est irrita, sine quo res ipsa esse non potuit. 11 *Co.* 52.—(He who conceded anything is considered as conceding that without which his concession would be void, without which the thing itself could not exist)

Quicquid plantatur solo, solo cedit. *Off. of Exec.* 47.—(Whatever is affixed to the soil, belongs to the soil.) Therefore, if A. builds on B.'s land, the building becomes the property of B. See FIXTURES.

Quicquid solvitur, solvitur secundum modum solventis. 2 *Vern.* 606.—(Whatever is paid is paid according to the direction of the payer.) See APPROPRIATION OF PAYMENTS.

Quid Juris clamat, a judicial writ issued out of the record of a fine, which remained with the *custos brevium* of the Common Pleas before it was engrossed: it lay for the grantee of a reversion or a remainder, when the particular tenant would not attorn.—*Reg. Jud.* 571.

Quid pro quo (what for what), the mutual consideration and performance of both parties to a contract.

Quietare, to quit, acquit, discharge, or save harmless.

Quiete clamare, to quit claim, or renounce all pretensions of right and title.—*Bract.* l. 5.

Quiet Enjoyment. A qualified covenant for quiet enjoyment is usually inserted in leases and excludes the implied covenant, which is far more extensive. For the implied covenant may guarantee the lessee against any lawful entry whatever, whereas the express covenant, as usually worded, guarantees the lessee only against entry by the lessor or persons 'claiming by, from, or under him,' so that a lessor having no title to the demised premises may safely enter into the qualified covenant for quiet enjoyment, for an ejectment of the lessee by the real owner would not be an ejectment by a person claiming by the lessor, but *against* him. See *Woodfall, L. & T.*, and *Baynes* v. *Lloyd*, 1895, 2 Q. B. 610; *Jones* v. *Lavington*, 1903, 1 K. B. 253.

A covenant for quiet enjoyment is implied by virtue of s. 7 of the Conveyancing Act, 1881, reproduced under ss. 76 and 77 of the Law of Property Act, 1925, Sched. 2, Parts 1, 2, in any conveyance for value made after the commencement of that Act by a person conveying and expressed to convey 'as beneficial owner.' The section is to the effect that notwithstanding anything by the person who so conveys or any one through whom he derives title otherwise than by purchase for value made, done, executed or omitted or knowingly suffered the subject-matter of the conveyance

shall remain to and be quietly entered upon, received and held, occupied, enjoyed, and taken by the person to whom the conveyance is expressed to be made, and any person deriving title under him and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or by, through, or under any one not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made, through whom the person who so conveys derives title, otherwise than by purchase for value.

See *David* v. *Sabin*, 1893, 1 Ch. 523.

Quietus, freed or acquitted; discharged of all further liability; see, e.g., *Ex parte Pullman*, (1890) 45 Ch. D. p. 466. A word made use of in the Exchequer in the discharge given to accountants to the Crown, e.g., a sheriff. As to the registration of a *quietus*, see 2 Vict. c. 11, s. 9; *Obs. in England.* As to entry of an acknowledgment by satisfaction or discharge of a writ or order registered at the Land Registry, see Land Charges Act, 1925, s. 6 (6).

Quietus reditus, a quit-rent.

Qui ex damnato coitu nascuntur inter liberos non computentur.—(Those who are born of a criminal connection are not to be counted among children.) *Co. Litt.* 8 *a*;

Bract. l. 1, c. 6, s. 7; *Steph. Com.* vol. i. bk. ii. pt. i., at p. 249. See BASTARD.

Qui facit per alium facit per se. *Co. Litt.* 258.—(He who acts through another, acts through himself.) See AGENT.

Qui hæret in literâ hæret in cortice. *Co. Litt.* 283 *b.*—(He who considers merely the letter of an instrument goes but skin-deep into its meaning.) *Broom's Leg. Max.*

Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est. 10 *Rep.* 76.—(He who does an act by command of a judge is not considered to act from a wrongful motive, because it is his duty to obey.) See *Broom's Leg. Max.*

Quilibet potest [or **Cuilibet licet**] **renunciare juri pro se introducto.** 2 *Inst.* 183; *Co. Litt.* 99 *a.*—(Every man can renounce a right introduced for his own benefit.) See WAIVER.

Quillet, a quibble.

Quinquepartite, consisting of five parts.

Quinque Portus. See CINQUE PORTS.

Quinsteme, or **Quinzime,** fifteenths, temporary aids issuing out of personal property, and granted to the King by Parliament.—1 *Bl. Com.* 309. Also the fifteenth day after a festival.—13 Edw. 1.

Quintal, or **Kintal,** a weight of 100 lbs.

Quinto exactus, the fifth or last call or requisition of a defendant sued to outlawry. See *Cowel*, voce '*Quint-exact.*'

Qui peccat ebrius, luat sobrius. *Cary's Rep.* 133.—(Let him who sins when drunk be punished when sober.)

Qui prior est tempore potior est jure. *Co. Litt.* 14 *a.*—(He who is first in time is better in law.) *Broom's Leg. Max.* Equitable incumbrances rank as a rule according to their dates; the first grantee is *potior*, that is, *potentior;* he has a better and superior, because a prior, equity (*Phillips* v. *Phillips*, (1862) 4 De G. F. & J. 215). But the acquisition of the legal estate may make a most material alteration in the rights of the parties (*Bailey* v. *Barnes*, 1894, 1 Ch. 25), and the application of the rule in *Dearle* v. *Hall*, to land by s. 137 of the Law of Property Act, 1925, has lessened the importance of the maxim. See PRIORITIES.

Qui sentit commodum, sentire debet et onus; et è contra. 2 *Inst.* 489.—(He who receives the advantage, ought also to suffer the burthen; and the converse also holds.) Similarly, *Secundum naturam est, commoda cujusque rei eum sequi, quem sequuntur incommoda.* D. 50, 7, 10.—(It is natural that the advantages of anything should follow him whom the disadvantages follow.) *Broom's Leg. Max.*

Qui tam (who as well), a popular action (i.e. one which any one may bring) on a penal statute (*q.v.*) which is partly at the suit of the King and partly at that of an informer; so called from the words '*Qui tam pro domino rege, quam pro se ipso, sequitur.*'

As to the power of the Crown to remit these penalties, see Remission of Penalties Act, 1859, and in respect of Sunday entertainments, the Remission of Penalties Act, 1875. See *Chitty's Statutes*, tit. '*Penal Actions*'; and as to compounding (by leave of the Court) see R. S. C, Ord. L., rr. 13-15.

Quit Claim, a quitting of one's action, claim, or title.

Quit Rent (*quietus redditus*), a rent payable to the lord by a freeholder or ancient copyholder of a manor, so called because thereby the tenant goes quit and free of all other services.—2 *Bl. Com.* 42. As no manor has been created since the statute *Quia Emptores* (see MANOR; QUIA EMPTORES), every quit rent must have become first payable at a date prior to that statute.

A quit rent may be 'redeemed' by the owner of the land subject thereto, under s. 45 of the Conveyancing Act, 1881, reproduced by the Law of Property Act, 1925, s. 191. As to the remedies for non-payment, see s. 121 and *ibid.*

Quittance, an abbreviation of acquittance, a release (*q.v.*); see *Re Northumberland* (*Duke*) *and Tynemouth Corporation*, 1909, 2 K. B. 374.

Quoad hoc (as to this).

Quo animo (with what mind).

Quod approbo non reprobo.—(That which I approve I do not reject.) In other words, if one take a benefit under a deed or will, he must perform any condition attached to it.

Quod clerici beneficiati de cancellaria, etc., a writ to exempt a clerk of the Chancery from the contribution towards the proctors of the clergy in Parliament, etc.—*Reg. Brev.* 261.

Quod clerici non eligantur in officio ballivi, etc., a writ which lay for a clerk, who, by reason of some land he had, was made, or was about to be made, bailiff, beadle, reeve, or some such officer, to obtain exemption from serving the office.—*Reg. Brev.* 187.

Quod computet, an interlocutory judgment or decree in a matter of account. See now ACCOUNT.

Quod constat curiæ opere testium non indiget. 2 *Inst.* 662.—(What is manifest to the Court needs not the help of witnesses.) See JUDICIAL NOTICE.

Quod cum (that whereas).

Quod ei deforceat, a writ for a tenant-in-tail, tenant-in-dower, by the courtesy, or for term of life, having lost any land by default, against him who recovers, or his heir.—*Reg. Brev.* 171.

Quod fieri non debet factum valet. 5 *Co.* 38.—(What ought not to be done is valid when done.) As to the cases in which this principle is applicable, see *Broom's Leg. Max.*

Quod non habet principium non habet finem. *Wing. Max.* 79; *Co. Litt.* 345 *a.*—(That which has not beginning has not end.) For illustrations of this maxim see *Broom's Leg. Max.*

Quod nullius est, est domini regis. *Fleta,* l. iii.—(That which is the property of nobody belongs to our lord the King.) See ESCHEAT.

Quod nullius est, id ratione naturali occupanti conceditur. *Pand.* l. xli.—(What belongs to nobody is given to the occupant by natural right.) See FINDER.

Quod permittat, a writ which, before the abolition of real actions, lay against any person who erected a building, though on his own ground, so near to the house of another that it hung over or became a nuisance to it. —*Termes de la Ley,* 479. Abolished. See *Roscoe on Real Actions,* p. 40.

Quod permittat prosternere, a writ, in the nature of a writ of right, to abate a nuisance. —*Fitz. N. B.* 104. Abolished.

Quod per recordum probatum, non debet esse negatum.—(What is proved by record ought not to be denied.) See RECORD.

Quod persona nec prebendarii, etc., a writ which lay for spiritual persons distrained in their spiritual possessions for payment of a fifteenth with the rest of the parish.—*Fitz. N. B.* 175. Obsolete.

Quod recuperet [Lat.] (that he do recover [the debt or damages]), a final judgment for a plaintiff in a personal action.

Quod semel placuit in electionibus amplius displicere non potest. *Co. Litt.* 146 *a.* (When choice is once made, it cannot be disapproved any longer.)

Quo jure, a writ which lay for him who had land wherein another challenged common of pasture, time out of mind; and it was to compel him to show by what title he challenged it.—*Fitz. N. B.* 158.

Quo ligatur, eo dissolvitur. 2 *Rol. Rep.* 21.—(By the same mode by which a thing is bound, by that is it released.) Similarly, *Quo modo quid constituitur, eodem modo dissolvitur.* Jenk. Cent. 74.—(In the same manner by which anything is constituted, by that it is dissolved.) See REVOCATION; DEED.

Quo minus, a writ which lay for him who had a grant of house-bote and hay-bote in another's woods against the grantor making such waste whereby the grantee could the less enjoy his grant.—*Old N. B.* 148.

It also lay for the King's accountant in the Exchequer against any person against whom he had a right of action, and was called a *quo minus* because in it the plaintiff suggested that he was the King's farmer or debtor, and that the defendant had done him the injury or damage complained of; *quo minus sufficiens existit,* by which he is less able to pay the King his debt or rent; see 3 *Bl. Com.* 45. Afterwards this suggestion of being debtor to the King was allowed to be inserted by any plaintiff who wished to proceed in that Court against any defendant, as a mere matter of form, and in this way the Court of Exchequer obtained a jurisdiction co-extensive with that of the Common Pleas in actions personal. The writ of *quo minus* was abolished by 2 Wm. 4, c. 39.

Quoniam attachiamenta, one of the oldest books of the Scotch law, so called from the first words of the volume. See *Erskine,* l. 1, tit. 1, s. 36.

Quorum (of whom), the number of members of an administrative or judicial body whose presence is necessary for the acts of the body to be valid; e.g., of a County Borough Licensing Committee, which consists of not less than seven members, the quorum is three members.—Licensing (Consolidation) Act, 1910, s. 3. The term is derived from the 'justices of the quorum.' See JUSTICES, and the *General Index to Chitty's Statutes,* tit. '*Quorum.*'

Quot, one-twentieth part of the movable estate of a person dying in Scotland. anciently due to the bishop of the diocese wherein he had resided.

Quota, the proportion of a contribution. See, e.g., Militia Act, 1882, s. 37; Land Tax Act, 1797, s. 2.

Under the Cinematograph Films Act, 1927 (17 & 18 Geo. 5, c. 29), the proportion in length of British films which renters and exhibitors respectively are obliged to include in any one year up to the end of March, 1938, for renting or exhibiting films in that year. In 1937 and 1938 the proportion in either case is 20 per cent. In coal mines, district schemes under Coal Mines Act, 1930 (20 & 21 Geo. 5, c. 34), as amended, e.g., by S. R. & O., 1934, Nos. 677 and 766; and 1935, Nos. 696 and 697; the proportion of the standard tonnage which each of the coal mines in the district is to be allowed to

produce under the scheme as provided by s. 3, *ibid.*; and see the Wheat Act, 1932 (22 & 23 Geo. 5, c. 24), s. 3, as to quota payments.

Quo warranto, a writ issuable out of the King's Bench Division of the High Court of Justice, in the nature of a writ of right for the Crown against him who claims or usurps any office, franchise, or liberty to inquire 'by what authority' he supports his claim, in order to determine the right. It lies also in case of non-user or long neglect of a franchise, or mis-user or abuse of it, whereby it is forfeited.

This proceeding was, until 1872, the one generally adopted for the purpose of trying the right to be elected to municipal offices, but the Corrupt Practices (Municipal Elections) Act, 1872, by s. 12, replaced by the Municipal Corporations Act, 1882, s. 87 (see now s. 71 of the Local Government Act, 1933 (23 & 24 Geo. 5, c. 51)), substituted an election petition in the cases where an election is sought to be questioned on the ground of bribery, etc., disqualification, or undue return. By s. 84 of the Act of 1933, proceedings must be instituted within six months. See also Crown Office Rules, 1906, rr. 40–43.

As to procedure on *quo warranto* generally, see Crown Office Rules, 1906, rr. 43–48 and 123, 124. An application in the nature of *quo warranto* must be made by counsel; it cannot be made by an applicant in person (*Re a Solicitor*, 1903, 2 K. B. 205).

If the defendant be adjudged guilty of an intrusion or usurpation, the Court may give judgment of *ouster* against him, fine him, and order him to pay costs to the relator. See *Com. Dig.*, tit. '*Quo warranto*'; *Shortt and Mellor's Crown Office Practice; Corner's Crown Practice.*

Q. V. (*quod vide*), used to refer a reader to the word, chapter, etc., the name of which it immediately follows.

R.

Rabbit, also termed 'coney' in the Game Act, 1831, ss. 30–32 of which render trespass in the daytime in pursuit of conies punishable on summary conviction by fine up to 2*l*; trespassers may be required to quit the land and to tell their names and abodes on pain of arrest on refusal, and similar trespass with violence by five or more armed persons is punishable by fine up to 5*l*. By the Night Poaching Act, 1828, s. 1, unlawfully taking or destroying game or rabbits by night is punishable on summary conviction by imprisonment up to three months with hard labour (with increased punishments for second or third offences); and by s. 9 of the same Act, armed persons to the number of three or more unlawfully entering land for the purpose of destroying game or rabbits are punishable after conviction on indictment by penal servitude up to ten years or imprisonment with hard labour up to three years.

A tenant may shoot rabbits on his farm, although the right of sporting is reserved to the landlord: see Ground Game Act, 1880, *ante*, title GROUND GAME. The Forestry Act, 1919, s. 4, empowers the Commissioners to enter land and to destroy rabbits, hares, or vermin in order to protect trees or tree plants after notice to the occupier of the land and his failure to prevent such damage. See *Aggs* on *Agricultural Holdings;* and *Chitty's Statutes*, tit. '*Game.*'

Rabies, madness. As to destruction of mad dogs in the metropolis by magistrate's order, see Traffic Regulations (London) Act (30 & 31 Vict. c. 134, s. 8). Under 2 & 3 Vict. c. 47, s. 61, the metropolitan police may destroy any dog or animal reasonably suspected to be in a rabid state or to have been bitten by a dog or animal in a rabid state. As to muzzling orders, see Acts referred to under tit. ANIMAL (*Diseases*).

Rabula [Lat.], a wrangling advocate, pettifogger; a classical though not a common term; see *Law Quarterly Review*, vol. XXX. p. 167.

Racecourse. By the Racecourse Licensing Act, 1879, no metropolitan suburban racecourse (i.e., no racecourse within ten miles of Charing Cross) is allowed without an annual licence from the justices of the peace, which may be granted at any Michaelmas Quarter Sessions. The Racecourse Betting Act, 1928 (18 & 19 Geo. 5, c. 41), legalizes the use of totalisators on certain racecourses.

The Betting and Lotteries Act, 1934, amends the law as regards totalisators on horse racecourses, and prohibits betting on tracks with young persons, i.e., under eighteen years old. Regarding dog racing, see DOG RACING.

Racecourse Betting Control Board. A board appointed under Racecourse Betting Act, 1928, for the control of totalisators on approved racecourses. It consists of a chairman appointed by the Home Secretary, and eleven members, one of whom is

appointed by the Home Secretary, one by the Secretary of State for Scotland, and one by the Minister of Agriculture and Fisheries; one by the Chancellor of the Exchequer, and the remainder by certain racing organizations. The Betting and Lotteries Act, 1934, s. 18, amends the powers of the Board and interprets certain sections which give rise to doubts. This power of authorizing a person to set up a totalisator is limited to giving such authority to the persons having the management of the racecourse.

Rachetum [fr. *redimo*, Lat.], the compensation or redemption of a thief.

Rack, an engine of torture, said not to have been used in England since 1640. See TORTURE.

Rack-rent, rent raised to the uttermost; the full annual benefit of the property; in the Public Health Act, 1936, s. 334, in relation to any property, means a rent which is not less than two-thirds of the rent at which a house or other property might reasonably be expected to let from year to year, free from all usual tenant's rates and taxes and tithe rentcharge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance and other expenses (if any) necessary to maintain the same in a state to command such rent.

Rack-vintage, a second vintage, wines drawn from the lees.

Radour [Fr.], a term including the repairs made to a ship, and a fresh supply of furniture and victuals, munitions, and other provisions, required for the voyage.—*Bouvier's Law Dict.*

Raffles. Selling any houses, plate, jewels, ships, goods, or other things by way of lottery or by lots, tickets, numbers or figures, was penalized by s. 36 of the Lottery Act, 1721, of which Act all but ss. 36 and 37 was repealed by the Statute Law Revision Act, 1867, and ss. 36 and 37 have also been repealed by the Betting and Lotteries Act, 1934 (24 & 25 Geo. 5, c. 58), Part II. of which deals with lotteries, and the sale and distribution of tickets; there are exemptions for small lotteries incidental to certain entertainments (s. 23); private lotteries in certain cases (s. 24); and lotteries of art unions under the Art Unions Act, 1846, which Act is amended by s. 25. See *Chitty's Statutes*, tit. '*Games and Gaming*,' and see ART UNIONS AND LOTTERY.

Rageman [fr. *regimen*, Lat.], a rule, form, or precedent.

Rag Flock. See the Rag Flock Act, 1911 (1 & 2 Geo. 5, c. 52), an Act to prohibit the sale and use for the purpose of the manufacture of certain articles of unclean flock manufactured from rags. As to the meaning of 'rags,' see *Cooper* v. *Swift*, 1914, 1 K. B. 253; *Balmforth* v. *Chadburn*, 1927, 1 K. B. 663 (ragflock includes new material); and for further decisions on the Act, see *Guildford Corporation* v. *Brown*, 1915, 1 K. B. 256; *Cooper* v. *Evan Cook's Depositories*, *ibid.* 344.

Ragged Schools were exempted from poor and other rates by the Sunday and Ragged Schools Rating (Exemption from Rating) Act, 1869, in which a 'ragged school' means:

> any school used for the gratuitous education of children and young persons of the poorest classes, and for the holding of classes and meetings in furtherance of the same object, and without any pecuniary benefit being derived therefrom except to the teacher or teachers employed.

The Act also gives the same advantage to Sunday-schools, i.e., schools giving religious instruction to the young without deriving pecuniary profit. Ragged schools have ceased to exist since the establishment of free State education. See EDUCATION.

Raglorious, a steward.—*Seld. Tit. of Hon.* 597.

Ragman's-roll, or **Ragimund's-roll,** a roll, called from one Ragimund, or *Ragimont*, a legate in Scotland, who, summoning all the beneficed clergymen in that kingdom, caused them on oath to give in the true value of their benefices, according to which they were afterwards taxed by the Court of Rome.

The term Ragman's-toll also means the list of the barons and men of note who subscribed the submission to Edward I. in 1296, and which was delivered up to the Scots in 1328 (*Scott's History of Scotland*, vol. i. p. 162).

Railway. A road owned by a private person or public company on which carriages run over iron rails; if the road is a public highway, that part of it on which the rails are laid is called a tramway. Every railway in this country (except a few private railways running through land owned by the owner of the railway) is constructed and managed (1) under a local and personal Act of Parliament; and (2) under the Companies Clauses, Lands Clauses, and Railways Clauses Consolidation Acts; and (3) under the general Acts relating to railways. The Railway Act, 1921, provides for the reorganization of almost all the railways in England.

Railway Companies as Carriers.—The powers of railway companies as carriers are given by the 86th section of the Railways Clauses Consolidation Act, 1845, and controlled by the Railway and Canal Traffic Acts of 1854, 1873, and 1888. The Act of 1845, s. 86, enacts that :—

> It shall be lawful for the company [authorized (see s. 3) by the special Act to construct the railway] to use and employ locomotive engines or other moving power, and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the railway all such passengers and goods as shall be offered to them for that purpose, and to make such reasonable charges in respect thereof as they may from time to time determine upon, not exceeding the tolls by the special Act authorized to be taken by them.

The section is permissive only (*Johnson* v. *Midland Ry. Co.*, (1849) 18 L. J. Ex. 366); but the Railway Commissioners may compel a company to act as carriers; and some special Acts, e.g., that of the Great Northern Railway Company and that of the Lancashire and Yorkshire Railway Company (see *Lancashire and Yorkshire Co.* v. *Gidlow*, L. R. 7 H. L. 517), compel companies to provide locomotive power, etc. Sections 92 and 108 of the Act of 1845 make railways public highways, s. 92 enacting that 'upon payment of the tolls from time to time demandable, all companies and persons shall be entitled to use the railway, with engines and carriages properly constructed,' etc., but this right will not be enforced by mandatory injunction (*Powell Duffryn Steam Coal Co.* v. *Taff Vale Ry. Co.*, (1874) L. R. 9 Ch. 331).

The powers of railway companies to charge for conveyance and carriage are specified in the various toll clauses of their special Acts, which are very imperfect. So far as 'merchandise traffic,' i.e., the traffic in goods and animals, is concerned, the 24th section of the Railway and Canal Traffic Act, 1888, obliged all the companies to submit to the Board of Trade a 'revised classification of the traffic, and a revised schedule of maximum rates and charges applicable thereto,' with the view to their eventual embodiment in Acts of Parliament. Numerous Acts have been passed regulating these rates and charges. See RAILWAY RATES TRIBUNAL.

Passenger Fares.—The maximum fares for passengers have been but little revised since their first authorization by the special Acts authorizing the construction of the railways to which they are applicable. For tables of authorized maximum charges, see *Hodges on Railways*. The publication of fares at every station 'in a conspicuous place in the booking office' is enjoined on the companies by s. 15 of the Regulation of Railways Act, 1868, without any special penalty for non-compliance; and the printing upon every passenger ticket 'the fare chargeable for the journey for which such ticket is issued,' on pain of fine up to 40*s.* for every ticket issued without bearing the fare on its face, by s. 6 of the Regulation of Railways Act, 1889. Travelling without fare and with intent to avoid payment is punishable by fine up to 40*s.*, or in the case of a second conviction either by a fine not exceeding 20*l.*, or in the discretion of the Court by imprisonment for a term not exceeding one month.

Government Purchase and Revision of Tolls.—Since 1845 a clause has been inserted in every special railway Act to save the future parliamentary revision of the maximum rates and charges, and the Railway Regulation Act, 1844, authorized, after the expiration of twenty-one years from the passing of any construction Act, both Treasury Revision on three years' dividends exceeding 10 per cent., and Treasury Purchase whatever might be the rate of dividend; but 2,000 miles of railway are excluded from this Act as having been constructed before its date.

Accounts and Returns.—As to the accounts and returns which have to be made yearly to the Ministry of Transport, see the Railway Companies (Accounts and Returns) Act, 1911, as amended, and Railways Act, 1921, s. 8.

As to the protection of rolling stock from distress and execution, see ROLLING STOCK.

Electrical Power.—The Railways (Electrical Power) Act, 1903, as amended, 'facilitates the introduction and use of electrical power on railways,' and empowers the Minister of Transport to make Orders for those purposes, including the supply of electrical power and plant. The Orders may authorize the acquisition of land, but an order authorizing such acquisition compulsorily will require confirmation by Act of Parliament, and before making any order the Minister of Transport must be satisfied that public notice of the application for it has been given, and must consider any objections by 'the council of any county, any local authority, or other person,' and give to those by whom the objection is made an opportunity of being heard, with the view of declining to make the order or of so modifying it as to remove the objection if the Board decide that the objection should be upheld.

Independent powers of the companies are

expressly saved ; and the Railways Clauses Consolidation Act, 1845, which applies to the vast majority of the lines, empowers every company to which it applies 'to use and employ locomotive engines or other moving power, and carriages and wagons to be drawn or propelled thereby.'

Mails. As to conveyance of mails, see Railways (Conveyance of Mails) Act, 1838 (1 & 2 Vict. c. 98), and Conveyance of Mails Act, 1893 (56 & 57 Vict. c. 38). As to the reorganization of the railway system, see the Railway Act, 1921, especially s. 1 and Sched. I. For the general law relating to railways, consult *Browne and Theobald on Railways* ; see also *Leslie on Transport* and *Disney on Carriage by Railway*.

As to derating of railways, see Rating and Valuation (Apportionment) Act, 1928 (18 & 19 Geo. 5. c. 44), which provided schemes for relieving industry and freight carrying concerns of three-fourths of the burden of rates. See QUARTER-RATING and RATES, and Railways (Valuation for Rating) Act, 1930 (20 & 21 Geo. 5, c. 24), ss. 9 and 11.

Railway and Canal Commission, a body established by the Railway and Canal Traffic Act, 1888, to supersede the Railway Commissioners, who had been appointed under the Regulation of Railways Act, 1873 (36 & 37 Vict. c. 48), with all the jurisdiction conferred by s. 3 of the Railway and Canal Traffic Act, 1854 (see *infra*), on the several courts and judges empowered to hear and determine complaints under that Act, and exercise their jurisdiction with enlarged powers, and consisting of two appointed (one to be of experience in railway business) and three *ex-officio* commissioners : one for England, one for Scotland, and one for Ireland, bring each of them a judge of a superior Court in England, Scotland, or Ireland respectively, and not required to attend out of the part of the United Kingdom for which he is appointed. The *ex-officio* commissioner presides at the sittings, and his opinion upon any question of law prevails. As to appeal to '*superior* Court of Appeal,' see ss. 17 and 55 of the Act of 1888.

The jurisdiction of the Commission has been curtailed by Part II. of the Railway Act, 1921, which established the Railway Rates Tribunal (*q.v.*). See also the Railway and Canal Commission Rules, 1924, No. 1400, as amended by 1932, No. 502.

The Commission also has power to determine differences relating to telegraphs, by virtue of the Telegraph (Arbitration) Act, 1909, if the parties agree to such reference.

Railway and Canal Traffic Act, 1854, an Act by ss. 2 and 3 of which the Courts of Common Pleas in England and Ireland and the Court of Session in Scotland were empowered to compel railway and canal companies (1) to grant reasonable facilities for the receiving, forwarding, and delivering their own traffic ; (2) to abstain from giving an undue preference to any particular person or traffic ; and (3) to forward traffic without delay in cases of continuous communication. The object of the Act, which was amended in 1873 and 1888, was to ensure freedom and economy of transit from one end of the kingdom to the other. The law has been further amended by the Railway and Canal Traffic Acts, 1894 and 1912, and Railways Act, 1921. See last title, and RAILWAY COMMISSIONERS.

Railway Fires Act. See ENGINE.

Railway Passengers, Endangering, punishable under the Offences against the Person Act, 1861, ss. 32–34, and the Malicious Damage Act, 1861, ss. 35–38.

Railway Rates Tribunal. A tribunal established by the Railways Act, 1921, ss. 20 *et seq.*, which is composed, either with or without other assistance, of one person experienced in commercial affairs, one experienced in railway business, and the president, who shall be an experienced 'lawyer.' The jurisdiction of the tribunal is dealt with by ss. 27 and 28, which transfer to it some of the powers exercised by the Railway and Canal Commission in addition to granting new powers (Road and Rail Traffic Act, 1933 (23 & 24 Geo. 5, c. 53), Part II., ss. 37 *et seq.*). Its authority does not extend to Ireland. See also Railway Rates Tribunal Rules, 1922, No. 906.

Railway Rolling Stock Protection Act, 1872 (35 & 36 Vict. c. 50), protects from distress by a landlord rolling stock not being the property of the tenant. The Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 4, and the Railway Companies (Scotland) Act, 1867 (30 & 31 Vict. c. 126), s. 4, protect all rolling stock from execution.

Railway Securities Act, 1866 (29 & 30 Vict. c. 108), as amended. Enacted shortly after the 'Redpath Frauds' for the greater protection of persons lending money to railway companies upon debentures, etc., and providing that each loan shall be specifically certified by an accountable officer to be within the borrowing powers of the company.

Railways Amalgamation Tribunal. A temporary court of record established under

the Railways Act, 1921, to deal with the amalgamation of railways under the Act.

Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), and Railways Clauses Act, 1863 (26 & 27 Vict. c. 92). These Acts contain general provisions as to the construction and management of railways, and were passed for the purposes of (1) avoiding the necessity of repeating such provisions in the special Acts by which each railway company is incorporated ; and (2) securing uniformity in the provisions themselves. The Act of 1845 applies to all companies incorporated after its passing, except as expressly excepted by any special Act ; the Act of 1863 applies only if expressly incorporated in a special Act.

Ran, open or public theft.

Ranger, a sworn officer of the forest and parks. His office consists chiefly in three points : to walk daily through his charge, and see, hear, and inquire of trespasses in his bailiwick ; to drive the beasts of the forest, both of vinery and chase, out of the disafforested into the forested lands ; and to present all trespasses of the forest at the next court holden for the forest.—*Manwood.* Also an official in control of royal parks.

Ranges Act, 1891 (54 & 55 Vict. c. 54), facilitated the acquisition of ranges by or for volunteer corps ; the Military Lands Act, 1892 (55 & 56 Vict. c. 43), has repealed and superseded it with the exception of its 11th section, so far as it relates to acquisition of land under the Defence Acts. As to the right of an owner, whose lands are compulsorily taken, to be compensated for the injurious affection of his adjoining lands, see *Blundell* v. *Rex*, 1905, 1 K. B. 516, and Acquisition of Land (Assessment of Compensation Act), 1919, also particular statutory provisions.

Rank Modus, one that is too large. See MODUS DECIMANDI.

Ranking of Creditors, the arrangement of the property of a debtor, according to the claims of the creditors and the nature of their respective securities.—*Scots term.*

Ransom [fr. *rançon*, Fr.], the price of redemption of a captive or prisoner of war, or for the pardon of some great offence. It differs from amerciament, because it excuses from corporal punishment.

Rape. 1. A division of a county, especially Sussex, similar to that of a hundred, but oftentimes containing in it more hundreds than one. It was originally a military government.

2. The carnal knowledge of a woman by force against her will was for a long period punished as a capital crime in this country ; but it is now provided (see s. 48 of the Offences against the Person Act, 1861) that any person convicted of rape shall be guilty of felony, and be liable to be kept in penal servitude for life, or for not less than three years, or to be imprisoned for not exceeding two years, with or without hard labour. See also the Criminal Law Amendment Act, 1885, by s. 4 of which connection induced by personation of the woman's husband is declared to be rape.

The complaint of the woman shortly after the occurrence, and its particulars, may be given in evidence for the prosecution, not as evidence of the facts complained of (see HEARSAY EVIDENCE), but of the consistency of the conduct of the woman with the story told by her in the witness-box, and as negativing consent on her part (*Reg.* v. *Lillyman*, 1896, 2 Q. B. 167—C. C. R.). It is the universal practice to require corroboration of the woman's accusation (see *R.* v. *Osborne*, 1905, 1 K. B. 551). As to what constitutes carnal knowledge, see s. 63 of the Offences against the Person Act, 1861, which provision also applies to offences under the Criminal Law Amendment Act, 1885 (*R.* v. *Marsden*, 1891, 2 Q. B. 149). See ABUSING CHILDREN.

Rape of the Forest, trespass committed in the forest by violence.

Rape-reeve, an officer who used to act in subordination to the shire-reeve.

Rapine [fr. *rapina*, Lat.), the taking a thing against the owner's will, openly or by violence ; robbery. See LARCENY.

Raptu hæredis, a writ for taking away an heir holding in socage ; of which there were two sorts, one when the heir was married, the other when he was not.—*Reg. Brev.* 163.

Rastell, John, and William, his son, lawyers and printers of the time of Henry VIII. John Rastell translated from the French the 'Abridgment of the Statutes prior to the time of Henry VII.' He also abridged those of Henry VII., and down to the 23 & 24 of Henry VIII., which were printed together by the son William in 1533. This was the first abridgment in the English language.

The performances which most distinguish William Rastell belong to a later period than the reign of Henry VIII. These are his collection of English Statutes printed in 1559, and his 'Entries,' printed long after his death in 1596.—4 *Reeves*, 418.

Rasure, or Erasure, the act of scraping or shaving.

Rasure of a deed, so as to alter it in a material part, without consent of the party bound by it, etc., will make the same void, and if it be rased in the date after delivery, it is said it goes through the whole. Where a deed by rasure, addition, or alteration becomes no deed, the defendant may plead *non est factum.*—5 *Rep.* 23, 119.

A rasure or interlineation in a *deed* is presumed, in the absence of rebutting evidence, to have been made at or before its execution, but in a *will* it is presumed to have been made after its execution. See INTERLINEATION.

Rate. A contribution levied by some public body for a public purpose, as a poor rate, a highway rate, a sewers rate, upon, as a general rule, the occupiers of property within a parish or other area.

The term 'rate' is also used to mean a charge by a water, gas, railway, or other public undertaking for services rendered e.g., Railways Act, 1921, s. 20; Metropolitan Water Board Charges Act, 1921 (11 & 12 Geo. 5, c. xciv.).

The poor rate was levied under the Poor Relief Act, 1601 (43 Eliz. s. 2), on the occupiers in each parish of 'lands, houses, tithes, coal mines, or saleable underwoods,' and the Rating Act, 1874, extended the liability to rates to: (1) land used for a plantation or a wood, or for the growth of saleable underwood, and not subject to any right of common; (2) rights of fowling, shooting, taking, or killing game, or rabbits, and of fishing when severed from the occupation of the land; and (3) mines of every kind (e.g., iron mines) not mentioned in the Act of Elizabeth.

As between landlord and tenant rates are ordinarily paid by the tenant, but the rating of the landlord instead of the tenant is provided for by the Act of 1925, s. 11, superseding the Poor Rate Assessment and Collection Act, 1869, and the Public Health Act, 1875, s. 211, in cases where the rateable value does not exceed 20*l.* in the Metropolis, or 16*l.* 5*s.* or, as a rule, 13*l.* in other districts. Personal property is not rateable,and stock in trade is expressly excepted by the temporary Poor Rate Exemption Act, 1840, made permanent by the Expiring Laws Act, 1922.

The multiplicity of rates leviable by public bodies for public purposes was simplified by the Rating and Valuation Act, 1925. By this Act one general rate replaces all the rates formerly made by the respective authorities having power to raise money by a public rate, the only exception being a special rate in rural districts for lighting under the Lighting and Watching Act, 1833 (3 & 4 Will. 4, c. 90), the Local Government Act, 1894 (56 & 57 Vict. c. 73), or special expenses specified in the Public Health Act, 1875, s. 229.

The rating areas are either urban or rural. The rating authority in each area is the council of the county borough, borough or urban district having jurisdiction over the area; in rural rating areas the authority is the rural district council. The general rate is raised on so much in the pound on the rateable value of each hereditament in rateable occupation according to the valuation list. Contributions required by bodies such as the county council entitled out of the general rate are obtained by precepts to the rating authority requiring a levy of a specified amount in the pound calculated on the authority's estimate of the produce of a penny rate in its area: see the Rating and Valuation Act, 1925, and *Konstam's 'Modern Law of Rating,'* and also QUARTER-RATING. For the valuation of railways, see the Railways Valuation for Rating Act, 1930 (20 & 21 Geo. 5, c. 24); RAILWAYS. See CHURCH-RATES.

Rates Tribunal. See RAILWAY RATES TRIBUNAL.

Rate-tithe, when any sheep or other cattle are kept in a parish for less time than a year, the owner must pay tithe for them *pro ratâ,* according to the custom of the place.—*Fitz. N. B.* 51.

Ratification, confirmation. 'A contract of agency may also be created by ratification. Where A. purports to act as agent for B., either having no authority at all or having no authority to do that particular act, the subsequent adoption by B. of A.'s act has the same legal consequences as if B. had originally authorized the act. But there can be no ratification unless A. purported to act as agent, and to act for B.; and in such a case B. alone can ratify. Nor can there be any binding ratification of any agreement which was originally void' (*Odgers on the Common Law*), or where the principal was not in existence at the time of the act, either in fact or in the contemplation of law as in the case of persons such as trustees in bankruptcy or personal representatives who acquire title by relation (*Kelner* v. *Baxter,* L. R. 2 C. P. 174); and see also NOTICE TO QUIT. *Omnis ratihabitio retrotrahitur et mandato æquiparatur* (*Co. Litt.* 207 *a*). As to the ratification of contracts by infants,

see the Infants Relief Act, 1874, and INFANT.

Ratio, an account, a rule of proportion; also, a cause, or giving judgment therein.

Ratio decidendi, the ground of a judicial decision. The general reasons or principles of a judicial decision, as abstracted from any peculiarities of the case, are commonly styled, by writers on jurisprudence, the *ratio decidendi.*—*Austin's Jurisprudence,* p. 648.

Rationabile estoverium, alimony.

Rationabilibus divisis, an abolished writ, which lay where two lords, in divers towns, had seigniories adjoining, for him who found his waste by little and little to have been encroached upon, against the other, who had encroached, thereby to rectify the bounds.

Rationabili parte bonorum, a writ which lay for a wife after her husband's death, against the executors of the husband, for her third or 'reasonable part' of his goods, after debts and funeral charges paid.—*Fitz. N. B.* 122: and see REASONABLE PARTS.

Rationabilis dos, a widow's third, or reasonable dower.

Rationes [M. Lat.], the pleadings in a suit. *Rationes exercere,* or *ad rationes stare,* to plead.

Ratione tenure. See HIGHWAYS.

Ravishment, forcible violation. See ABDUCTION and RAPE.

Ravishment de Gard (ravishment of ward), an abolished writ which lay for a guardian, by knight's service or in socage, against a person who took from him the body of his ward.—*Fitz. N. B.* 140; 12 Car. 2, c. 3.

Reader. 1. A lecturer. 2. An official of the Temple Church, appointed alternately by the Inner and Middle Temple. He reads the lessons and preaches on Sunday afternoons.

Reading-in. The title of a person instituted or licensed to any benefice with cure of souls or perpetual curacy will be divested unless he publicly read in the church of the benefice, on the first Lord's-day on which he officiates, the Thirty-nine Articles, with a declaration of his assent thereto, and to the Book of Common Prayer.—Clerical Subscription Act, 1865 (28 & 29 Vict. c. 122), s. 7.

Re-afforested, where a de-afforested forest is again made a forest.—20 Car. 2, c. 3. See FOREST. Also, replanted.

Real Action, one brought for the specific recovery of lands, tenements, and hereditaments.

Among the civilians, real actions, otherwise called *vindications,* are those in which a man demanded something that was his own. They were founded on dominion, or *jus in re.*

The real actions of the Roman Law were not, like the real actions of the Common Law, confined to real estate, but they included personal as well as real property. But the same distinction as to classes of remedies and actions pervades the Common and Civil Law. Thus we have, in the Common Law, the distinct classes of real actions, personal actions, and mixed actions—the first, embracing those which concern real estate where the proceeding is purely *in rem;* the next, embracing all suits *in personam* for contracts and torts; and the last embracing those mixed suits where the person is liable by reason of and in connection with property.—*Story's Confl. Laws,* 781.

By the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27), s. 37, all real and mixed actions, except writ of right of dower, or writ of dower *unde nihil habet, quare impedit,* and ejectment, were abolished. By the C. L. P. Act, 1860, s. 26, the procedure in the excepted actions of dower, etc., except ejectment, was assimilated to that of ordinary actions, and by the Rules of Court under the Jud. Acts, all remaining distinction between ejectment and other actions is abolished. See ACTION.

Real Burden. Where a right to lands is expressly granted under the burden of a specific sum, or a burden of a specific sum is constituted on the lands themselves, and not merely personally, and where the name of the creditor can be discovered from the records, the burden is said to be real, and must be registered in the REGISTER OF SASINES. See *Addenda.*

Real Chattels. See CHATTELS.

Real Estate. Before 1926, land (with all houses, etc., built thereon) including all estates and interests in lands which are held for life (*not* for years, however many) or for some greater estate, and whether such lands be of freehold or copyhold tenure. This is the usual meaning of real estate, but for the purposes of devolution upon deaths after 1925 the definition of real estate by s. 3 of the Administration of Estates Act, 1925, is 'real estate includes chattels real and land in possession, remainder or reversion and every interest in or over land to which the deceased was entitled at his death and (ii.) real estate held on trust (including settled land) or by way of mortgage or security, but not money to arise under a trust for sale of land nor money secured or charged on land'; and see TRUST ESTATE. Consult *Carson's Real Property Statutes; Williams on Real Property; Burton's Compendium.*

Real Evidence, as by models, etc. See *Best on Evidence*, 10th ed., bk. ii. pt. ii.

Real Property Act, 1845 (8 & 9 Vict. c. 106), repealed and substantially re-enacted and extended by ss. 4, 51, 52, 56, 59, 138 and 168 of the Law of Property Act, 1925. The main provisions of the Act of 1845 affect all titles after 1845; prior to 1926, they included:

Partitions or exchanges of freehold land, leases required by law to be in writing, i.e., leases for three years or more (see FRAUD), and all assignments and surrenders of leases must be by deed.

A contingent executory and future interest in land, and a possibility coupled with an interest in land, and a right of entry whether immediate, future, vested, or contingent, may be disposed of by deed.

When the reversion on a lease is gone by surrender or merger, the next estate is to be deemed the reversion—(so that if, e.g., A. in 1900 let land to B. for fourteen years, and B. in 1903 surrender, after having sub-let to C. till the end of 1905, C. will become tenant to A. till the end of 1905, notwithstanding B.'s surrender)—the statute being in affirmance of the common law as laid down in *Co. Litt.* 338 *b*, and *Doe* v. *Pyke*, (1816) 5 M. & S. 154.

Real Representative. The name formerly given to a personal representative on whom real estate devolved on the death of any person between the 31st December, 1897, and the 1st January, 1926, under the provisions of the Land Transfer Act, 1897.

Prior to the commencement on the 1st of January, 1898, of the Land Transfer Act, 1897 (see TRANSFER OF LAND ACTS), the real estate of a deceased person vested in his heir, heiresses, or devisees, and his personal estate in his executors or administrators. The Land Transfer Act, 1897, (60 & 61 Vict. c. 65), reproduced and extended by the Administration of Estates Act, 1925, established a real representative in the person of the executor or administrator of any person dying after the commencement of that Act, in whom all his real estate except copyhold was vested notwithstanding his will, unless, as in a joint tenancy, any other person had a right to take by survivorship, so that one and the same person had the legal title to both the real estate and the personal estate of the deceased.

These provisions, and s. 30 of the Conveyancing Act, 1881 (relating to the devolution upon the personal representative of trust and mortgage estates belonging to the deceased), were consolidated and extended by the Administration of Estates Act, 1925 (which applies to deaths after 1925, s. 54, *ibid.*), with the object of assimilating the law of succession to real and personal property. Sect. 1 of the A. E. Act, 1925, provides:—

"(1) Real estate (*q.v.*) to which a deceased person was entitled for an interest not ceasing on his death shall, on his death and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased in like manner as before the commencement of this Act, chattels real devolved on the personal representative from time to time of the deceased person.

(2) The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts and powers.

(3) The personal representatives shall be the representatives of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate. Sect. 2 applies the law relating to chattels real to real estate except that (reproducing and amending the Land Transfer Act, 1897, s. 2, and the Conveyancing Act, 1911, s. 12), all the personal representatives or all the proving executors are to join in a conveyance either of realty or chattels real, and (s. 5 (21)) without prejudice to the rights and powers of a personal representative, preserves the order of administration and rights of property and action relating to real estate in favour of the persons entitled."

Real estate over which a person exercises a general power of appointment by his will and an entailed interest disposed of by will under the statutory power (L. P. Act, 1925, s. 176) devolve upon the personal representative. An entailed interest or reversion or remainder thereto which was not disposed of by will does not devolve upon them, nor does the interest in a joint estate passing by survivorship or the interest of a corporation sole. The trustees of settled land vested in the testator and not settled by his will may be appointed by the testator (and if not so appointed, these will be deemed to have been appointed by him as) the special representatives of the settled land, without prejudice to the appointment of general representatives (see s. 22 of the A. E. Act, 1925, and *Re Bridgett and Hayes*, 1928, Ch. 163).

Pending the effective creation of a personal representative the real estate of an intestate devolved on the heir-at-law (*Re Griggs*, 1914, 2 Ch. 547); it now vests in the President of the Probate Division (ss. 9 and 55, A. E. Act, 1925); as to the powers of an administrator over the real estate previous to the grant to him, see *Re Pryse*, 1904, P. 301.

The real representative, by s. 2 of the Land Transfer Act, 1897, held the real estate as trustee only for the person by law beneficially entitled thereto, e.g., for the devisee, and might at any time after the death assent to a devise or convey the real estate to such person, but under the L. P.

(Amendment) Act, 1924, 9th Sched., par. 3, and after 1925, a will cannot pass a legal estate except to the personal representatives, and testamentary dispositions are only equitable. The legal estate or property will pass to the beneficiary only upon assent or conveyance by the personal representatives. See ASSENT.

Real Right, the right of property, *jus in re.* The person having such right may sue for the subject itself. A personal right, *jus ad rem,* entitles the party only to an action for performance of the obligation.

Real Things, things substantial and immovable, and the rights and profits annexed to or issuing out of them.—1 *Steph. Com.*

Real Warrandice, an infeoffment of one tenement given in security of another.—*Scots Law.*

Reality of Laws. See PERSONALITY OF LAWS.

Realm, a kingdom or country.

Realty, real estate, which see.

Reason, the very life of law, for when the reason of law once ceases the law itself generally ceases, because reason is the foundation of all our laws.—*Co. Litt.* 97 *b,* 183 *b.*

Reasonable. If there be a contract to do a thing or to buy goods, and no time or price is mentioned, the law implies that the thing was to be done in a reasonable time, and that a reasonable price was to be paid, and what is reasonable is a question of fact, not law. See REASONABLE TIME.

Reasonable Aid, a duty claimed by the lord of the fee of his tenants holding by knight service, to marry his daughter, etc.

Reasonable and Probable Cause, such grounds as justify any one in suspecting another of a crime and giving him in custody thereon. Its absence is one of the causes of action in an action for malicious prosecution and its existence is a defence to an action for false imprisonment. After the jury have found the facts, the question whether the facts show a reasonable and probable cause is a question of law, not fact, but the judge may leave that finding to the jury in some cases (*McDonald* v. *Rooke,* (1835) 2 Bing. (N. C.) 217). See *Addison on Torts; Clerk and Lindsell on Torts.* See FALSE IMPRISONMENT; MALICIOUS PROSECUTION.

Reasonable Parts. The two-thirds of a man's personal property, one of which went on his death to his widow, and the other to his children, the remaining third going in accordance with his will. This right of the widow and children was expressly saved to them by a still unrepealed clause of Magna Charta, but became lost to them by imperceptible degrees. The Wills Act, 1837, is inconsistent with, but does not expressly repeal, the saving of Magna Charta for the 'reasonable parts,' but the Wills Act does not apply to Scotland, where (see LEGITIM), as generally throughout Europe, except in England and Ireland, the rights of the widow and children are in full force.

Reasonable Time, within the Sale of Goods Act, 1893 (which see), is by s. 56 of that Act (and see ss. 11 (2), 18 (4), 29 (4), 35, and 37) a question of fact. Where a contract is silent as to time the law implies a contract to do the stipulated act within a reasonable time under the circumstances: *Ford* v. *Cotesworth,* (1868) L. R. 4 Q. B. 132, Blackburn, J.

Re-assurance, a contract that a first insurer enters into to release himself wholly or in part from a risk which he has undertaken by throwing it upon some other insurer. Re-assurance is not to be confounded with double insurance, which see.

Re-attachment, a second attachment of him who was formerly attached and dismissed the Court without day, by the not coming of the justices, or some such casualty. —*Jac. Law Dict.*

Rebate, discount; reducing the interest of money in consideration of prompt payment or otherwise.

Rebellion. 1. The taking up of arms traitorously against the Crown, whether by natural subjects or others when once subdued. 2. Disobedience to the process of the courts. See next title.

Rebellion, Commission of, one of the abolished processes of contempt in the High Court of Chancery.—See the (repealed) *Consol. Ord.* 1860, XXX., r. 5.

Rebouter, to repel or bar.

Rebus sic stantibus, things standing so; under the circumstances.

Rebut, to bar, reply, or contradict.

Rebutter [fr. *repello,* Lat., to put back or bar], the answer of a defendant to a plaintiff's sur-rejoinder. See REJOINDER.

Rebutting Evidence, that which is given by one party in a cause to explain, repel, counteract, or disprove evidence produced by the other party.

Recall, to supersede a minister, or deprive him of his office; also to revoke a judgment on a matter of fact.

Recaption, the taking a second distress of one formerly distrained, during the plea grounded on the former distress; and it was a writ to recover damages for him whose

goods, being distrained for rent, or service, etc., were distrained again for the same cause, pending the plea in the County Court or before the justices.—*Fitz. N. B.* 71.

It is also a species of remedy by the mere act of the party injured. This happens when any one has deprived another of his property, in goods or chattels personal, or wrongfully detains one's wife, child, or servant, in which case the owner of the goods, and the husband, parent, or master, may lawfully claim and retake them, wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace.—3 *Bl. Com.* 4.

Recapture, the recovery by force of a prize captured by an enemy.

Receipt, an acknowledgment in writing of having received a sum of money, which is *primâ facie* but not conclusive evidence of payment (*Skaife* v. *Jackson*, (1824) 3 B. & C. 421).

A stamp duty first imposed in 1783 was progressively *ad valorem*, until 1853, when the uniform 1*d.* rate was imposed; this was increased to 2*d.* by the Finance Act, 1920.

For the purposes of the Stamp Act, 1891, the expression 'receipt' is defined (s. 101) as including—

(1) Any note, memorandum, or writing whereby any money amounting to two pounds or upwards, or any bill of exchange or promissory note for money amounting to two pounds or upwards, is acknowledged or expressed to have been received or deposited or paid, or whereby any debt or demand, or any part of a debt or demand, of the amount of two pounds or upwards, is acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgment, and whether the same is or is not signed with the name of any person.

And it is added that:—

(2) The duty upon a receipt may be denoted by an adhesive stamp, which is to be cancelled [see s. 8] by the person to whom the receipt is given before he delivers it out of his hands.

The receipt form sometimes indorsed upon a cheque or other bill of exchanges requires a 2*d.* stamp under this section (*Midland Bank* v. *Inland Rev. Commissrs.*, 1927, 2 K. B. 465).

A receipt may also be stamped with an impressed stamp.

Section 102 provides for stamping after execution, on penalties, and s. 103 enacts that:—

If any person—
(1) Gives a receipt liable to duty and not duly stamped; or
(2) In any case where a receipt would be liable to duty refuses to give a receipt duly stamped; or
(3) Upon a payment to the amount of two pounds or upwards gives a receipt for a sum not amounting to two pounds, or separates or divides the amount paid with intent to evade the duty;

he shall incur a fine of ten pounds.

There are fifteen exemptions under the heading of 'receipt' set out in the schedule, among which is a receipt given for or on account of salary, pay or wages (14 & 15 Geo. 5, c. 21, s. 36), and now also a receipt of consideration money and for sums recovered by way of compensation under the Workmen's Compensation Act, 1925; see the Finance Act, 1930 (20 & 21 Geo. 5, c. 28), s. 44.

The signature of counsel for a fee marked on his brief, though the fee is purely honorary, is a receipt and must be stamped (*General Council of the Bar* v. *I. R. C.*, 1907, 1 K. B. 462).

Receiver. (1) An officer appointed by the Court to collect rents, etc., pending a suit. Receivers are appointed in actions for administration; in actions by mortgagees or against trustees or executors; in actions between partners for winding up the partnership business, and in a great many other cases. (2) A mortgagee may also appoint a receiver of the mortgaged property, if empowered so to do by the mortgage deed or by separate instrument, without having to apply to the Court; and by section 19 of the Conveyancing Act, 1881, reproduced and extended to mortgages of certain incorporated hereditaments, such as rentcharges or annual income, by the Law of Property Act, 1925, s. 101, in the case of a mortgage executed *on or after* the 1st January, 1882, the mortgagee, when the mortgage money has become due, may appoint a receiver of the income of the mortgaged property, or of any part thereof, together with certain leasing powers conferred by the Conveyancing Act, 1911, s. 3, now replaced by s. 99, L. P. Act, 1925, but such power cannot (s. 24 of the Act of 1881, reproduced by L. P. Act, 1925, s. 109) be exercised until the mortgagee is entitled to exercise the power of sale under the Act (i.e., by s. 20, now L. P. Act, 1925, s. 103, unless default has been made in payment of the principal, after notice, or interest is in arrear for two months, or there has been other default on the part of the mortgagor); and s. 24 also regulates in detail the powers, remuneration and duties of the receiver. A receiver so appointed is the agent of the mortgagor. A practising barrister may be a receiver; a

solicitor in the cause cannot, unless by consent, and without salary; nor next friends of infant-plaintiffs; nor trustees.

A receiver may be appointed by an interlocutory order of the Court, in all cases in which it shall appear to the Court to be just or convenient, that such order should be made (Jud. Act, 1873, s. 25 (8)). See now Jud. Act, 1925, s. 45.

'Receiver' includes consignee or manager appointed by the Court; see R. S. C. Ord. LXXI., r. 1; *Re Neudegate Colliery Co.*, 1912, 1 Ch. 468.

Under the Bankruptcy Act, 1914, s. 8, the Court may appoint the official receiver to be interim receiver of the debtor's property.

A receiver may also be appointed by way of 'equitable execution' where the property of a litigant against whom judgment has been obtained cannot be made available by *fi. fa.*, *elegit*, or other ordinary process of execution; as to the appointment of such a receiver, see *Harris* v. *Beauchamp Bros.*, 1894, 1 Q. B. 801; *Morgan* v. *Hart*, 1914, 2 K. B. 183; R. S. C. 1883, Ord. L., r. 15A. As to debenture holders, see Comp. Act, 1929, ss. 86, 308–310.

In the administration of estates, under the Lunacy Acts, 1890, 1891 and 1908, the Mental Deficiency Act, 1913, and the Mental Treatment Act, 1930, it is usual to appoint a receiver of the income and so much of the capital property as the Master in Lunacy may order to manage the property of the patient under the direction of the Master in Lunacy (*Mills and Poyser's Lunacy Practice*). The term 'receiver,' however, as thus used is not a very happy one—he may be compendiously described as standing in the position of a statutory-attorney or agent of the person under disability; see *Re E. G.*, 1914, 1 Ch. 927. See *Kerr on Receivers*, and *Hals. L. E.*, tit. '*Receivers*.'

Receiver of the Fines, an officer who received the money of all such as compounded with the Crown on original writs sued out of Chancery.

Receiver of Stolen Property. Punishable under the Larceny Act, 1916, s. 33. The offence consists in receiving any property knowing the same to have been stolen or obtained in any way whatsoever under circumstances which amount to felony or misdemeanour. It matters not whether the principal thief has been prosecuted. Whether the offence is a felony or misdemeanour depends on which the original stealing, etc., was. Section 43 provides that,, on a prosecution of a person for receiving stolen property knowing it to have been stolen or for being in possession thereof, there may be given in evidence for the purpose of proving guilty knowledge: (*a*) The fact that other property stolen within the period of twelve months preceding the date of the offence charged was found or had been in his possession; (*b*) the fact that within five years preceding the date of the offence charged he was convicted of an offence involving fraud or dishonesty. Before the prosecution can prove (*b*) a seven days' notice must be given to the accused, and evidence must be given at the trial that the property in respect of which he is being tried was found or had been in his possession.

Receivers of Wreck, officers appointed by the Board of Trade, pursuant to the Merchant Shipping Act, 1894, ss. 5 and 6, which take the place of s. 439 of the repealed Merchant Shipping Act, 1854, for the preservation of wreck, etc. The Act provides for their duties and powers.

Receiver-General of the Duchy of Lancaster, an officer of the Duchy Court, who collects all the revenues, fines, forfeitures, and assessments within the duchy.

Receiver-General of the Public Revenue, an officer appointed in every county to receive the taxes granted by Parliament, and remit the money to the Treasury.

Receiving Order. An order of the Court on the petition of a creditor, or of the debtor himself, granted for the protection of the estate on an act of bankruptcy being established. The order constitutes the official receiver the receiver of the debtor's property. Legal proceedings against the person or property of the debtor in respect of debts provable in bankruptcy can thenceforth be restrained by the official receiver. The effect of the order is that unless a scheme or composition is accepted by the creditors the debtor is adjudged bankrupt. See Bankruptcy Act, 1914, ss. 3, 7, 37 (2), 107 (4), and Bankruptcy Rules, 1915, rr. 179–188A. Receiving orders in bankruptcy, whether or not known to affect land, must be registered at the Land Registry every five years or else the title of the trustee in bankruptcy will be void against a purchaser of a legal estate in good faith for money or money's worth without notice of an available act of bankruptcy under a conveyance made after the date of registration of the bankruptcy petition as a pending action (see *lis pendens*), unless at the date of the conveyance either the registration of the pending action is in

force or the receiving order is registered—Land Charges Act, 1925, s. 7.

Reception Order. No person, not being a a rate-aided poor person or a person of unsound mind so found by inquisition, can be received or detained as a person of unsound mind except under the authority of (1) a reception order, or (2) an urgency order (*q.v.*), or (3) a summary reception order (*q.v.*) (Lunacy Act, 1890, ss. 1, 9, 13). Sections 21 and 22 provide exceptions in the case of emergency, etc., and of friends and relatives taking charge. A reception order can only be made by a judicial authority, i.e., a justice of the peace specially appointed, a county court judge, a stipendiary magistrate, or by two commissioners in lunacy (*ibid.*, ss. 1, 9, 10, and 23). It is only effective for one year unless extended (Lunacy Act, 1891, s. 7), and by s. 36 (3) of the Act, 1890, it ceases to be of any force unless the patient has been received thereunder before the expiration of seven days from its date. As to the reception of feebleminded and mentally defective persons, see the Mental Deficiency Acts, 1913 to 1927; of Voluntary Patients, the Mental Treatment Act, 1930 (20 & 21 Geo. 5, c. 23).

Receptus, an arbitrator.—*Civ. Law.*

Recession, a re-grant.

Récidive [Fr.], a relapse; the commission of a second offence.

Reciprocity, mutuality.

Recital, the rehearsal or making mention in a deed or writing of something which has been done before.—1 *Lilly Abr.* 416. As to how far the recitals govern the construction of a deed the rule is as follows:—

If the recitals are clear and the operative part is ambiguous, the recitals govern the construction. If the recitals are ambiguous, and the operative part is clear, the operative part must prevail. If both the recitals and the operative part are clear, but they are inconsistent with each other, the operative part is to be preferred (*Ex parte Dawes*, (1886) 17 Q. B. D. p. 286, per Lord Esher, M.R.). As between the parties to a deed and for its purposes only and subject to the intention of the parties upon construction, a recital of a particular fact but not a general recital amounts to an estoppel against the party making it. Whether both parties are bound is a question of intention to be ascertained in the same way. See *Notes to the Duchess of Kingston's case, Sm. L. C.* See DEED.

Reclaimed Animals, those that are made tame by art, industry, or education, whereby a qualified property may be acquired in them. See FERÆ NATURÆ, and 2 *Steph. Com.*

Reclaiming, the action of a lord pursuing, prosecuting, and recalling his vassal, who had gone to live in another place without his permission. Also the demanding of a thing or person to be delivered up or surrendered to the prince or State it properly belongs to, when by some irregular means it has come into the possession of another.

Reclaiming, the procedure of appeal to the Inner House from the Outer House of the Court of Session in Scotland (except in jury cases).

Recognition, an acknowledgment.

Recognitione adnullanda per vim et duritiem facta, a writ to the justices of the Common Bench for sending a record touching a recognizance, which the recognizor suggests was acknowledged by force and duress; that if it so appear, the recognizance may be annulled.—*Reg. Brev.* 183.

Recognitors, the jury impannelled in an assize; so called because they acknowledged a disseisin by their verdict.—*Bract.* 1, 5.

Recognizance, an acknowledgment of a debt owing to the Crown, with a condition to be void if the recognizor shall do some particular act, as if he, or the party for whom he is surety, shall appear at the assizes to prosecute a person, or to come up for judgment when called upon, or shall prosecute an appeal, or shall be of good behaviour, commonly called 'binding over.' As to the power of justices of their own initiative to bind over a person, though no formal charge has been made against him, see *R.* v. *Wilkins*, 1907, 2 K. B. 380. See also *R.* v. *Sandbach, Ex p. Williams*, 1935, 2 K. B. 192, and Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 31, sub-s. 3, as amended by Summary Jurisdiction (Appeals) Act, 1933 (23 & 24 Geo. 5, c. 38), s. 1; and as to the mode of entering into recognizance, see Criminal Justice Administration Act, 1914, s. 24; see also ss. 19–23. For forms of recognizance, see the schedule to the Summary Jurisdiction rules, 1886; also rules 112–115 of the Crown Office Rules of 1906, especially rule 113, by which no recognizance 'shall be forfeited, estreated, or put upon the estreat roll without the order of the Court or a Judge, nor unless an order or notice shall have been previously served upon the parties by whom such recognizances shall have been given, calling upon them to perform the conditions thereof,' and see

s. 66 of the Summary Jurisdiction (Appeals) Act, 1933, as to forfeited recognizances.

As to enforcement of recognizances by a Court of Summary Jurisdiction in respect of proceedings in such Court, see s. 9 of the Summary Jurisdiction Act, 1879.

Recognizances of any date are not to operate as a charge on land or the unpaid purchase money of any land unless a writ or order for the purpose of enforcing the recognizance is registered at the Land Registry (Law of Property Act, 1925, s. 195 (4), and see Land Charges Act, 1925, s. 6).

Recognized Mortgage, a mortgage upon which money may be advanced under the Agricultural Credits Act, 1921, s. 1 (expired); see now agricultural charges under the Agricultural Credits Acts, 1928 (18 & 19 Geo. 5, c. 43), and 1932 (22 & 23 Geo. 5, c. 35).

Recognizee, he to whom one is bound in a recognizance.

Recognizor, he who enters into a recognizance.

Récolement [Fr.], re-examination.

Recommendation to Mercy. See MERCY.

Re-compensation. Where a party sues for a debt, and the defendant pleads compensation, i.e., set-off, the plaintiff may allege a compensation on his part, and this is called a re-compensation.—*Scots Law Term.*

Reconduction, a relocation; a renewal of a lease.—*Civ. Law.*

Reconstruction of a Company, upon a voluntary winding-up the company may sell its undertaking for property of (including profits in) the purchasing company; see Companys Act, 1929, s. 234.

Reconvention, an action by a defendant against a plaintiff in a former action; a cross-bill or litigation.—*Ibid.*

Reconveyance. See PROVISO FOR REDEMPTION; MORTGAGE.

Record, a memorial or remembrance; an authentic testimony in writing contained in rolls of parchment, and preserved in a court of record. The public records of the kingdom are placed under the superintendence of the Master of the Rolls, and a Record Office established by the Public Record Office Act, 1838 (1 & 2 Vict. c. 94). The Public Record Office (commonly called the Rolls Office) is a large building in Chancery Lane, London, and was opened in 1902.

There are three kinds of records, viz.: (1) *judicial,* as an attainder; (2) *ministerial,* on oath, being an office or inquisition found; (3) by way of *conveyance,* as a deed enrolled. As to ancient public records generally, see *Hubback on Succession,* pp. 607 *et seq.*

The Record Offices of the Supreme Court are now merged in the Central Office there. See R. S. C. Ord. LXI.

Also the general name given to (*a*) pleadings and subsequent orders and recorded matters in an action (by R. S. C. 1883, Ord. XXXVI., r. 30, the party entering the action for trial must deliver to the officer two copies of the whole of the pleadings in the action, one of which is for the use of the judge at the trial. Such copies must be in print, except as to such parts, if any, of the pleadings as are by the Rules permitted to be written. In Scotland, the printed pleadings in a contested action); (*b*) the volume containing the case, evidence and transcripts of appellants and respondents on appeal to the House of Lords or Privy Council.

Record, Conveyances by, extraordinary assurances, as private Acts of Parliament, and royal grants.

Record, Courts of, those whose judicial acts and proceedings are enrolled on parchment, for a perpetual memorial and testimony; which rolls are called the Records of the Court, and are of such high and supereminent authority that theirt ruth is not to be called in question. Courts of Record are of two classes—Superior and Inferior. Superior Courts of Record include the House of Lords, the Judicial Committee, the Court of Appeal, the High Court, and a few others. The Mayor's Court of London, the County Courts, Coroner's Courts, and others are Inferior Courts of Record, of which the County Courts are the most important. Every superior court of record has authority to fine and imprison for contempt of its authority; an inferior court of record can only commit for contempts committed in open court, *in facie curiæ.* See *Co. Litt.* 117 *b,* 260 *a*; *Odgers on the Common Law; Odgers on Libel.*

Record, Debts of, those which appear to be due by the evidence of a court of record, such as a judgment, recognizance, etc. Since 1st January, 1870, all specialty and simple contract debts of deceased persons stand in equal degree in the administration of the estate of any one deceased (Administration of Estates Act, 1869 (32 & 33 Vict. c. 46)).

Record of Nisi Prius, a transcript of the pleadings and issue was formerly made on parchment for the use of the Court on the trial of the action.

Record Office, Public, in Chancery Lane.

Under the Master of the Rolls, with a Keeper of Records, the repository of national records, including '*Domesday*' (*q.v.*). See ROLLS OFFICE.

Record of Titles (Ireland) (28 & 29 Vict. c. 88), amended by 29 & 30 Vict. c. 99; (Scotland), see REGISTER OF SASINES (*Addenda*).

Record, Trial by. If a record be asserted on one side to exist, and the opposite party deny its existence, thus, 'that there is no such record remaining in Court as alleged,' and issue be joined thereon, this is an issue of *nul tiel* record; and the Court awards a trial by inspection of the record. Upon this, the party affirming its existence is bound to produce it in Court on a given day; failing to do so, judgment is given for his adversary. The trial by record is the only legitimate mode of trying such issue.—*Steph. Plead.*; 2 *Chit. Arch. Prac.*

Record and Writ Clerks, three officers of the Court of Chancery, appointed by 5 & 6 Vict. c. 103. As to their duties, see that Act and also 15 & 16 Vict. c. 87, s. 46; 18 & 19 Vict. c. 124, s. 11; *Consol. Ord.* 1860, 1, rr. 35-53; and *Dan. Ch. Pr.* They were attached to the Supreme Court by s. 77 of the Jud. Act, 1873, and made 'masters' thereof by s. 8 of the Jud. (Officers) Act, 1879. See now Jud. Act, 1925, ss. 104-106.

Recordari facias loquelam [abbrev. *re. fa. lo.*], an original writ, in the nature of a *certiorari*, issuing out of Chancery, addressed to a sheriff to remove a cause depending in an inferior court not of record to a superior court; and it is called a *recordari*, because it commands the sheriff to make a record of the plaint in the ancient County Court, and then to send up the cause. Obsolete.—Fitz-N.B. 71.

Recorder, in municipal boroughs having a separate Court of Quarter Sessions, a barrister of five years' standing at least, appointed by the Crown, holding office during good behaviour, and receiving 'such yearly salary not exceeding that stated in the petition on which the grant of a separate Court of Quarter Sessions was made,' as the sovereign directs. He is sole judge of the Court of Quarter Sessions, 'having cognizance of all crimes, offences, and matters cognizable by Courts of Quarter Sessions in England,' except that he may not grant licences or hear licensing appeals under the Intoxicating Liquor Licensing Acts, or levy rates (Municipal Corporations Act, 1882, ss. 162, 165). He may appoint as 'deputy recorder' a barrister of five years' standing, in case of sickness or unavoidable absence, and an 'assistant recorder' if it appears that the Quarter Sessions are likely to last more than three days (*ibid.*, s. 168), as amended by the Summary Jurisdiction (Appeals) Act (23 & 24 Geo. 5, c. 38).

Recorders also existed in some of the places (see a list in the schedule to the Municipal Corporations Act, 1883) not subject to the Municipal Corporations Act, 1882.

Recorder of London, one of the justices of oyer and terminer, and a justice of the peace of the *quorum* for putting the laws in execution for the preservation of the peace and government of the city. Being the mouth of the city, he delivers the sentences and judgments of the Court therein, and also certifies and records the city customs, etc. He is chosen by the lord mayor and aldermen, and attends the business of the city when summoned by the lord mayor, etc.; but by the Local Government Act, 1888, s. 42, sub-s. 14, after the vacancy next after the commencement of that Act, which vacancy happened in 1892 by the death of Sir Thomas Chambers, no Recorder may exercise any judicial functions unless he be appointed by the sovereign to exercise such functions.

Records, gramophone, are subject to the Copyright Act, 1911, ss. 19 to 35; as to reproducing broadcast music, see 15 & 16 Geo. 5, c. 46.

Recoup, to keep back something due; to recompense.

Recoverer, the demandant in a common recovery after judgment.

Recovery, the obtaining a thing by judgment or trial.

A *true* recovery is an actual or real recovery of anything, or the value thereof, by judgment; as if a man sue for any land or other thing movable or immovable, and gain a verdict or judgment.

A *feigned* recovery. An abolished common assurance by matter of record, in fraud of the statute *De Donis*, whereby a tenant-in-tail in possession enlarged his estate-tail into a fee-simple and so barred the entail, and all remainders and reversions expectant thereon, with all conditions and collateral limitations annexed to them, and subsequent charges subordinate to the entail. But incumbrances on the estate-tail equally affected such fee-simple, and any estate or interest prior to the entail remained undisturbed.

This assurance consisted of two parts: (1) The recovery itself, which was a fictitious real action in the Court of Common Pleas,

carried on to judgment, and founded on the supposition of an adverse claim ; and (2) the recovery-deed, which was partly a preparatory step to suffering the recovery, and partly a declaration of the uses when suffered.

This method barring an estate-tail by a fictitious real action was based upon (*a*) the doctrine that the tenant-in-tail could sell the entailed lands for an estate in fee-simple, provided that judgment was obtained in favour of the tenant-in-tail and his heirs against some one for lands of equal value, and (*b*) the law of warranty as applied in actions for recovery of land. The procedure in such an action for the recovery of land was as follows : X. brought a writ of recovery against Y. in respect of land which Y. had bought from Z. Y. called upon Z. to prove that he had had a good title when he sold to Y. (this was called ' vouching Z. to warranty '). If Z. failed to prove that he had had a good title at the time of the sale, judgment was given for X. against Y. and a judgment against Z. for lands of equal value was also given in favour of Y.

To bar the entail a tenant-in-tail adopted the above procedure by means of a fictitious and collusive action. A., the tenant-in-tail, procured a friend D. (the *Demandant*) to bring an action for recovery of land against him. A. pretended that he had bought the land from C. and vouched C. to warranty. C. was a man of no substance (generally the crier of the Court), who was willing to allow a judgment to be given against him. C. admitted, contrary to the fact, that he had sold the land to A. and craved leave to ' imparl with him,' i.e. to consult with him outside the Court. C. failed to return, and judgment was therefore given in favour of D. against A. and in favour of A. and his issue for land of equal value against C. D. becoming thus possessed of the fee-simple conveyed the land in fee-simple to A. or dealt with it as directed by him. This right to suffer a *common recovery* was considered as an incident of an estate-tail. In later times the proceedings became more complicated ; it was found inexpedient that the action should be brought against the tenant-in-tail himself, and so another person was brought into the action. The land were first conveyed by the tenant-in-tail to a friend, the *tenant to the præcipe* (so-called because he was to be served with the *præcipe* or writ). The demandant then brought the action against the tenant to the *præcipe ;* the latter vouched the tenant-in-tail to warranty ; he in his turn vouched the Court crier (the *common vouchee*) to warranty. The Court crier admitted (untruly) that he had sold the land to the tenant-in-tail and craved leave to imparl with him outside the Court. In his absence judgment was given by default that the lands belonged to the demandant in fee-simple and that the common vouchee must give lands of equal value to the tenant-in-tail and his heirs. See for example, *Taltarum's case*, Y. B. 12 Edw. 4, 19, and *Tudor's Leading Cases*, 3rd ed., p. 695.

This was called a recovery with double voucher, and effectually barred the entail, with every latent interest and all reversions and remainders expectant thereon. The only possible case in which a remainder with treble voucher was necessary was in the instance in which a tenant-in-tail created an entail derived out of his own, and the two entails were, in point of estate or of right, existing at one time in distinct persons, and both entails were to be barred.

To perfect the legal title, and to give a seisin to the demandant, a writ of *habere facias seisinam* must have been issued after judgment, and seisin duly delivered to him, whereupon the uses arose. This writ was returned by the sheriff, and the proceedings exemplified by the clerk of the Court for the purpose of proving the suffering of the recovery. In a recovery deed the proper parties, either alone or jointly with other persons, as circumstances might have required, were : (1) the person who had the immediate freehold ; (2) the intended vouchee ; (3) the intended tenant ; and (4) the intended demandant. See *Williams on Real Property ;* 1 *Shep. Touch.* c. 3 ; and 1 *Prest. Conv.* c. 1 ; 1 *Hall. Cons. Hist.* c. i. 12. An estate-tail might also be barred by a fine (*q.v.*). A friend brought an action of recovery against the tenant-in-tail. The action was then settled upon the terms that the friend should have the lands in fee-simple and that the tenant-in-tail should be paid a sum of money as consideration. This compromise was entered on the rolls of the Court. The effect of a fine varied from time to time, but eventually it became conclusive not only against the tenant-in-tail but against his issue, but inoperative as to remainders and reversions.

These fictions were abolished by the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), which substituted a short deed, duly enrolled, as the mode of barring an estate-tail. See TAIL.

Recovery of Land, the title, since the Judicature Acts, of the action of ' eject-

ment' to transfer the possession of land from the wrongful to the rightful owner.

Under the County Courts Orders, see Order V., *actions to recover possession of land* under ss. 138 and 139 of the County Courts Act, 1888, were to be so called in distinction from *actions of ejectment* under s. 59, *ibid.*, but by the County Courts Act, 1934, s. 48, county courts have jurisdiction over actions for the recovery of land where neither the value of the land nor the rent exceeds 100*l.* per annum, and references to ss. 138 and 139 of the Act of 1888 are to be construed as references to s. 48 of 1934. As to the judges' discretion under s. 138 of the County Courts Act, 1888, see *Sheffield Corporation* v. *Luxford*, 1929, 2 K. B. 180.

Recreant, yielding. See CRAVEN.

Recreation Grounds. The Recreation Grounds Act, 1859 (22 & 23 Vict. c. 27), facilitates grants of land near populous places for use in the regulated recreation of adults, and as playgrounds for children; and ss. 76 and 77 of the Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), contain provisions for their regulation. See also OPEN SPACES.

Recrimination, a charge made by an accused person against the accuser.

Recta prisa regis, the king's right to prisage, or taking of one butt or pipe of wine before, and another behind, the mast, as a custom for every ship laden with wines. See PRISAGE.

Rectification. The power to rectify a written document which, as drawn out, does not express the mutual and concurrent intention of the parties, is a power which the Courts of equity always possessed; but such jurisdiction is exercised with the greatest care and caution, and only on evidence of the clearest and most satisfactory description. Rectification has been made in almost every kind of instrument, e.g., in marriage settlements (*Cogan* v. *Duffield*, (1876) 2 Ch. D. 46), in agreements concerning land (*Olley* v. *Fisher*, (1886) 34 Ch. D. 367), in conveyances (*White* v. *White*, (1872) L. R. 15 Eq. 247), and in leases (*Cowan* v. *Truefitt, Ltd.*, 1899, 2 Ch. 309). As to wills, see *Vaughan* v. *Clerk*, (1902) 87 L. T. 144; *Re Schott*, 1901, P. 190.

Also an alteration rectifying an entry in a register, e.g., company, patents, trade-marks, etc.

Rectitudo, right or justice; legal dues; tribute or payment.

Recto, Breve de, a writ of right, which was of so high a nature that, as other writs in real actions were only to recover the possession of the land, etc., in question, this aimed to recover the seisin and the property, and thereby both the rights of possession and property were tried together.

There were two species: (1) writ of right patent, so called because it was sent *open*, and was the highest writ lying for him who had a fee-simple in the lands or tenements sued for, against the tenant of the freehold at least, and in no other case; this writ was likewise called *breve magnum de recto*; (2) writ of right close, which was brought where one held lands and tenements by charter in ancient demesne in fee-simple, fee-tail, or for term of life, or in dower, and was disseised.—*Co. Litt.* 158 *b*; *Jac. Law Dict.* Abolished by 3 & 4 Wm. 4, c. 27. See ACTION (POSSESSORY).

Recto de advocatione ecclesiæ, a writ which lay at Common Law, where a man had right of advowson of a church, and, the parson dying, a stranger had presented.—*Fitz. N. B.* 30.

Recto de custodiâ terræ et hæredis, a writ of right of ward of the land and heir. Abolished.

Recto de dote, a writ of right of dower, which lay for a widow who had received part of her dower, and demanded the residue, against the heir of the husband or his guardian. Abolished. See 23 & 24 Vict. c. 126, s. 26, and DOWER.

Recto de dote unde nihil habet, a writ of right of dower whereof she had nothing, which lay where her deceased husband, having divers lands or tenements, had assured no dower to his wife, and she thereby was driven to sue for her thirds against the heir or his guardian. Abolished. See *ibid.*

Recto de rationabili parte, a writ of right, of the reasonable part, which lay between privies in blood, as brothers in gavelkind, sisters, and other coparceners, for land in fee-simple.—*Fitz. N. B.* 9.

Recto quando (or **quia**) **dominus remisit curiam,** a writ of right, when or because the lord had remitted his court, which lay where lands or tenements in the seigniory of any land were in demand by a writ of right.—*Fitz. N. B.* 16.

Recto sur disclaimer, an abolished writ on disclaimer.

Rector, a governor; in ecclesiastical law, either a layman, sometimes called a 'lay rector' or 'lay impropriator,' who has that part of the revenues of a church which before the dissolution of the monasteries by King

Henry VIII. was appropriated to a monastery, the incumbent generally being a 'vicar'; or, in cases where the living had not been so impropriated and a spiritual person, the 'parson,' who has the whole revenues together with the cure of souls. See 1 *Bl. Com.* 384.

Rector, sinecure, one without cure of souls.

Rectorial Tithes, great or predial tithes.

Rectory, a spiritual non-impropriated living, composed of land, tithe, and other oblations of the people, separate or dedicate to God, in any congregation for the service of His Church there, and for the maintenance of the governor or the minister thereof, to whose charge the same is committed.—*Spelm.* Also, the house in which the rector resides. 'By the grant of a rectory or parsonage will pass the house, the glebe, the tithes, and offerings belong to it' (*Shep. Touch.* p. 93).

Rectum, right; also a trial or accusation. —*Bract.*

Rectum esse, to be right in court.

Rectum rogare, to ask for right; to petition the judge to do right.

Rectum, stare ad, to stand trial, or abide by the sentence of the Court.

Rectus in Curiâ, one who stands at the bar of a court, and no accusation is made against him; also said of an outlaw when he had reversed his outlawry.

Recuperatores, judges to whom the prætor referred a question.—*Civ. Law.*

Recusants, persons who wilfully absented themselves from their parish church, and on whom penalties were imposed by various statutes (e.g., 1 Eliz. c. 2, and 3 Jac. 1, c. 4; repealed by 9 & 10 Vict. c. 59) passed during the reigns of Elizabeth and James I. And see Canons 65, 66, by which Ministers are enjoined to denounce Recusants, and Ministers being Preachers to 'labour diligently with them from time to time thereby to reclaim them from their errors.'

Recusatio Judicis, a refusal of, or exception to, a judge upon any suspicion of partiality. —*Civ. Law.*

Red or **Rede** [fr. *rædan*, Sax.], advice.

Red-book of the Exchequer [*liber rubeus scaccarii*, Lat.], an ancient record, wherein are registered the names of those who held lands *per baroniam* in the time of Henry II.—*Ryley*, 667. See *Hary. Co. Litt.* 68 *b*, Note (7).

Reddendo singula singulis, the method of construction applied in such a sentence as this, 'If any one shall draw or load any sword or gun'; the word 'draw' is applied to 'sword' only, and the word 'load' to 'gun' only, the former verb to the former noun, and the latter to the latter, because it is impossible to load a sword or draw a gun; and so of other applications of different sets of words to one another.

Reddendum, a clause reserving rent in a lease, whereby a lessor reserves some new thing to himself out of that which he granted before: it commonly and properly succeeds the *habendum*, and is usually made by the words 'yielding and paying,' or similar expressions importing a covenant if executed by the lessee. Consult *Platt on Leases*, vol. ii. p. 82. See DEED.

Redditarium, a rental of an estate or manor.

Redditarius, a renter.—*Cowel.*

Reddition, a surrendering or restoring; also, a judical acknowledgment that the thing in demand belongs to the demandant, and not to the person surrendering (*ibid.*).

Reddidit se (he has rendered himself), applied to a principal who renders himself to prison in discharge of his bail.

Redeemable Rights, rights which return to the conveyor or disposer of land, etc., upon payment of the sum for which such rights are granted.

Re-delivery, a yielding and delivering back of a thing.

Re-demise, a re-granting of land demised or released.

Redemption. 1. A paying off of a loan (see FUNDS). The term is used especially with reference to the paying off of a mortgage debt. An action of redemption is a suit brought to compel the mortgagee to reconvey the property to the mortgagor on the latter paying the mortgage debt. See EQUITY OF REDEMPTION; PROVISO FOR REDEMPTION.

2. Commutation or the substitution of one lump payment for a succession of annual ones: e.g., see the Land Tax and the Tithe Redemption Acts and many other statutes.

Re-development Areas. By ss. 34 *et seq.* of the Housing Act, 1936, a local authority may acquire an area of land by agreement or compulsorily for houses for the working classes if after an inspection for the purposes of detecting overcrowding under s. 1 of the Act or otherwise the authority is satisfied that the area contains fifty or more working-class houses, of which at least one-third are overcrowded or unfit for human habitation, and that the industrial and social conditions of the district are such that the area should be used for working-class houses and that the area should be re-developed as a whole

for their accommodation. The authority must in those conditions prepare a re-development plan by reference to a map to be submitted to the Minister of Health for approval, and the Minister must hold a public inquiry if there is any objection, before giving or witholding or modifying the plan; in any other case approval may be given, qualified or withheld at the Minister's discretion. See s. 46, Sched. I., art. 5, and Sched. II., as to compensation, and the validity of compulsory purchase orders. The general provisions in Part V. of the Act, ss. 71–104, apply to re-development areas. As in the case of Clearance Orders, owners may offer to re-develop and recondition the area *before* the Minister of Health has approved a re-development plan (see ss. 51-53). See HOUSING.

Red-handed, with the marks of crime fresh on him.

Redhibition [fr. *redhibitio*, Lat.], an action allowed to a buyer by which to annul the sale of some movable, and to oblige the seller to take it back again upon the buyer finding it damaged, or that there was some deceit.—*Civ. Law; Sand. Just.*

Re-disseisin, a disseisin made by him who once before was bound and adjudged to have disseised the same person of his lands or tenements.—*Fitz. N. B.* 188; 1 *Reeves*, 263.

Redistribution of Seats (in the House of Commons). See HOUSE OF COMMONS.

Reditus albi, white rents—quit-rents by freeholders or ancient copyholders of a manor, reserved in silver or white money.—2 *Bl. Com.* 42.

Reditus assisus, a set or standing rent.

Reditus capitales, chief rents paid by freeholders to go quit of all other services.

Reditus nigri, *black-mail*, quit-rents paid in work, grain, or base money, as distinguished from *reditus albi*, or rents paid in silver.—2 *Bl. Com.* 43.

Reditus quieti, quit-rents; see that title.

Reditus siccus, a rent seck, or barren, the owner of which has neither seigniory nor reversion, nor any express power of distress reserved to him. See RENT.

Redmans, or **Radmans,** men who, by the tenure or custom of their lands, were to ride with or for the lord of the manor about his business.—*Domesday.*

Re-draft, a second bill of exchange.

Redubbers, persons who bought stolen cloth and turned it into some other colour or fashion, that it might not be known again. —3 *Inst.* 134.

Reductio ad absurdum, the method of disproving an argument by showing that it leads to an absurd consequence.

Reduction, an action for the purpose of setting aside or rendering null and void some deed, will, right, etc.—*Bell's Scots Law Dict.*

Reduction ex capite lecti. By the law of Scotland the heir in heritage was entitled to reduce all voluntary deeds granted to his prejudice by his predecessor within sixty days preceding the predecessor's death; provided the maker of the deed, at its date, was labouring under the disease of which he died, and did not subsequently go to kirk or market unsupported.—*Bell's Scots Law Dict.* But such reductions have now been abolished by the Reductions *ex capite lecti*.—Abolition Act, 1871 (34 & 35 Vict. c. 81).

Reduction Improbation, one form of the action of reduction in which falsehood and forgery are alleged against the deed or document sought to be set aside.—*Scots Law.*

Redundancy, unnecessary or foreign matter inserted in a pleading.

Re-entry, the resuming or retaking that possession which one has lately foregone. A clause of this nature, called a 'proviso for re-entry,' is inserted in every properly drawn lease, empowering the lessor to re-enter upon the demised premises if the rent is in arrear for a certain period, e.g., twenty-one days, or if there shall be any breach of the lessee's covenants. A proviso for re-entry, strictly speaking, is only applicable to corporeal hereditaments; see *Sitwell* v. *Londesborough* (*Earl of*), 1905, 1 Ch. p. 465. A proviso for re-entry for *breach of covenant* has been denounced by a judge of the greatest eminence as 'a most odious stipulation' (*Hodgkinson* v. *Crowe*, (1875) L. R. 10 Ch. p. 626, per Sir Wm. James, L.J.), but in practice is certainly common enough. A proviso confined to the case of *non-payment of rent* is a 'usual' stipulation: see *Re Anderton*, (1890) 45 Ch. D. 476. A lease under the Settled Land Act, 1882, must contain a condition of re-entry on the rent not being paid within a specified time not exceeding thirty days (Settled Land Act, 1882, s. 7, sub-s. 3, reproduced and amended by s. 42, Settled Land Act, 1925; *Sitwell* v. *Londesborough* (*Earl of*), *ubi sup.*); see also Conveyancing Act, 1881, s. 18 (7), now Law of Property Act, 1925, s. 99. See FORFEITURE.

Reeve [fr. *gerefa*, Sax.], a steward or bailiff. See DYKE-REEVE; FIELD-REEVE.

Re-examination, an examination of a witness after a cross-examination upon matters

arising out of such cross-examination. If the re-examination disclose new matter which the cross-examining party could not anticipate, the Court in its discretion may permit him to cross-examine upon it.

Re-exchange is 'the difference in the value of a bill occasioned by its being dishonoured in a foreign country in which it was payable. The existence and amount of it depend on the rate of exchange between the two countries. The theory of the transaction is this: a merchant in London endorses a bill for a certain number of Austrian florins, payable at a future date in Vienna. The holder is entitled to receive in Vienna, on the day of the maturity of the bill, a certain number of Austrian florins. Suppose the bill to be dishonoured. The holder is now, by the custom of merchants, entitled to immediate and specific redress by his own act in this way: he is entitled, being in Vienna, then and there to raise the exact number of Austrian florins by drawing and negotiating a cross-bill, payable at sight on his endorser in London, for as much English money as will purchase in Vienna the exact number of Austrian florins at the rate of exchange on the day of dishonour; and to include in the amount of that bill the interest and necessary expenses of the transaction.'—*Byles on Bills.*

Re-extent, a second extent on lands or tenements, on complaint that the former was partially made, etc.

Re. Fa. Lo., the abbreviation of *recordari facias loquelam*, which see.

Refare, to bereave, take away, rob.

Referee, one to whom anything is referred; an arbitrator. Also, persons to whom are referred questions as to the *locus standi* of petitioners against private parliamentary Bills. Consult the works of *Smethurst* or *Clifford and Stephens* hereon.

Panels of referees are appointed to decide technical questions on appeal from departmental authorities under various statutes, see 8 & 9 Geo. 5, c. 13 (licensing of stations); as to bulls, see that title; on valuation of machinery, see Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), s. 24; also Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), and other Acts. Reference committees may be appointed under the Acquisition of Land (Assessment of Compensation) Act, 1929; Landlord and Tenant Act, 1927 (15 & 16 Geo. 5, c. 20), for compensation; and the Law of Property Act, 1925, in relation to releases or otherwise from restrictive covenants.

By s. 38 of the Workmen's Compensation Act, 1925, legally qualified medical practitioners may be appointed as medical referees for the purposes of that Act. As to the appointment of referees under the Coal Mines Act, 1911, see s. 117; and as to courts of referees under the Unemployment Insurance Act, 1935 (25 & 26 Geo. 5, c. 8), s. 41.

Reference was the sending of any matter of inquiry by the Court of Chancery to a chief clerk, a taxing master, or a conveyancing counsel, that he might examine it and certify the result to the Court. References in cases involving matters of account were also frequently made to the masters of the Courts of Common Law under the C. L. P. Acts.

The Judicature Acts and rules did not repeal the powers of reference to masters under the Common Law Procedure Acts (Judicature Act, 1873, s. 83) (see now Jud. Act, 1925, s. 125), but made provision for attaching to the Supreme Court permanent official referees, and four official referees were appointed shortly before that Act came into operation. To any of such official referees, or to a special referee, questions arising in an action may, by Jud. Act, 1925, ss. 88, 89, be referred: (1) subject to the right to a jury, for inquiry and report; or (2) where the parties consent, and also without such consent in any cause 'requiring any prolonged examination of documents or accounts or any scientific or local investigation which cannot, in the opinion of the Court, conveniently be made before a jury, or conducted by the Court through its other ordinary officers,' for trial.

The Arbitration Act, 1889 (52 & 53 Vict. c. 49), as amended by the Arbitration Act, 1934 (24 & 25 Geo. 5, c. 14), has amended and consolidated the law of references. See also ARBITRATION.

Reference, Incorporation by, of an earlier statute by a later one, judicially stigmatized in *Knill* v. *Towse*, (1889) 24 Q. B. D. 186, and *Chislett* v. *Macbeth & Co.*, 1909, 2 K. B. at p. 815. See ACT OF PARLIAMENT.

Referendary, one to whose decision anything is referred.—*Cowel: Spelm.*

Referendum, a note addressed by an ambassador to his own government touching a proposition as to which he is without power and instructions.

Also, a mode, obtaining in Switzerland, and, under the Borough Funds Act, 1872 (35 & 36 Vict. c. 91), s. 4 (now repealed by the Local Government Act, 1933), and replaced by s. 255 and the 9th Sched., *ibid.*, in

England, of appealing from an elected body to the whole body of electors.

Reform Acts (2 & 3 Wm. 4, c. 45 (1832), 30 & 31 Vict. c. 102 (1867)), commonly called the Representation of the People Acts; and the Representation of the People Act, 1884 (48 Vict. c. 3) : Acts for extending the parliamentary franchise. The Acts of 1832 and 1867 applied to England and Wales only, there being separate Acts for Scotland and Ireland at the same period : the Act of 1884 applied to Scotland and Ireland as well. See now Representation of the People Act, 1918 (7 & 8 Geo. 5, c. 64) (England, Wales and Scotland).

Reformatory Schools. Sect. 44 of the Children Act, 1908, defined a ' reformatory school ' as ' a school for the industrial training of youthful offenders, in which youthful offenders are lodged, clothed, and fed, as well as taught.' As to the present law, see APPROVED SCHOOLS.

Refraction, reparation of a building.—*Civ. Law.*

Refresher. A further or additional fee allowed to counsel when a case heard on *viva voce* evidence lasts longer than one day. The allowance of refreshers is regulated by Ord. LXV., r. 27 (48).

Refreshment House, a house, etc., ' kept open for public refreshment, resort, and entertainment between 10 p.m. and 5 a.m.' (24 & 25 Vict. c. 91, s. 8), to keep which an Inland Revenue licence only is required, unless wine, etc., be sold therein, in which case a licence from the justices of the peace is required also. See also Refreshment Houses Act, 1860 (23 & 24 Vict. c. 27), and 39 & 40 Vict. c. 16, s. 4, as to wine licences and subsequent Licensing Acts, and 10 Edw. 7 & 1 Geo. 5, c. 24, s. 1, as to the certificates of justices. See PUBLIC-HOUSE CLOSING ACT; *Chit. Stat.*, tit. ' *Refreshment House.*'

Refusal, where one has, by law, a right and power of having or doing something of advantage, and he declines it.

Regale episcoporum, the temporal rights and privileges of a bishop.

Regalia, the royal rights of a sovereign, which the civilians reckon to be six—viz., power of judicature, of life and death, of war and peace, masterless goods, as waifs, estrays, etc., assessments, and minting of money.

The crown, sceptre and other articles used at a coronation are also commonly called the regalia. For an account of the extraordinary attempt made by Col. Blood in 1673 to steal them from the Tower, see *Scott's Peveril of the Peak, Centen. Ed.*, note BB.

Regalia facere, to do homage or fealty to the sovereign by a bishop when he is invested with the regalia.

Regality, a territorial jurisdiction in Scotland conferred by the Crown. The lands were said to be given *in liberam regalitatem,* and the persons receiving the right were termed lords of regality.—*Bell's Scots Law Dict.*

Regard, Court of, a tribunal held every third year for the lawing or expeditation of dogs, to prevent them from chasing deer.

Regard of the Forest, the oversight or inspection of it, or the office and province of the regarder, who is to go through the whole forest, and every bailiwick in it, before the holding of the sessions of the forest, or justice-seat, to see and inquire after trespassers, and for the survey of dogs.—*Manw.*

Regardant, Villein, or **Regardant to the Manor,** an ancient servant or retainer annexed to the manor or land, who did the base services within the manor.—*Co. Litt.* 120.

Regarder of the Forest, an ancient officer of the forest, whose duty it was to take a view of the forest hunts, and to inquire concerning trespasses, offences, etc.—*Manw.*

Rege inconsulto, a writ issued from the sovereign to the judges not to proceed in a cause which may prejudice the Crown until advised.—*Jenk. Cent.* 97.

Regency, a temporary monarchy—the rule of a person appointed to administer a kingdom during the incapacity, minority, or absence of the sovereign. The Regency Act, 1937 (1 Edw. 8 & 1 Geo. 6, c. 16), provides for the person next in line of succession to the Crown, if qualified, to be the ' Regent ' during the minority or incapacity of the Sovereign.

Regest [fr. *registum,* Lat.], a register.—*Milton.*

Regiam Majestatem, a collection of the ancient laws of Scotland. It is said to have been compiled by order of David I., King of Scotland, who reigned from A.D. 1124 to 1153.—*Hale's Hist.* 271.

Regicide, the murder of a sovereign ; also the murderer.

Regimental Debts Act, 1893 (56 & 57 Vict. c. 5), and the regulations made thereunder, provide for the payment of certain debts of a deceased person who was subject to military law out of the proceeds of his property in camp, etc., which property is to be seized by the committee of adjustment (*q.v.*).

Regio assensu, a writ whereby the sove-

reign gives his assent to the election of a bishop.—*Reg. Brev.* 294.

Register [fr. *giter*, Fr., to lodge], a public book serving to enter and record memoirs, Acts, and minutes, to be had recourse to for the establishing matters of fact; as the register of companies under the Companies Act, 1929; of bills of sale under the Bills of Sale Acts, 1878 and 1882; and Administration of Justice Act, 1925, s. 23; of births, deaths, and marriages, and of baptisms; and of parliamentary, municipal, county, district, and parochial electors.

Register of Writs, an old book in which new forms of original writs were entered. The Register of Writs is said to be the oldest book in the law—a character which may, in a great measure, be true, but should not be allowed without some consideration. It is not more certain than extraordinary that the forms of writs were settled in their substance and language very nearly in the manner in which they were drawn ever after. However, this uniformity was not so exact as that the writs published and used in the reign of Henry VIII. were all of them identically the same with those used at the first origin of this invention, in the reign of Henry II. It is not to be wondered at that there should be a difference in these forms at their infancy, and at this advanced state of our law; but it is remarkable that the difference should be so small.—4 *Reeves*, 426; *Co. Litt.* 16 *b*, 37 *b*, 159 *a*.

Registrar, or **Registrary,** an officer whose business is to write and keep a register; as the Registrars of the Chancery Division of the High Court, who draw up the orders of the Court (see R. S. C. Ord. LXII.; *Dan. Ch. Pr.*; *Seton on Judgments*); the Registrar of a County Court under s. 1 of the County Courts Act, 1924. See now County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), ss. 16 *et seq.*: of solicitors, of which the Law Society shall perform the duties, Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37), s. 1 (see INCORPORATED LAW SOCIETY); of friendly societies under the Friendly Societies Act, 1896, and many other statutes. See, e.g., COMPANIES; REGISTRATION OF TITLE.

Registrar, District. See DISTRICT REGISTRAR.

Registrar-General. See REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES (*Civil Registration*).

Registrar-General of Shipping and Seamen. To secure the great object of affording general information from time to time as to the state of our mercantile marine, it is provided that there shall be in the Port of London a 'General Register and Record Office for Seamen,' under the management of this officer. See Merchant Shipping Act, 1894, ss. 251 *et seq.*

Registrarius, a notary or registrar.

Registration for Preservation. In Scotland any deed may be registered in the books of Council and Session for preservation (stamp 10*s.*); official extracts are equivalent to originals. See also WILLS.

Registration of Births, Deaths, and Marriages.

Ecclesiastical Registration. — The 70th Canon made in 1603 directs the churchwardens of every parish to provide a register, and the minister to enter baptisms, marriages, and burials therein; and the Parochial Registers Act, 1812 (52 Geo. 3, c. 146), directs the rector, vicar, curate, or officiating minister to make and keep similar registers, the books to remain in their custody in an iron chest, and copies thereof to be transmitted annually to the registrars of each diocese. So much of this Act as related to marriages was repealed by the Births and Deaths Registration Act, 1836. Consult *Hubback on Succession*, pp. 469 *et seq.*

Civil Registration.—A general registry office was established by the Births and Deaths Registration Act, 1836 (6 & 7 Wm. 4, c. 86), by which district registrars are directed to send copies of registers of births, deaths, and marriages to superintendent registrars, who forward them to the Registrar-General. This Act was amended by the Births and Deaths Registration Act, 1837 (7 Will. 4 & 1 Vict. c. 22), and by the Marriage and Registration Act, 1856 (19 & 20 Vict. c. 119). The duty of registering births is thrown on parents and others, and the duty of registering deaths is thrown on relatives and others by the Births and Deaths Registration Acts (37 & 38 Vict. c. 88 and 5 & 6 Geo. 5, c. 64); the Births and Deaths Registration Act, 1926 (16 & 17 Geo. 5, c. 48), as amended by the Public Health Act, 1936, and the Registration (Births, Stillbirths, Deaths and Marriages) Consolidated Regulations, 1927 (S. R. & O., 1927, No. 485).

The registration of births, deaths and marriages occurring outside the United Kingdom among officers and soldiers in the army and their families is regulated by the Registration of Births, Deaths and Marriages (Army) Act, 1879 (42 & 43 Vict. c. 8); and see BIRTHS, MARRIAGES AND DEATHS.

Registration of Charges on Land, for the registration of charges affecting land, and

for the protection of purchasers for value of the land in case of non-registration; and for allowing searches of the registers on payment of fees. See LAND CHARGES.

Registration of Companies. See COMPANY.

Registration of Copyright. The Copyright Act, 1842, authorizing in every case of copyright the registration of the title of the proprietor at Stationers' Hall, and providing that, without previous registration, no action should be commenced, was repealed by the Copyright Act, 1911, and no such registration is now necessary.

Registration of Deeds and Wills affecting Land. See MIDDLESEX; YORKSHIRE; BEDFORD LEVEL.

Registration of Electors. The representation of the People Act, 1918, provides for the preparation of a spring and an autumn register in each year by the registration officer for each parliamentary borough or county. This officer is the clerk of the county or the town clerk (see Part II. of the Act, ss. 11 *et seq.*). See (as amended 12 & 13 Geo. 5, c. 12, and Local Gov. Act, 1933 (23 & 24 Geo. 5, c. 51).

Registration of Title to Land. The Land Registration Act, 1925 (15 Geo. 5, c. 21), repeals and re-enacts the Land Transfer Acts, 1875 (38 & 39 Vict. c. 87) and 1897 (60 & 61 Vict. c. 65), with amendments in keeping with innovations which were introduced by the property laws of 1925. Its object is to simplify the indicia of land ownership and transfer by mere inscription and transcription in a register. The advantages which are claimed for the system are (*a*) purchasers for value of an absolute or good leasehold title are absolved from any inquiry into the title other than it is shown to be on the register; (*b*) certain equitable claims which would be binding on the land under the general law and cannot be removed or over-reached without onerous formalities do not affect such purchasers; (*c*) the method of conveyance or charge is simple; (*d*) subject to the statutory provisions, registration guarantees the title to purchasers for value and mortgagees. It should be observed that mines and minerals which have been excepted from a grant of land are not guaranteed unless separately registered. All registered land, irrespectively of the nature of title, remains subject to 'over-riding interests.' See below, notwithstanding registration.

All estates and interests in land which come under the description of 'legal estates' in s. 3 of the L. R. Act, 1925, and ss. 1 and 205 of the Law of Property Act, 1925, may, and in districts where registration is compulsory must, as a rule be registered except leaseholds having not more than 21 years unexpired, and except all mortgage terms where there is a subsisting right of redemption (see s. 8, Land Registration Act, 1925). But the latter exception has little practical importance, for the reasons that charges, which for all practical purposes are equivalent to a mortgage, may be registered under s. 25 of the L. R. Act, 1925 (see s. 27, *ibid.*, and see ss. 86 and 87 of the Law of Property Act, 1925).

Registration is compulsory in the counties of London, Middlesex (*q.v.*), County Borough of Eastbourne (Order in Council, S. R. & O., 1926, No. 1262, as from 1st January, 1925). and County Borough of Hastings (O. C., 1928, No. 253, as from 1st January, 1929). Compulsory registration may be introduced in any county or part of a county by Order in Council at the instance of a county, or county borough council, or otherwise (see ss. 120 *et seq.*). In a compulsory area, land may but need not be registered until, in the case of freehold land, a sale takes place, and in the case of leasehold land, a grant or sale of a term thereout having not less than forty years to run is effected. The penalty for not registering land in a compulsory area within two months from the date of conveyance is that the purchaser will not acquire the legal estate, and until that takes place the purchaser is open to the risk of the vendor establishing or perfecting equities against him and even fraudulently conveying the same land to another purchaser, who may obtain a perfect title if he registers his conveyance before the prior purchaser.

Freehold land may be registered with absolute, qualified, or possessory title, leaseholds of which more than twenty-one years are still unexpired, with absolute, qualified, good leasehold, or possessory title. Registration with absolute title, of either tenure, confers on purchasers for value all the advantages referred to. Registration with qualified title is granted where it appears to the registrar that the title can only be established for a limited period or subject to reservations. Registration in this form is seldom effected. Registration with possessory title gives the registered proprietor no guarantee of title other than the registered title for what that may be worth, nor does it absolve a purchaser from inquiring into the vendor's title under the

general law prior to registration (ss. 6 and 20 (3)). But a possessory registered title confers on the registered proprietor and purchasers from him all the advantages of registration in respect of matters arising subsequently to registration, and further, under s. 77, the registrar may change the possessory into absolute title under the statutory conditions if the land was registered before the 1st January, 1926, or, if first registered after that date the title has been possessory for fifteen years (Law of Property Act, 1925, s. 172).

The same incidents, according to the quality of the title, attach to registered leaseholds to the extent of the term and estate which has been registered.

Registration with 'good leasehold' title confers the same privileges and is subject to the same incumbrances and interests (if any) as registration with 'absolute' title, except that 'good leasehold' does not include a guarantee of the lease itself. Registration with qualified title is the same as 'absolute' but without prejudice to any excepted rights appearing on the register. Registration with possessory title gives such privileges as are conferred on possessory titles of freeholds and no more to the extent of the registered leasehold estate.

A purchaser for value of registered land with any title but possessory is not affected by trusts, express, implied, or constructive (s. 74). A possessory title is affected by trusts arising prior to the first registration, of which the purchaser has actual or constructive notice either upon investigation of title or otherwise if these trusts have not been over-reached upon conveyance under the Law of Property or Settled Land Acts, 1925.

The incumbrances and other liabilities to which all registered land is subject are :—

(*a*) All entered on the register at the time of first registration.

(*b*) Those entered subsequently to the first registration.

(i.) Charges (s. 25).
(ii.) Notices of leases (s. 48).
(iii.) Annuities and rentcharges (s. 49).
(iv.) Severance of mines and minerals (s. 49).
(v.) Land charges under the Land Charges Act, 1925 (ss. 3, 49 and 59, L. R. Act).
(vi.) Widow's rights.
(vii.) Notices by creditors and others (ss. 49, 59 and 61).
(viii.) Restrictive covenants (s. 50).
(ix.) Manorial incidents (s. 51).
(x.) Certain over-riding incidents (s. 70 (3)).
(xi.) Notice of lien by deposit of certificate (s. 66).
(xii.) Priority notices (s. 88).
(xiv.) Notices as to a sole trustee of registered land (s. 99).

The priority of these incumbrances is regulated by the date of entry on the Land Register. It should be observed that registration under the Land Charges Act, 1925, does not affect registered land (see s. 110 (7) L. R. Act, and Land Charges Act, 1925, s. 23 (1)), except local land charges, which obtain priority according to the date of registration in the local register. Under the Land Charges Act, s. 15 (8), incumbrances are protected (1) by means of caution or restriction against the registered proprietor (ss. 54 and 58). Strictly speaking, cautions and restrictions are not incumbrances on the land, but they serve to give the persons entitled time to assert their rights, if any. (2) By entry or notice of the incumbrance (s. 79 and L. R. R. 1925, 190); on the charges register (s. 25). (3) In addition to these, s. 57 confers a remedy styled inhibition, which is analogous to an injunction. As to bankruptcy, s. 61 and L. R. R. 1925, 229, provide for bankruptcy and priority inhibitions.

A large number of incumbrances in the usual and even the legal sense of the term are protected by law and are not prejudiced or affected by registration of the land under the L. R. Act, 1925. Such incumbrances are included in the term 'over-riding interests,' a list of which is given in s. 70. Rights to mines and minerals are over-riding interests on land registered before 1898, and so are all such rights if created before first registration of the land after 1898 and before 1926. Mines and minerals in respect of land registered after 1925 are now included in the word 'land' by the Act, subject to its provisions. Persons interested in the transfer or charge of registered land should be careful to make all proper inquiries outside the Land Registry in regard to the many important incumbrances, claims, charges and other matters included in the list contained in s. 70.

Claims by beneficiaries and others which would be over-reached upon sale by trustees for sale or under the Settled Land Act, 1925, or otherwise as provided by the Law of Property Act, 1925 (see s. 2, *ibid.*), are not

over-riding interests and are classed among minor interests (see ss. 3 (xv.), 101 to 103, 105), and being equitable will be over-ridden by a registered disposition for value subject to the entries on the register. A purchaser for value is not concerned with anything not appearing on the register, but, as between minor interests, those interests, which, if the Law of Property Acts, 1922 and 1925, had not been passed, would have been legal estates, have priority over other minor interests, and as regards dealings effected after 1925 between assignees and incumbrancers of life interests, remainders, reversions and executory interests, priority is established by order of special priority cautions or inhibitions, noted in a '*Minor Interests Index*,' which does not concern a purchaser of the land from a registered proprietor. Death duties after 1925, even if registered, do not affect a purchaser for money or money's worth of registered land, but with that exception they affect the registered proprietor and the land if entered on the register (see s. 73).

On first registration the first registered proprietor of any land is affected by all minor interests of which he has notice under the general law, and subsequent registered proprietors not being purchasers for value are under the same liability in regard to minor interests which affected the registered proprietor at the time of transfer to them (s. 20 (4)).

Upon registration the proprietor becomes entitled to the issue to him of a certificate called the 'Land Certificate' or Charge Certificate, as the case may be, which is evidence of the matters appearing therein (s. 58). The land certificate is conclusive evidence of the state of the register up to the time but not later than the date of its last issue from the registry. Subsequent entries (if any) are ascertained by inquiry at the Land Registry. The certificate must, as a rule, be produced by any person requiring an entry or notice on the register, and must be produced at the registry and endorsed on every important dealing by the proprietor (see s. 64). The register is in three parts :—

1. The property register, or parcels by reference to the Land Registry General Map or to a filed plan.

2. The proprietorship register, stating the nature of the title, e.g., absolute, good leasehold, possessory, etc., and the name and description of the registered proprietor.

3. The charges register, notifying incumbrances, e.g., registrable leases, and charges, mortgages, restrictive covenants, etc.

As a rule (see L. R. Rules, 1925, 287 to 297), no one but the proprietor of the land or of any charge or incumbrance thereon may inspect any entry on the register or any document in the custody of the registrar without authority of the proprietor of the land or any such charge or incumbrance. Any person authorized to inspect may apply for an official search against the title, charge or incumbrance, and obtain a certificate of the result from the registrar. The certificate is conclusive and comprehensive of all registered matters affecting the title or object of search. The search at the Land Registry is more conveniently practical for intending purchasers or incumbrancers than a search under the Land Charges Act, 1925, which must be made by reference to the names of proprietors and incumbrancers, who may be numerous and not easily identified. The search at the Land Registry is made by reference to the land registered and is made possible by the system of mapping and indexing, which has been brought to great perfection at the registry. For the practice and procedure fees and legal charges at the Land Registry, consult *Fortescue-Brickdale and Steward-Wallace* on the Land Registration Act, 1925.

Registration of Trade Marks. See TRADE MARKS.

Registrum Brevium, a register of writs. See WRIT.

Registry, District. See DISTRICT REGISTRIES.

Registry of Ships. The registry of ships appears to have been introduced into this country by the Navigation Act (12 Car. 2, c. 18, A.D. 1660); several provisions were made with respect to it by 7 & 8 Wm. 3, c. 22, and the whole was reduced into a system by the 27 Geo. 3, c. 19. It is now provided for by Part I. of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), *Chit. Stat.*, tit. '*Shipping*,' by which (s. 2) every British ship must be registered under the Act, except (s. 3) 'ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of the ships are resident,' and 'ships not exceeding thirty tons burden, and not having a whole or fixed deck and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the Gulf of Saint Lawrence, or

on such portions of the coasts of Canada as lie bordering on that gulf.'

Regius Professor, a royal professor, or reader of lectures, founded in the universities by the King. Henry VIII. founded in each of the universities of Oxford and Cambridge five professorships—viz., of Divinity, Greek, Hebrew, Law, and Physic.

Regnal Year. The year as calculated from the sovereign's accession to the throne—e.g., 6 Geo. V. means the sixth year since the accession of George the Fifth on May 6th, 1910, i.e., 6th May, 1915, to 5th May, 1916. For Table of Regnal Years, see *Chitty's Statutes*, vol. xvi., p. 53.

Regnant, reigning, having regal authority. See KING; and 2 *Steph. Com.*

Regni populi, a name given to the people of Surrey and Sussex, and on the sea-coasts of Hampshire.—*Blount.*

Regnum ecclesiasticum, the ecclesiastical kingdom.—2 *Hale's Hist. P. C.* 324.

Regrating, buying corn, etc., in any market, and selling it again in or near to the same place. It was illegal, but is, by 7 & 8 Vict. c. 24, now no longer so. See FORESTALLING THE MARKET.

Regress, Letters of. They were granted by the superior of lands mortgaged to the wadsettor or mortgagor. Their object was this: by the wadset or mortgage, the mortgagor was completely divested, and when he redeemed, he appeared to claim an entry from the superior as a stranger, and the superior was no more bound to receive the mortgagor than he would have been forced to receive any third party; to remedy this, letters of regress were granted by the superior under which he became bound to re-admit the wadsettor at any time when he should demand entry.—*Bell's Scots Law Dict.*

Regulæ generales (General Rules), which the courts promulgate from time to time for the regulation of their practice. Before the Judicature Act the more important of these were those promulgated in Hilary Term, 1853, abbreviated as '*R. G. H. T.* 1853.' Since the Judicature Act the description is 'Rules of the Supreme Court,' abbreviated as 'R. S. C.'

Regular Clergy, the monks, who lived *secundum regulas* of their respective houses or societies.—2 *Steph. Com.*

Regulars, those who profess and follow a certain rule of life (*regula*), belonging to a religious order, and observe the three approved vows of poverty, chastity, and obedience.

Rehabere facias seisinam, a judicial writ which lay when the sheriff in the *habere facias seisinam* had delivered more than he ought.—*Rep. Judic.* 13.

Rehabilitate, to restore a delinquent to former rank, privilege, or right; to qualify again; to restore a forfeited right.

Re-hearing. See APPEAL.

Reif [fr. *refian*, Sax.], a robbery.

Re-insurance or **Re-assurance,** a contract by which a first insurer relieves himself from the risks which he has undertaken, and devolves them upon other insurers, called re-insurers or re-assurers.

Rejoinder, a defendant's answer to a plaintiff's reply, which must have been delivered within four days after notice, unless the defendant was under any terms of 'rejoining gratis,' which meant rejoining within four days from the delivery of the replication without a notice to rejoin, or a demand of a rejoinder.

By R. S. C. 1883, Ord. XXIII., no pleading subsequent to reply, other than a joinder of issue, may be pleaded without leave, except in Admiralty actions, and subject to this rule every pleading subsequent to reply must be delivered within four days after the delivery of the previous pleading. The pleadings subsequent to reply are Rejoinder, Surrejoinder, Rebutter and Surrebutter (see those titles).

Relation, where two different times or other things are accounted as one, and by some act done the thing subsequent is said to take effect 'by relation' from the time preceding. Thus letters of administration relate back to the intestate's death, and not to the time when they were granted; see *Re Pryse*, 1904, P. 301; *Foster* v. *Bates*, (1843) 12 M. & W. 226. See FORFEITURE; BANKRUPTCY; TRESPASS.

Relations, a general word meaning, *primâ facie*, next-of-kin of any degree or, colloquially, kindred of all degrees.

Relator, a rehearser, teller, or informer. It was the name given to a plaintiff in an information in Chancery, where the rights of the Crown were not immediately concerned, who was responsible for costs; he must have given the solicitor a written authority to file the information.—15 & 16 Vict. c. 86, s. 11. For the former information in Chancery an action is now substituted (see R. S. C. Ord. 1., r. 1), but the term 'relator' is still in use as meaning the person responsible for costs at whose suggestion an action is commenced by the Attorney-General.

Also, a person who brings an information in

the nature of a *quo warranto*, or a criminal information.

Release [fr. *relaxatio*, Lat.], a gift, discharge, or renunciation of a right of action (see SURETY, CONSIDERATION); also a Common Law conveyance of a larger estate, or a remainder, or reversion to one already in possession, the operative verb in which is 'release'; hence the name. It operates or inures in five modes:—

(*a*) By passing an estate to one or more already in possession (*mitter l'estate*), as where a coparcener conveys his estate to his coparcener, or where one of more than two joint tenants conveys his interest to one or more but not all of the others so as to sever that share. It also operates without *mitter l'estate* where one joint tenant releases his estate to the other, or all the other joint tenants so as not to create a severance. See *Halsbury, L. of E.*, tit. '*Release*.' In consequence of the privity between such parties, a fee-simple will pass without any words of limitation. Tenants in common, however, could not thus release to one another, since they had distinct interests in the property. They now are equitably interested only in proceeds of sale. See UNDIVIDED SHARES, and the question of the release of a legal estate does not arise, but the interest can be released.

(*b*) By transferring a right (*mitter le droit*), as in the case of a disseisee discharging his right to a disseisor, his heir, or grantee. Words of limitation are not necessary, since the subject of transfer is a simple right, which once discharged is for ever extinguished, and not an estate which may be qualified or restricted.

The difference between this and the previous mode is, that the former passes an estate, where a privity exists between the parties; this passes only a right in the absence of privity.

(*c*) By extinguishment, as the lord releasing his seigniorial rights to his tenant, or a life tenant having conveyed a greater estate than he owns, the expectant releasing his right to the tenant's grantee. A release of all demands extinguishes all actions and titles, and is the amplest discharge that can be given.

(*d*) By enlarging a particular estate into an estate commensurate with that of the person releasing; but a privity of estate must at the time exist between the releasor and the releasee, who must have an estate actually vested in him susceptible of enlargement.

(*e*) By entry and feoffment, as a disseisee releasing to one of two disseisors, who then becomes as solely seised as if the disseisee had entered upon the property, put an end to the disseisin, and then enfeoffed such disseisor. Consult *Jac. Law Dict.*; *Shep. Touch.* c. xix.

In modern practice a release generally means a discharge under seal of a right of action, or of some claim or demand upon another person—most commonly, perhaps, the formal discharge given by beneficiaries to trustees on the winding-up of a trust. A trustee cannot ordinarily insist on a release under seal; he is only entitled (in the absence of special circumstances) to a simple receipt for the funds he hands over, but in practice a release is often given him. A release, however wide its terms, does not extend beyond the matters expressly in the contemplation of the parties, and every claim intended to be released should therefore be mentioned in the recitals.

A release in general terms upon surrender of a lease does not impliedly release from past breaches of covenant, only the future. (*Richmond* v. *Savill*, 1926, 2 K. B. 530.) Consult *Dav. Prec. in Con.*, vol. v., pt. ii.

Releasee, the person to whom a release is made.

Releaser or **Releasor,** the maker of a release.

Relegation, exile; judicial banishment.

Abjuration, i.e., a deportation for ever into a foreign land, is a civil death; relegation is banishment for a time only.—*Co. Litt.* 133 *a*. In Rome, relegation was a less severe punishment than deportation, in that the relegated person did not thereby lose the rights of a Roman citizen, nor those of his family, as the authority of a father over his children, etc.—*Sand. Just.*

Relevancy. In Scots law the relevancy is the justice or sufficiency in law of the allegations of a party. A plea to the relevancy is therefore analogous to the demurrer of the English courts.

Relevant, applying to the matter in question; affording something to the purpose; especially of evidence as meaning supporting the contention of a party to a suit.

Relict, a widow.

Relictâ verificatione. Where a judgment was confessed by *cognovit actionem* after plea pleaded, and the plea was withdrawn, it was called a confession or *cognovit actionem relictâ verificatione*.—2 *Chit. Arch. Prac.*

Formerly, a defendant who had pleaded a bad plea which was demurred to, could

withdraw it by entering a *relictâ verificatione*, upon which he would not have to pay costs until the plaintiff obtained judgment in the action; but by Reg. Gen. H. T. 1853, r. 8, 'a defendant shall not be at liberty to waive his plea, or enter a *relictâ verificatione* after a demurrer, without leave of the Court or a judge, unless by consent of the plaintiff or his attorney.'—2 *Chit. Arch. Prac.*

Reliction, the sudden recession of the sea from land. See Derelict Lands.

Relief, legal remedy for wrongs, etc.; charitable assistance.

In the feudal law a payment made to the lord by the tenant coming into possession of an estate held under him. Abolished with other feudal grievances.

Relief with respect to Election Offences. If a candidate at a parliamentary or municipal election has become responsible in respect of an election offence committed unwittingly, or which he has taken all reasonable means to prevent, he can apply for relief at the trial of an election petition, or if no petition is on the record, to the High Court, under Corrupt and Illegal Practices Prevention Act, 1883 (46 & 47 Vict. c. 51), the application being usually to a Divisional Court: see *Shaw* v. *Reckitt*, 1893, 1 Q. B. 779; 2 Q. B. 59; and as to municipal elections under the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, ss. 7 and 8, see *Nichol* v. *Fearby*, 1923, 1 K. B. 480.

Relief against Forfeiture of Lease. See Forfeiture; and see Trustees.

Religion. To deny the Christian religion, after having been brought up in or professed it, is an offence against the Blasphemy Act (see Blasphemy): and the uniformity of religious worship in the Church of England is enjoined by the Act of Uniformity (14 Car. 2, c. 4); but restrictions on religious worship by Nonconformists are removed by the Toleration Act (1 W. & M. c. 15), and other Acts. The Roman Catholic Relief Act, 1829, however, subjects Jesuits and members of other religious orders in the Church of Rome (except nuns) to banishment for life; but this part of the Act is virtually a dead letter: see *Re Smith*, 1914, 1 Ch. 937. See Jesuits; Roman Catholics; and *Chitty's Statutes*, tit. '*Religious Worship*.'

Religious Men [fr. *religiosiat.*], such as entered into some monastery or convent, there to live devoutly. They were held to be *civiliter mortui*.

Relinquishment, forsaking, or giving up.

Reliqua, the remainder or debt which a person finds himself debtor in upon the balancing or liquidation of an account. Hence *reliquary*, the debtor of a *reliqua*; as also a person who only pays piecemeal.

Reliques, remains, such as the bones, etc., of saints, preserved with great veneration as sacred memorials; they have been forbidden to be used or brought into England.—3 Jac. 1, c. 26.

Relocation, a reletting or renewal of a lease; a *tacit relocation* is permitting a tenant to hold over without any new agreement.—*Scots Law.*

Rem, Action in, in the Admiralty Court. By proceedings *in rem* the property in relation to which the claim is made, or the proceeds of such property in court, can be made available to anser the claim, and be proceeded against. See *Williams and Bruce, Adm. Pr.* 186. See Admiralty.

Rem, Information in, when any goods are supposed to become the property of the Crown, and no one appears to claim them or to dispute the title, as anciently in the case of treasure-trove, wrecks, waifs, and estrays seized by the Crown's officers. After such seizure an information was usually filed in the Exchequer, and thereupon a proclamation was made for the owner (if any) to come in and claim the effects, and at the same time there issued a commission of appraisement to value the goods, after the return of which and a second proclamation made, if no claimant appeared, the goods were supposed derelict, and condemned to the use of the Crown; and when in later times forfeitures of the goods themselves, as well as personal penalties on the parties, were inflicted by Act of Parliament for transgressions against the laws of the customs and excise, the same process was adopted in order to secure such forfeited goods for the public use, though the offender had escaped justice. See 18 & 19 Vict. c. 90 as to the Crown paying costs. See now Action. Consult *Robertson on the Crown.*

Rem, Judgment in, is an adjudication pronounced upon the status of some particular subject-matter by a tribunal having competent jurisdiction and concluding all persons (not merely the parties to the proceedings) from saying that the status of the thing adjudicated upon was not such as declared by the adjudication (*Rex* v. *Hartington*, 4 E. & B. 780; and see *Castrique* v. *Imrie*, 8 C. B. N. S. 1, 405, and L. R. 4 H. L. 414). Where a court *rei sitæ* has control over the thing and jurisdiction to decide as to its disposition, the adjudication is

conclusive against the world. See opinion of judges, per Blackburn, J., in the House of Lords, *supra*. The chief instances are in the Admiralty Courts; foreign judgments, declaring status of a ship; or in the matrimonial causes, etc.; grants of probate or administration; condemnation of goods by a competent tribunal (*Geyer* v. *Aquilar*, 7 T. R. 696; and as to highways, *Wakefield Corporation* v. *Cooke*, 1904, A. C. 31. See *The Duchess of Kingston's case*, and notes thereto, 2 *Sm. L. C.*

Remainder [fr. *remanentia*, Lat.], that expectant portion, remnant, or residue of interest which, on the creation of a particular estate, is at the same time limited over to another, who is to enjoy it after the determination of such particular estate.

After 1925 remainders can operate only as equitable interests, and in that manner they can be created in respect of personalty as well as realty. The following explanation of legal remainders has been retained as relating to titles to land existing before 1926, and see Law of Property Act, 1925, s. 4, as to the construction of equitable interests.

A remainder may be limited in all freehold estates, but not strictly and technically in chattels real and personal, although these may be limited over after a previous limitation or a partial interest in them. It may be limited by way of use (which is, in practice, the usual method), as well as by a conveyance deriving its effect from the Common Law.

In the same land there may at the same time be an estate in possession, and one estate or several estates in remainder, and an estate in reversion.

When the estate in possession is determined, the estate in remainder (if there be any), otherwise the estate in reversion, will become an estate in possession, with priority as to the estates in remainder, when there are several, according to the order in which they are limited.

An interest in possession and an interest in remainder or reversion are several parts of the same estate. When there are a particular estate and a remainder, the several limitations give distinct interests to the persons to whom these limitations are made.

These interests (different as they are in their nature), and also a reversion, are with reference to the person by whom the limitations are made, and the connection and relative situation of the tenants, several parts of the same estate.

Estates are said to be in remainder or reversion according to the relative situation they bear to each other.

The interest which as to one man is an estate in remainder, may, as to another person, be an estate in reversion. Thus if A. leases to B. for life, with remainder to C. in fee, and C. leases to D. for life, the estate of C. is still a remainder in reference to the estate of B., but in reference to the estate of D. it is a reversion.

So an estate which as to one person is an estate in possession, or a particular estate, may, as to another person, be an estate in reversion; and consequently there may be two reversions in the same land. As if A. lease to B. for life, B. has the possession and A. the reversion as between themselves; and if B. lease to C., then as between B. and C., C. has the possession and B. the reversion; hence the doctrine of privity of estate.

A remainder does not, like a reversion, arise by operation of law, but is always created by act of parties. It may be granted over, charged, devised, or barred by a prior tenant in tail. Mr. Burton (*Comp.* pl. 28) thus indicates the difference between a reversion and a remainder:

'If the gift were simply "to you for your life," the reversion in fee-simple would remain in the feoffor. But this consequence would be varied if the gift were "to you for your life, and after your decease to A. and his heirs"; or "to you for twenty-one years, and subject to that estate to A. and his heirs"; or "to you and the heirs of your body" (which would constitute an estate tail), "and upon your decease, and failure of your issue, to A. and his heirs." In any of these three cases A. would take an estate in fee-simple, giving him a right to the possession of the land upon the death of the feoffee, or the expiration of twenty-one years, or the extinction of the feoffee and his issue. But this estate is not called a *reversion*—as the land does not revert or return to the feoffor—but a *remainder*, being the residue or remnant of the whole estate conveyed, after subtracting the feoffee's estate; which last, in relation to the remainder, as in this, or to the reversion, as in the former, case is called the *particular estate*.'

Remainders are of three kinds:—(1) vested or executed; (2) contingent or executory; and (3) cross.

The seven following rules affecting the remainders should be observed:—

(1) There must be a present or particular estate created which, if the remainder be

vested, must be, at least, for years, but an *interesse termini* would be sufficient; or, if the remainder be contingent, it must be an estate of freehold, expressly limited, or arising by a resulting or implied use in order to give such a remainder existence. A chattel interest will not support a contingent remainder, since, while the contingency is in suspense, there must be an ulterior estate of freehold vested in some person, for otherwise there would be no vested freehold at law, which the law will not allow. There is not, however, any necessity for a preceding freehold to support a contingent remainder for years; for such a remainder not amounting to a freehold, no freehold estate appears requisite to pass out of the grantor in order to give effect to a chattel remainder.

An Act of 1844 (7 & 8 Vict. c. 76) converted future contingent remainders into executory interests which were not hampered in the same way, but the Real Property Act, 1845, repealed this Act, and restored the rules relating to contingent remainders to their pristine vigour although the Act had abolished real actions on which they were largely based. This Act, however, provided that the accidental determination by forfeiture, surrender or merger of a preceding estate of freehold should not affect the estate in contingent remainder, but it was not until the Contingent Remainders Act, 1877 (40 & 41 Vict. c. 33), was passed that the liberal purpose of the Act of 1844 was restored by providing that every contingent remainder created after the 2nd August, 1877, which would have been valid as a springing or shifting use or executory devise or other limitation had it not had a sufficient estate to support it as a contingent remainder should be capable of taking effect as a springing or shifting use or executory devise or limitation. The Act of 1877 was repealed by the Law of Property (Amendment) Act, 1924, 10th Sched.

(2) The particular estate and the remainders must be created by the same deed or instrument, but a will and codicil may be fairly denominated the same instrument, for they take effect at the same time; and a deed giving a power, and the appointment exercising such power, are esteemed the same deed.

(3) The remainder must vest in the grantee during the particular estate, or the very instant it determines. But an estate limited on a contingency may fail as to one part, and take effect as to another, wherever the preceding estate is in several persons in common or in severalty; for the particular tenant of one part may die before the contingency, and the particular tenant of another part may survive it. Posthumous children are capable of taking in remainder in the same manner as if they had been born in their father's lifetime, and the remainder vests in them while yet *in ventre matris*.—10 & 11 Wm. 3, c. 16.

(4) A contingent remainder must be limited, upon a legal event, to some one that may by common possibility be in being, at or before the determination of the particular estate.

(5) It is not necessary for the support of a contingent remainder that the preceding estate of freehold continue in the actual seisin of the rightful tenant; it is sufficient that there subsists a right to such preceding estate at the time the remainder should vest, provided such right be a present subsisting right of entry preceding the contingency, and not a right of action. It is necessary to distinguish between a right of entry and a right of action. If A. is disseised by B., then, while the possession continues in B., it is a mere possession unsupported by any presumption of right, and A. may restore his possession by an entry on the land, without any previous action. If A. enter and B. defend his possession, and the question is tried in a possessory action, the gist of it must be who has the better title to the possession, and A. must necessarily recover. Thus far the party disseised, even during the disseisin, is considered in law to be the rightful tenant. But if B. continue in the possession of the estate till his decease, the law, at his decease, casts the possession upon his heir; thus, upon B.'s decease his heir acquires the possession by act of law, and his title, though immediately derived from a person who himself acquired it by wrong, is so far respected in law that A. cannot restore his possession by entry, and can only recover it by action. This removes A.'s title one degree farther than while he could restore his possession by entry, and is therefore said to reduce him to a right of action, and it is called a right of action in contradistinction to a right of entry.

(6) Where a contingent remainder is limited to the use of several who do not all become capable at the same time, notwithstanding it vests in the person first becoming capable, yet it shall divest as to the proportions of the persons afterwards becoming capable, before the determination of the particular estate.

(7) If a condition be annexed to a particular estate, making it void on a given event, and a remainder be limited to take effect not only on the determination of the particular estate but on the destruction of that estate, by the effect of the condition the remainder is void; the Common Law rule being that a stranger shall not take advantage of a condition, but only the grantor or his heirs. But if the condition for defeating the prior estate be to operate on one event, and the remainder be to arise on another and totally different event, the remainder will not be void, but the particular estate will be discharged from the condition. If A. make a feoffment to B., a widow, for life, provided that if she marry again, then her estate shall cease, and immediately after her death *or second marriage* the estate shall enure to B. in fee, this is a bad remainder; because it is limited to take effect, not only on the determination of the widow's estate, but also on the event which is mentioned in the condition to cut that estate short—namely, her second marriage; but if the remainder had been introduced without the words in italics, then it would have been a good contingent remainder, and the condition would be viewed as surplusage.—*Fearne's Cont. Rem.* 270. So, if the limitation had been to the widow *durante viduitate*, the remainder would have been good; as then her death or second marriage would have been the natural period for the determination of her estate. But if the remainder had been introduced by the words 'from and immediately after the determination of that estate,' it would be liable to objection, on the ground that the remainder-man would be taking advantage of the condition unless the word 'determination' could be construed to refer to the death only of the widow, and not to her second marriage.

But such a remainder is supported, as a conditional limitation, in wills and conveyances under the Statute of Uses.

A remainder is to commence when the particular estate is, from its very nature, to determine; it is, as it were, a continuance of the same estate; it is a part of the same whole. A conditional limitation is not a continuance of the estate first limited, but is entirely a different and separate estate. It is not to commence on the determination of the first, but the first is to determine when the latter commences. It is the commencement of the latter which rescinds and destroys the former, and not the ceasing of the former which gives existence to the latter. The particular estate and remainders are, in fact, as the very terms imply, but one and the same estate. The estate first appointed, and the conditional limitations, are separate and distinct estates. See CONTINGENT REMAINDERS; CROSS-REMAINDERS; VESTED REMAINDER; EXECUTORY DEVISE.

Remainder-man, a general term for a person entitled to an expectant estate. See last title.

Remand, to re-commit, or send back to prison, one charged before a magistrate (see Indictable Offences Act, 1848, s. 21, and Summary Jurisdiction Acts, 1848, s. 16, and 1879, s. 24), in the first instance for the sake of allowing further evidence to be collected and adduced at a further hearing.

Remanent pro defectu emptorum (they remain unsold for want of buyers). A sheriff's return to a writ of *fi. fa.*

Remanet, the name given to a cause the trial of which has been postponed from one sittings to another. A new notice of trial does not seem to be necessary either when a cause has been made a *remanet* at the assizes, or when it has been made a *remanet* from one sittings to another, or has been put off by order of *Nisi Prius*. See *A. P.*, notes to R. S. C. Ord. XXXVI., r. 34.

Costs incurred for witnesses, etc., are allowed to the party ultimately prevailing.

Also the unexpired part of a sentence in Criminal Law. See SENTENCE.

Remedial Statutes, those which are made to supply such defects, and abridge such superfluities in the Common Law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned judges, or from any other cause. This being effected either by enlarging the Common Law where it is too narrow and circumscribed, or by restraining it where it is too lax and luxuriant, has occasioned a division of remedial Acts of Parliament into enlarging and restraining statutes.—1 *Bl. Com.* 86.

Remedy, the legal means to enforce or recover a right. Also, a certain allowance for variation from the standard weight and fineness of coins: see Coinage Act, 1870, s. 3.

Remembrancer, an officer of the Exchequer. See QUEEN'S REMEMBRANCER; now KING'S.

Remise, to surrender or return; to release.

Remission, a pardon from the Crown, passed under the Great Seal; a release.

Remitment, the act of sending back to custody; an annulment.

Remittance, money sent by one person to another, either in specie, bill of exchange, cheque, or otherwise.

Remittee, the person to whom a remittance is sent.

Remitter. Where he who has the right of entry in lands, but is out of possession, obtains afterwards the possession of the lands by some subsequent, and, of course, defective title, he is remitted or sent back, by operation of law, to his ancient and more certain title. The possession which he has gained by a bad title is *ipso facto* annexed to his own inherent good one; and his defeasible estate is utterly defeated and annulled by the instantaneous act of law, without his participation or consent. As if A. disseise B., i.e., turn him out of possession, and afterwards demise the land to B. (without deed) for a term of years, by which B. enters, this entry is a remitter to B., who is *in* of his former and surer estate. But if A. had demised to him for years by deed indented, or by matter of record, there B. would not have been remitted. For if a man by deed indented take a lease of his own lands, it shall bind him to the rents and covenants, because a man never can be allowed to affirm that his own deed is ineffectual, since that is the greatest security on which men rely in all manner of contracting. The same law holds, if it had been by matter of record, for that is of its own nature uncontrollable evidence, which a man cannot be allowed to controvert.—3 *Steph. Com.*

Remitter of Actions to County Court. See County Courts Act, 1934 (24 & 25 Geo. 5, c. 53), s. 45, which replaces the County Courts Act, 1919, s. 1, which took the place of the County Courts Act, 1888, s. 65. The High Court may remit to the County Court any action brought in the High Court where (1) the plaintiff's claim is founded either on contract or tort and the amount claimed or remaining in dispute does not exceed 100*l.*, whether the counterclaim (if any) exceeds or does not exceed 100*l.*; or (2) the only matter remaining in dispute is a counterclaim, founded on contract or tort, not exceeding 100*l.*; or (3) by s. 50, the plaintiff's claim is for recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant (or some one claiming by, through, or under him), whose term has expired or been determined or has become liable to forfeiture for non-payment of rent, and the action could have been brought in the County Court. Sect. 46 provides for the remission of any action of tort where the plaintiff has no visible means of paying the defendant's costs in the event of the claim failing. Certain equity proceedings may be transferred to the County Court (s. 54), and also certain Admiralty proceedings (s. 58) and certain probate proceedings (s. 61), application to attach debts or bring execution against members of a firm (s. 138). Interpleader issues may also be remitted to the County Court if they may be more conveniently determined there, and the amount or value of the matter in dispute does not exceed 500*l.* (Jud. Act, 1925), s. 204. See, generally, the County Courts Act, 1934.

Remittitur damnum. Where a jury gave greater damages than a plaintiff had declared for, the mistake might be rectified by entering a *remittitur* for the excess; or, if a plaintiff had signed judgment for the greater sum, the Court would give him leave to amend it, by entering a *remittitur* for the excess, even in a subsequent term and after error brought. The damages were usually remited in ejectment and replevin where judgment was signed by confession or default.—2 *Chit. Arch. Prac.*, 12th ed. 1517.

Remittitur of Record. Formerly, when a writ of error in the Exchequer Chamber abated or was discontinued, the transcript must have been remitted, and a *remittitur* entered, before a defendant could sue out execution; but this was afterwards unnecessary, for the record remained in the court below, and execution was, therefore, in all cases, issued out of that court.—*H. T.* 4 Wm. 4, r. 16.

Remoteness, want of close connection between a wrong and the injury, as cause and effect, whereby the party injured cannot claim compensation from the wrongdoer. Where the damage sustained by the plaintiff is neither the necessary nor the probable result of the defendant's conduct, nor such as can be shown to have been in his contemplation at the time, it will be excluded as too remote. Consult *Maine on Damages*, and see CAUSA CAUSANS. The term is also often used to signify an infraction of the rule against perpetuity, a limitation exceeding the prescribed limits being said to be 'void for remoteness.' See Law of Property Act, 1925, s. 163, and PERPETUITIES. Consult *Gray on Perpetuities.*

Remote impedimento emergit actio. *Wing.*

20.—(An impediment being removed, an action emerges.)

Removal of Goods to prevent Distress. See the Distress for Rent Act, 1737 (11 Geo. 2, c. 19), which, if the removal of his goods by a tenant be fraudulent, or clandestine, allows the landlord to follow and distrain upon the goods for thirty days, wherever they are. See *Woodfall, L. & T.*

Removal of Poor Person. See SETTLEMENT.

Renant, or **Reniant** [fr. *regans*, Lat.], denying.—32 Hen. 8, c. 2.

Rencounter, a sudden meeting; as opposed to a duel, which is deliberate.

Render, to yield, give again, or return.

Certain things lie in render, i.e., must be rendered or answered by the tenant, as rents, heriots, and other services.—3 *Steph. Com.*

Renegade [from the Latin *renego*, to renounce], one who has changed his profession of faith or opinion: one who has deserted his church or party. See APOSTASY.

Renewal of Lease, a re-grant of an expiring lease for a further term. Where a lease contains a covenant by the lessor for renewal, this convenant is commonly subject to the condition that the covenants in the lease shall have been performed by the lessee, and this condition is strongly enforced by the Court (*Finch* v. *Underwood*, (1876) 2 Ch. D. 310).

Leases may be surrendered in order to be renewed, without a surrender of under-leases, by virtue of the Landlord and Tenant Act, 1730 (4 Geo. 2, c. 28), s. 6, before which Act a surrender of each under-lease was necessary.

As to covenants for perpetual renewal, see *Wynn* v. *Conway Corporation*, 1914, 2 Ch. 705, and cases there referred to.

By the Law of Property Act, 1922, s. 145, and 15th Sched., perpetually renewable leases have, from the 1st January, 1926, been converted into terms of 2,000 years from the date of the commencement of the existing term. The conversion is without prejudice to the covenants and conditions of the lease or the trusts, powers, limitations, rights and equities or defects in title affecting the original term. The long term may be terminated by ten days' previous notice at any date on which the original lease would have expired, apart from renewal. Every assignment or devolution of the term is to be registered with the lessor, his solicitor, or agent, within six months at a fee of a guinea in substitution for similar covenants (if any) in the lease, and a further covenant for production of the lease and proof of right of renewal to the lessor, etc., and endorsement by the latter of notice of such production, is also implied in a lease before the 1st January, 1927. Disputes as to notices to quit or right to renewal and other matters are referred to the Minister of Agriculture, and fines payable upon renewal have been converted into annual rents. The only substantial change in rights is that the liability for rent and breach of covenant attaches to the tenant only for so long as he holds the term, even though he may be the original lessee. Long leases or leases with perpetual right of renewal, taking effect as a demise for 2,000 years, may be granted, but any contract to renew an existing lease for a term exceeding sixty years from the termination of the original lease is void, and apparently this contract cannot be entered into until less than twenty-one years of the existing term is unexpired (see s. 149 (3), Law of Property Act, 1925). Corresponding provisions are made in regard to subleases with perpetual right of renewal. A comprehensive code on this subject is provided in the L. P. Act, 1922, 15th Sched. Copyholds held with a perpetual right of renewal are converted into enfranchised freehold by s. 135 of the L. P. Act, 1925, and see the 12th Sched., *ibid.* Subleases with perpetual right of renewal, become leases for 2,000 years under the provisions of s. 145 (Law of Property Act, 1922) and 15th Sched. (1).

By s. 44 of the Small Holdings and Allotments Act, 1908 (see SMALL HOLDINGS), a local authority which has compulsorily hired land for the purposes of the Act can obtain a compulsory renewal of the lease, and see the Landlord and Tenant Act, 1927, for renewal of leases by way of compensation for improvements and increase in value due to goodwill. See, generally, *Woodfall, L. & T.*

Renewal of Writs. It is provided by R. S. C. 1883, Ord. VIII., that no writ of summons shall be in force for more than twelve months; but upon application before the expiration of the twelve months, may be renewed for six months from the date of such renewal, and so from time to time during the currency of the renewed writ, so as to be 'available to prevent the operation of any statute whereby(see LIMITATION OF ACTIONS) the time for the commencement of an action may be limited.' See *Hewett* v. *Barr*, 1891, 1 Q. B. 98.

Renounce, to give up a right. An executor

who declines to take probate of the will of his testator is said to 'renounce' probate. Where any person, after 1st January, 1858, renounces probate of the will of which he is appointed executor, his right shall wholly cease, and go and devolve as if he had not been appointed—Court of Probate Act, 1857, s. 79. Whenever an executor appointed in a will survives the testator, but dies without taking probate, or an executor named in a will is cited to take probate and does not appear, his right shall cease, and go in like manner as if he had not been appointed.—Court of Probate Act, 1858, s. 16.

Renovant, renewing.

Rent [fr. *reditus*, Lat.], a certain profit issuing yearly out of lands and tenements corporeal; it may be regarded as of a two-fold nature—first, as something issuing out of the land, as a compensation for the possession during the term; and secondly, as an acknowledgment made by the tenant to the lord of his fealty or tenure. It must always be a profit, yet there is no necessity that it should be, as it usually is, a sum of money; for spurs, capons, horses, corn, and other matters, may be, and occasionally are, rendered by way of rent; it may also consist in services or manual operations, as to plough so many acres of ground and the like; which services, in the eye of the law, are profits. The profit must be certain, or that which may be reduced to a certainty by either party; it must issue yearly, though it may be reserved every second, third, or fourth year; it must issue out of the thing granted, and not be part of the land or the thing itself.

There are several kinds of rents, viz.:—

(1) *Rent-service*, so called because it has some corporeal service incident to it, as at the least, fealty.

(2) *Rent-charge*, where the owner of the rent has no future interest or reversion in the land. It is usually created by deed or will, and was accompanied by express powers of distress and entry. Small rent-charges were frequently granted for the mere purpose of qualifying the grantee for the parliamentary franchise, as a forty-shilling freeholder, under 8 Hen. 6, c. 7, but this kind of qualification was abolished by the Representation of the People Act, 1884, s. 4.

As to the period of limitation after which the right of recovering a rent-charge is barred, see *Shaw* v. *Crompton*, 1910, 2 K. B. 370.

(3) *Fee farm rent*, one issuing out of an estate in fee, of at least one-fourth of the value of the lands at the time of its reservation.

(4) *Rent-seck*, a barren rent, which is in effect nothing more than a rent reserved by deed or will, but *without* any clause of distress. See *infra*.

(5) *Rents of assize*, the certain established rents of the freeholders, and ancient copyholders of a manor, which cannot be departed from. Those of the freeholders are frequently called *chief-rents*, and both sorts are indifferently denominated *quit-rents*, because thereby the tenant goes quit and free of all services.

(6) *Rack-rent*, a rent of the full value of the tenement, or near it. See RACK-RENT.

(7) *Fore-hand-rent*, otherwise called rent payable in advance. See 2 *Bl. Com.* pp. 14 *et seq.*: and *Harg. Co. Litt.* 144 *a*, note (5).

(8) *Ground-rent*, the rent reserved on a lease generally in respect of land let on condition that certain buildings are built thereon.

For the purposes of the Law of Property Act, 1925, s. 205 (xxiii.), *ibid.*, declares that 'rent' includes a rent service or a rent-charge or other rent, toll or duty, royalty or annual or periodical payment in money or money's worth, reserved or issuing out of or charged upon land, but does not include mortgage interest; 'rent-charge' includes a fee farm rent.

Rents-seck, rents of assize, and chief rents, to which the Common Law remedy of distress did not attach, because no reversion existed to the land from which they issued, became recoverable by distress (Landlord and Tenant Act, 1730, s. 5); and any annual sum charged on land by way of rent-charge or otherwise, not being rent incident to a reversion, by distress and entry under s. 44 of the Conveyancing Act, 1881, reproduced, together with s. 6 of the Conveyancing Act, 1911, by the L. P. Act, 1925, s. 121, with the additional powers of creating a term to secure payment by mortgage, sale or receipt of income of the land comprised in the term.

Quit-rents, chief-rents, rent-charges, and other annual sums issuing out of land may by s. 45 of the 1881 Act be redeemed on requisition of the owner to the Copyhold Commissioners (now the Ministry of Agriculture), who certify the amount of money to be paid for the redemption, and such rents if payable out of former copyholds are manorial incidents to which the enfranchised land is liable until extinguished under the

L. P. Act, 1922, ss. 128 and 138–144. See COPYHOLDS.

Sect. 45 of the C. Act, 1881, has been reproduced and extended by the L. P. Act, 1925, s. 191, to rent reserved on a sale or on a conveyance (not a lease) for building purposes and to compensation rent-charges for the extinguishment of manorial incidents upon enfranchisement of copyholds.

The rights conferred by ss. 121 and 191 of the L. P. Act, 1925, only relate to rent-charges or other rents not being rent incident to a reversion. If they are held in fee simple in possession or for a term of years absolute (see LEASE) they are legal estates. All other rent-charges and rents, such as for life or remainder, etc., have become equitable estates (L. P. Act, 1925, s. 1 (8)), but see s. 149, L. P. Act, 1925, converting leases for life or determinable with life into terms of years absolute.

Sect. 122 of the L. P. Act, 1925, enables a rent-charge to be created out of another rent-charge with power to appoint a receiver of the same charged upon default for twenty-one days.

Rent is not due till midnight of the day upon which it is reserved, although sunset is the time appointed by law to make a proper demand of it, to take advantage of a condition of re-entry or to tender it, in order to save a forfeiture; but, more properly speaking, the demand should be made before sunset, so as to allow sufficient light to count the money; and the person making the demand or tender must remain on the land till the sun has set. It may lawfully be made payable on a Sunday (*Child* v. *Edwards*, 1909, 2 K. B. 753). Where rent is reserved generally and no such mention is made, as is usual, of half-yearly or quarterly payments, nothing is due until the end of the year.

Rent is considered as of a higher nature than even a debt due on an instrument under seal, as between the parties themselves. This is the effect of *Davis* v. *Gyde*, (1835) 2 A. & E. 624, where a distress for rent after a bill of exchange had been given for it was held good; but in *Bramley* v. *Palmer*, 1895, 2 Q. B. 405, it was held that the giving of such a bill was some evidence of an agreement by the landlord to suspend his remedy by distress during his currency; but the ordinary words 'yielding and paying' import a payment in cash (*Henderson* v. *Arthur*, 1907, 1 K. B. 10); and see *Woodfall, L. & T.* Rent in arrear due by the executors of a tenant was, before 32 & 33 Vict. c. 46, of a higher degree than simple contract debts, and of equal degree with specialty debts; but that Act has abolished the priority (see *Shirreff* v. *Hastings*, (1877) 6 Ch. D. 610), and see now the Administration of Estates Act, 1925, s. 34.

As to the apportionment of rents, see the L. P. Act, 1925, ss. 77 and 190, and title APPORTIONMENT.

Rent-charge. See RENT.

Rental Bolls, when the tithes (teinds) have been liquidated and settled for so many bolls of corn yearly.—*Bell's Scots Law Dict.*

Rental-rights, a species of lease usually granted at a low rent and for life. Tenants under such leases were called *rentalers* or *kindly tenants.*

Rental Value. See MINERAL RIGHTS DUTY.

Rente [Fr.], an annuity. *Rentes* is the term applied to the French Government Funds, and *Rentier* to a fundholder or other person having an income from personal property.

Rente Viagère [Fr.], a life annuity.

Rent Restriction. See INCREASE OF RENT, ETC., ACTS.

Renunciation, the act of giving up a right.

Renvoi, a term employed in private international law to denote the sending, or determination, of a matter to or according to the law of a tribunal outside the jurisdiction where the question arose. Apparently, the Courts of France, Italy and Germany will apply the law of nationality, and where the law of nationality, as in England, applies the law of the domicil, the latter law appears to have been applicable under German law in Germany (*Re Askew, Majoribanks* v. *Askew*, 1930, 2 Ch. 259), and Italy (*Re Ross, Ross* v. *Waterfield*, 1930, 1 Ch. 377), and, in France, as to movables (*Re Annesley, Davidson* v. *Annesley*, 1926, 2 Ch. 692). See *Bate on the Doctrine of Renvoi.*

Reparatione facienda, an ancient writ, which lay in many cases to compel repairs.—*Fitz. N. B.* 127.

Repeal, a revocation or abrogation. Repeal of one Act of Parliament by another is either express or implied, the rule being that a later Act repeals a former one if contradictory thereto. — *Leges posteriores priores contrarias abrogant.* By s. 11 of the Interpretation Act, 1889, re-enacting s. 5 of Lord Brougham's Act (13 Vict. c. 21), where an Act passed after 1850 repeals a repealing enactment, it does not revive any enactment previously repealed. And by s. 38 of the same Act, where any Act passed after January 1st, 1890, repeals and re-enacts

any provisions of a former Act, references in any other Act to the provisions so repealed are to be construed as references to the provisions so re-enacted, as had been already specially provided in the consolidating Public Health Act, 1875, by s. 313, and Factory and Workshop Act, 1878, by s. 102, and see *R.* v. *Minister of Health, Ex p. Villiers*, 1936, 2 K. B. 29.

Implied Repeal.—The effect of an implied repeal is the same as that of an express repeal; but the leaning of the courts is against implied repeal. See *West Ham* v. *Fourth City Mutual Building Society*, 1892, 1 Q. B. 654, and other cases cited in *Mews's Digest*, vol. 19, p. 842, tit. '*Statute*.'

Repertory, a classified inventory.

Repetition, a recovery of money paid under mistake.—*Civ. Law.*

Repetitum namium, a second or reciprocal distress, in lieu of the first, which was eloigned.

Repetundæ, or **Pecuniæ repetundæ,** the terms used to designate such sums of money as the *socii* of the Roman state, or individuals, claimed to recover from *Magistratus, Judices,* or *Publici Curatores,* which they had improperly taken or received in the *provinciæ,* or in the *Urbs Roma,* either in the discharge of the *jurisdictio,* or in their capacity of *Judices,* or in respect of any other public function. Sometimes the word *repetundæ* was used to express the illegal act for which compensation was sought, as in the phrase, '*Repetundarum insimulari damnari*'; and *pecuniæ* meant, not only money, but anything that had value. Original inquiry was made into this offence, *extra ordinem ex senatus consulto,* as appears from the case of P. Furius Philus and M. Matienus, who were accused of it by the *Hispani.*—*Smith's Dict. of Antiq.*

Repleader, to plead again. The motion for a repleader was made when, after issue joined and verdict thereon, the pleading was found (on examination) to have miscarried, and failed to effect its proper object, of raising an apt and material question between the parties. A repleader might become necessary where the issue had been defectively joined.

Replegiare, to redeem a thing detained or taken by another, by giving sureties.

Replegiare de averiis, a writ brought by one whose cattle were distrained or put in pound, on any cause, by any person, on surety given to the sheriff to prosecute or answer an action.—*Fitz. N. B.* 68.

Replegiari facias, the original writ out of Chancery commencing an action of replevin, superseded by the Statute of Marlbridge, 52 Hen. 3, c. 21.

Repletion, where the revenue of a benefice is sufficient to fill or occupy the whole right or title of the graduate who holds it.—*Can. Law.*

Repleviable, or **Replevisable,** that which may be taken back or replevied.

Replevin, a personal action to recover possession in specie of goods unlawfully taken (generally, but not exclusively, applicable to the taking of goods distrained for rent), by contesting the validity of the seizure, whereas, if the owner prefer to have damages instead, the validity may be contested by action of trespass or unlawful distress. The word means a re-delivery to the owner of the pledge or thing taken in distress. It is re-delivered to him by the registrar of the county court of the district within which it was taken, upon his undertaking and giving security to try the validity of the distress or taking, in an action of replevin to be forthwith commenced by him against the distrainer, and prosecuted with effect and without delay either in the County Court or in the High Court, and to restore it if the right be adjudged against him; after which the distrainer may keep it in distraint subject to the law of distress.

It is a general rule that whoever brings replevin ought to have the property of the goods either general or special in him at the time of the taking, and it lies against him who takes the goods and also against him who commands the taking, or against both. Whatever may be distrained may be replevied.

In cases of distress for rent the replevy should be made before the expiration of five days (or fifteen, if s. 6 of the Law of Distress Amendment Act, 1888, applies) after the distress, otherwise the distrainer may sell the goods; though, indeed, they may be replevied at any time before they have been sold. See *Jacob* v. *King,* (1814) 5 Taunt. 451.

An action for replevin may be commenced in the High Court, and if the replevisor wish to proceed in that court, he must at the time of the replevying give security sufficient to cover the alleged rent or damage for which the distress is made, and the probable costs of the cause, conditioned to commence and prosecute an action of replevin in that court, a week from date, and to prove that he had ground to believe that the title to some hereditament, or to some toll, etc., was in question, or that such rent or damage

exceeded 20*l.*, and to make return of the goods, if return adjudged. In the County Court the action must be commenced within a month (County Courts Act, 1934, ss. 101–103).

Avowry and Cognizance.—In avowries and cognizances for *rent* was set forth, as in a statement of claim, the nature and merits of the defendant's case, to show that the distress taken by him was lawful, and to entitle him to a judgment *de retorno habendo*. The technical difference between an avowry and cognizance was this: where the action was against the principal or landlord, he made avowry—that is, he avowed taking the distress in his own right; where, on the other hand, it was against the bailiff or servant, he made cognizance—that is, he acknowledged the taking in right of the principal or landlord; and where it was against both, the one avowed and the other made cognizance.

The action of replevin is now rarely brought, it being usually more convenient to sue for damages for illegal distress. Consult *Bullen and Leake, Prec. of Plead.*, 7th ed. pp. 393, 816.

Replevy, or **Replevish,** to let one to mainprise on surety: also to re-deliver goods which have been distrained to their owner, upon his giving pledges in an action of replevin. See last title.

Repliant, or **Replicant,** a litigant who replies, or files or delivers a replication.

Replication. This was before the Judicature Acts the term for a plaintiff's answer to a defendant's plea, and still so used in the Mayor's Court, London. See now REPLY.

Reply, the response of the opening counsel on a trial, which is only allowed when evidence has been given in answer to the case first stated, except in the case of the Crown, which is always entitled to reply. See Criminal Procedure Act, 1865 (28 & 29 Vict. c. 18), which applies to civil as well as criminal cases.

Also the pleading of the plaintiff which follows the defendant's statement of his defence or counterclaim (see R. S. C. 1883, Ord. XXIII.), by which (r. 1), where plaintiff desires to deliver a reply, he shall deliver it within seven days from the delivery of the defence; (r. 2), when a counterclaim is pleaded, a reply thereto shall be subject to the rules applicable to defences. See ISSUE and PLEADING.

Report Office, was a department of the Court of Chancery. The suitor's account there is discontinued by 15 & 16 Vict. c. 87, s. 36.

Reporter, a person who reports the decisions upon questions of law in the cases adjudged in the several Courts of Law and Equity. See LAW REPORTS.

Reports. 'A report,' says Coke, 'signifyeth a public relation or bringing again to memory of cases judicially argued, debated, resolved, or adjudged in any of the King's Courts of justice, together with such causes and reasons as were delivered by the judges.' —*Co. Litt.* 293 *a*. See LAW REPORTS.

Also, certificates from the masters of the Courts, when the Courts make reference to them concerning matters of account, etc.; or from committees of either House of Parliament.

Reports, The. Coke's reports from 14 Eliz. to 13 Jac. 1, which are usually quoted as 'Rep.' They are divided into thirteen parts, and the modern editions are in six volumes, including the index.

Reposition of the Forest, a reputting; a re-afforesting.—*Manw.*

Repositorium, a storehouse or place wherein things are kept; a warehouse.—*Cro. Car.* 555.

Representation, standing in the place of another for certain purposes, as heirs, executors, or administrators. See EXECUTOR; ADMINISTRATOR; PERSONAL REPRESENTATIVE; REAL REPRESENTATIVE.

Any indication by words, letters, signs or conduct by one person to another of the existence of a fact. A representation of simple commendation or expectation at or before a contract of which the other party can or should form his own opinion is not as a rule actionable; 'an innocent misrepresentation gives no ground for damages,' but this involves the question whether the misrepresentation is innocent. If made at the time of sale of personal chattels, 'it is a warranty' (or collateral contract), 'provided it appears to have been so intended' (*Pasley* v. *Freeman*, (1789) 3 T. R. 634), and in that case, being a collateral contract, it may be proved by parol or extrinsic evidence, even if the contract to which it is collateral must be in writing under the Statute of Frauds or otherwise, if the principal or written contract is wholly silent on the subject: *De Lassalle* v. *Guildford*, 1901, 2 K. B. 235 (warranty that drains were in order before taking a lease), and *Heilbut, Symons & Co.* v. *Buckleton*, 1913, A. C. 30.

In equity, on principles which are now applicable in all courts, see Judic. Act, 1925, ss. 36 *et seq.*, even though a representation might not amount to fraud, or a warranty,

its untruth might be a ground for resisting specific performance (*Redgrave* v. *Hurd*, 20 Ch. D. 1), or for rescinding the contract (*Newbigging* v. *Adam*, 34 Ch. D. 582); and see *Russell and Brown's Contract*, 1934, Ch. 34 (underlease described as a lease), and see Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), s. 11, as to conditions and warranties.

A collateral statement, in insurance, either by parol or in writing, of such facts or circumstances relating to the proposed adventure, and not inserted in the policy, as are necessary for the information of the insurer to enable him to form a just estimate of the risk. Such representations are often the principal inducement to the contract, and afford the best ground upon which the premium can be calculated. Consult *Arnould on Marine Insurance.*

The statement as to another's character, etc., within the meaning of s. 6 of the Statute of Frauds Amendment Act, 1828 (9 Geo. 4, c. 14), which enacts that :—

> No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

A signature by an agent is not sufficient, so that a bank is not liable on the signature of the manager of one of its branches; see *Swift* v. *Jewsbury*, (1874) L. R. 9 Q. B. 301 —where the manager was held personally liable; *Hirst* v. *West Riding Banking Co.*, 1901, 2 K. B. 560. See DECEIT; CONDITION; WARRANTY and CONTRACT OF SALE OF LAND.

Representative, bearing the character or power of another. Before 1926, an heir-at-law or devisee was a real representative; an executor or administrator is a personal representative. See now definition in the Settled Land Act, 1925, s. 117 (xviii.), and Administration of Estates Act, 1925, s. 55 (xi.). If the plaintiff sues, or any of the defendants is sued, in a representative character, this must be stated on the writ, and must also appear in the title or heading of the statement of claim (Ord. III., r. 4; *Re Tottenham*, 1896, 1 Ch. 628), and Ord. XVI., r. 19, as to representation of parties in an action.

Reprieve [fr. *reprendre*, Fr., to take back], the suspension of the execution of a criminal's sentence.

It may take place (1) *ex mandato regis*, at the mere pleasure of the Crown.

Or (2) *ex arbitrio judicis*, either before or after judgment; as, where the judge is not satisfied with the verdict, or the indictment is insufficient, or any favourable circumstances appear in the criminal's character, in order to give time to apply to the Crown for either an absolute or conditional pardon.

Or (3) *ex necessitate legis*; as where a woman is capitally convicted and pleads her pregnancy. See JURY OF MATRONS.

Or (4) if the criminal become *non compos.*—4 *Steph. Com.*

Reprimand, a formal and public stigmatization of an offence addressed by a judge to a convicted offender, or by an official superior to an inferior, generally in substitution for any other punishment: see, e.g., that enjoined for the first offence against the Wild Birds Protection Act, 1880 (see BIRDS), in the case of a sparrow or other not scheduled bird, and that enjoined in the case of officers convicted by court-martial, which may be either 'reprimand,' or 'severe reprimand,' by s. 44 (*g*) of the Army Act.

Reprisal, the taking one thing in satisfaction for another. Reprisals are used between nation and nation, in order to do themselves justice, when they cannot otherwise obtain it. If a nation has taken possession of what belongs to another—if she refuses to pay a debt, to repair an injury, or to give adequate satisfaction for it—the latter seizes something belonging to the former, and applies it to her own advantage, unless she obtains payment of what is due to her, together with interest and damages, or may keep it as a pledge until she has received ample satisfaction. For the latter it is rather a stoppage or a seizure than reprisals, but they are frequently confounded in common language.—*Vattel, by Chit.* 283. Reprisals are either *ordinary*, as arresting and taking the goods of merchant-strangers within the realm, or *extraordinary*, as satisfaction out of the realm, and are under the Great Seal.—*Lex Mercat.* 120. See also RECAPTION; CAPIAS IN WITHERNAM; LETTERS OF MARQUE.

Reprises, deduction and payments out of a manor or lands, as rent-charges, annuities.

Reprobation, the propounding of exceptions either to facts, persons, or things.—*Eccl. Law.*

Rep-silver, money anciently paid by servile tenants to their lord, to be quit of the duty of reaping his corn.

Republication of Wills, a second publication after cancelling or revoking.

The Wills Act, 1837 (7 Wm. 4 & 1 Vict. c. 26), provides in s. 22 as follows :—

No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

Every will re-executed, or republished, or revived by any codicil, shall for the purposes of the Wills Act be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived (s. 34).

Repudiation, (1) the putting away of a wife or of a woman betrothed; (2) the renunciation of a contract (which renders the repudiator liable to be sued for breach of contract, and entitles the repudiatee, on accepting the repudiation, to treat the contract as at an end: see per Lord Blackburn in *Mersey Steel and Iron Co.* v. *Naylor,* (1884) 9 App. Cas. 434) (see WARRANTY); (3) the refusal to accept a benefice.

Repugnant, that which is contrary to what is stated before. The rule of construction is that in a will the later of two contradictory clauses prevails, but in other writings the earlier. Conditions which are repugnant to a previous gift or limitation are void (*Bradley* v. *Peixoto,* (1797) 3 Ves. 325; *Britton* v. *Twining,* (1817) 3 Mer. 184; *Stogdon* v. *Lee,* 1891, 1 Q. B. 661). See RESTRAINT ON ALIENATION.

Reputation, credit, honour, character, good name. Injuries to one's reputation, which is a personal right, are defamatory. See CHARACTER; LIBEL.

Certain private and public rights may be established by reputation, e.g., highways (*Austin's case,* (1672) 1 Vent. 181); commons (*Warwick* v. *Queen's College, Oxford,* (1871) 6 Ch. App. 716); connection of mark or name with goods: see TRADE MARKS.

Reputed Owner, one who has, to all appearances, the right and actual possession of property. By the Bankruptcy Act, 1914, s. 38—an enactment which repeats with little variation the successive enactments on the subject dating from the reign of James I.—it is provided that all goods being at the commencement of the bankruptcy in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is reputed owner thereof, pass to his trustee. As to the conduct of the owner, see *Simeons* v. *Durand,* 1928, 2 K. B. 66, and see Law of Distress Amendment Act, 1908, s. 4, enabling a landlord to distrain on goods comprised in any bill of sale, hire-purchase agreement, or settlement made by a tenant or on goods in the possession, order and disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the owner thereof. See HIRE-PURCHASE.

Request, Letters of. Many suits are brought before the Dean of Arches, as original judge, the cognizance of which properly belongs to inferior jurisdiction within the province, but in respect of which the inferior judge has waived his jurisdiction under a certain form of proceeding known in the canon law by the denomination of Letters of Request.—3 *Steph. Com.*

Request-notes, applications to obtain a permit for removing excisable articles.

Requests, Courts of, tribunals of a special jurisdiction for the recovery of small demands, which were abolished by the County Courts Act, 1846 (9 & 10 Vict. c. 95), and Order in Council, 9th May, 1847, with a few exceptions.

Requisition, made by a creditor, that a debt be paid or an obligation fulfilled.—*Bell's Scots Law Dict.*; and (by Government) *France, Fenwick & Co. Ltd.* v. *Rex,* (1926) 43 T. L. R. 18.

Requisitions on Title, a series of inquiries and requests which arise upon a title on behalf of a proposed purchaser or mortgagee, and which the vendor or mortgagor is called upon to satisfy and comply with. In the case of sales, they are often curtailed by the conditions of sale (see ABSTRACT and CONDITIONS OF SALE OF LAND). Consult *Williams* or *Dart on Vendors and Purchasers; Jackson* and *Gossett on Investigation of Title.*

Reredos, an ornamental screen covering the wall at the altar. See *Philpotts* v. *Boyd,* (1876) L. R. 6 C. P. 435.

Rere-fiefs, inferior feudatories in Scotland.—*Steph. Com.*

Res, all physical and metaphysical existences, in which persons may claim a right. See *Sand. Just.; Cum. C. L.* 59.

Res generalem habet significationem quia tam corporea quam incorporea, cujuscunque sunt generis, naturæ, sive speciei, comprehendit. 3 Inst. 182.—(The word 'thing'

has a general signification, because it comprehends corporeal and incorporeal objects, of whatever nature, sort, or species.)

Res accessoria sequitur rem principalem.—(The accessory follows the principal.)

Re-sale, a second sale.

Reseit, or **Receit** [fr. *receptio*, Lat.], an admission or receiving of a third person to plead his right in a cause already commenced between two other persons.—13 Rich. 2, c. 17.

Reseit of Homage, the lord's receiving homage of his tenant at his admission to the land.—*Kitch.* 148.

Rescission, annulment or destruction. A general term for the repudiation and annulment of any contract or transaction: see Sale of Goods Act, 1893. A contract for the sale of real estate very commonly contains a power for the vendor to rescind the contract if the purchaser makes or insists upon any objection or requisition which the vendor is unable or unwilling to comply with; but see ss. 42 and 45 of the Law of Property Act, 1925, precluding the vendor from rescinding in certain cases, and this facility will not assist the vendor in case of a serious defect in title or substantial misrepresentation (see *Re Hardicke Co.* v. *Lipski*, 1901, 2 Ch. 666). Where a purchaser rescinds under a power in the contract he has a lien for his deposit (*Whitbread & Co.* v. *Watt*, 1902, 1 Ch. 835), but before 1926 the purchaser in the absence of misrepresentation was precluded from recovering his deposit if he chose to rescind upon an objection which he was precluded by statute from taking under an open contract, or by the conditions in the contract (*Scott* v. *Alvarez*, 1895, 2 Ch. 603). Under ss. 45 (11) and 49 (2) of the Law of Property Act, 1925, the Court can, if it thinks fit, order the return of any deposit where the Court refuses to grant specific performance or in any action for the return of the deposit.

Rescissory Action, one to rescind or annul a deed or contract.—*Scots Law.*

Rescous (*rescussus*), an ancient French word coming from *rescourrer*, *recuperare*, that is, to take from, to rescue or recover. See Rescue.

Rescript, the answer of the Roman emperor when consulted by a particular person on some difficult question; it is equivalent to an edict or decree; a counterpart.

Rescriptum principis contra jus non valet. *Reg. Civ. Dur.*—(The prince's rescript avails not against law.)

Rescue, the taking away and setting at liberty, against law, a distress taken, or a person arrested by the process or course of law (*Co. Litt.* 160 *b*). Rescue of persons in the custody of the law has been dealt with by a number of Statutes from 23 Edw. 1. Aiding a prisoner to escape is a felony by the Prison Act, 1865 (28 & 29 Vict. c. 126), s. 37. See *Archbold's Criminal Pleading, Ev. and Practice*, 25th ed. pp. 1112–1123. Rescue of children from approved schools (late reformatory or industrial), see Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12); rescues from prisons abroad, see 22 Vict. c. 25; of persons of unsound mind, see Lunacy Act, 1890.

Rescue lies where a person distrains for rent or services, or for damage feasant, and is desirous of impounding the distress, and another person rescues the distress from him. The party distraining must be in possession of the distress, otherwise there cannot be a rescue.

The action of rescue has fallen into disuse; the usual remedy is by an action on the case, under the Sale of Distress Act, 1690 (2 W. & M. sess. 1, c. 5), s. 4, which gives treble damages to the person grieved. When a distress is taken without cause, or contrary to law, the tenant may lawfully make rescue before it is impounded, for then it is deemed to be in the custody of the law. The Pound Breach Act, 1843 (6 & 7 Vict. c. 30), gives a summary remedy for pound breach and rescue in certain cases after a distress for damage feasant.

Resealing Writ, the second sealing of a writ by a master so as to continue it, or to cure it of an irregularity.

Reservation, a keeping aside or providing. See Sacrament. Reservation of the Sacrament is an offence punishable by deprivation (*Oxford* (*Bishop*) v. *Henly*, 1909, P. 319).

As to a reservation in a conveyance and how it differs from an exception, see title Exception.

Reservatio non debet esse de proficuis ipsis, quia ea conceduntur, sed de reditu novo extra proficua. *Co. Litt.* 142 *a.*—(A reservation ought not to be of the profits themselves, because they are granted, but from the new rent apart from the profits.)

Reserve Forces. 1. *Army.*—The Reserve Forces Act, 1882 (45 & 46 Vict. c. 48), repealing and consolidating the prior Acts on the subject, established an 'Army Reserve' and a 'Militia Reserve.' The 'Army Reserve' consists of time-expired regular soldiers who are on its strength by

reason of the terms of their enlistment or by re-engagement. As to the present character of the Militia, see that title. The Reserve is further strengthened by the Territorial Army Reserve, consisting of a reserve division, and also by a body composed of owners of motor cars who are liable to military service in an emergency, and the Act has been applied to an Air Force Reserve and Auxiliary Air Force Reserve under 7 & 8 Geo. 5, c. 51, and 14 & 15 Geo. 5, c. 15, and S. R. & O. 1924 (Nos. 1212 and 1213) and 1934 (No. 592). By 11 & 12 Geo. 5, c. 37, the 'Territorial Force' which was provided for in the Territorial and Reserve Forces Act, 1907 (7 Edw. 7, c. 9), became the 'Territorial Army,' and the special reserve became 'militia,' for the purposes of the Act of 1907 and otherwise. The sections of the Act of 1907 relating to Militia Reserves were repealed.

Calling out Reserve.—By s. 5 a Secretary of State 'at any time when occasion appears to require' may call out the whole or part of the Army Reserve 'to aid the civil power in the preservation of the public peace'; and by s. 12 the Sovereign in Council in case of imminent national danger, or of great emergency, may order the Army Reserve to be called out on permanent service.

2. *Navy.*—The reserve forces of the Navy are composed of:—(*a*) the Royal Naval Reserve, established by the Royal Naval Reserve (Volunteer) Act, 1859, which consists of officers and men from the merchant service who receive an annual retaining fee; (*b*) the Royal Fleet Reserve, formed of time-expired members of the Royal Navy and Marines; (*c*) the Royal Naval Volunteer Reserve, a force in many ways comparable to the Territorial Army (see generally, the Royal Naval Reserve Acts, 1859 to 1927.

See *Chitty's Statutes*, tits. '*Army*' and '*Navy.*'

Reserving Points of Law. It was long the practice for a judge at the assizes to reserve points of law for consideration by the full Court (for which he was sitting as Commissioner) at Westminster, and this practice, recognized by s. 34 of the Common Law Procedure Act, 1854, which conferred a right of appeal, was kept up by s. 46 of the Judicature Act, 1873, and R. S. C. Ord. XXXVI., r. 22, of the Rules of 1875. But s. 17 of the Appellate Jurisdiction Act, 1876, and R. S. C. Ord. XXXVI., r. 22A (now rescinded), substituted for this procedure the argument of the point on 'further consideration' before the judge himself, and now by R. S. C. Ord. XXXVI., r. 39, the judge shall, at or after trial, direct judgment to be entered as he shall think right, and no motion for judgment shall be necessary.

As to the reserving points of law at sessions or assizes, see Crown Cases Act, 1848; Judicature Act, 1873, s. 47 (see now Jud. Act, 1925, s. 31 (1) (*a*)), and Judicature Act, 1875, s. 19 (see now Jud. Act, 1925, s. 103 (2)); and title Crown Cases Reserved.

Reservoirs. As to construction of reservoirs, see Waterworks Clauses Acts, 1847 (10 & 11 Vict. c. 17) and 1863 (26 & 27 Vict. c. 93), and the Reservoirs Safety Provisions Act, 1930 (20 & 21 Geo. 5, c. 51). For powers and procedure of local authorities to construct, lease or purchase reservoirs, see Public Health Act, 1936, ss. 116–123, subject to the conditions imposed by the Acts. The Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877 (40 & 41 Vict. c. 31), gives limited owners power to form reservoirs and to charge their estates with the expense. Reservoirs are among the 'improvements' which may be made with capital trust money under the Settled Land Act, 1882; see s. 25 (xiii.); now under the Settled Land Act, 1925, s. 83, and 3rd Sched., Part I

Reset, the receiving or harbouring an outlawed person.

Reset of Theft, the feloniously receiving and keeping of stolen property, with knowledge of the theft.—*Scots term.*

Res gestæ, the things done (including words spoken) in the course of an event. The phrase is commonly used in connection with evidence, and the admissibility in evidence of words spoken—e.g., the cries of a woman who is being ravished: see *Reg.* v. *Lillyman*, 1896, 2 Q. B. 167, and Evidence.

Residance, residence, abode, or continuance.

Resiant Rolls, those containing the resiants (residents) in a tithing, etc., which are to be called over by the steward on holding courts-leet.

Residence, abode; also the continuance of a parson or vicar on his benefice. It is upon the supposition of residence that the law styles every parochial minister an incumbent.

By the Pluralities Act, 1838 (1 & 2 Vict. c. 106), repealing former Acts, every spiritual person (with exceptions for heads of houses in the universities and others) holding a benefice, which comprises all parochial churches, perpetual curacies, chapels, and church or chapel districts, if with cure of

souls, shall reside on his benefice, in the house of residence; and if he absent himself (without licence from the bishop, grantable by s. 43 for incapacity of mind or body, or illness of wife or child for six months) for more than three months in any year, he shall forfeit, unless resident at some other of his benefices, a certain portion of the value of his benefice. It is further provided that annual returns of residents and non-residents must be made to the Sovereign in Council; and that in case of non-residence, the bishop, instead of enforcing the penalties, may issue a monition, to be followed up by an order to reside; and in case of non-compliance, may sequester the profits of the benefice, and apply them to the purposes in the Act specified.

Under the Pluralities Acts Amendment Act, 1885, the inadequate performance of ecclesiastical duties may be inquired into by the Commissioners; and (s. 12) a non-resident incumbent may not return, without the bishop's permission, until the expiration of his licence, nor, if he be non-resident for more than twelve months, interfere with the discharge of the duties of the benefice as entrusted to the curate.

Ordinary meaning.— The word 'resides' denotes 'the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink, and sleep' (per Bayley, J., in *R.* v. *Inhabitants of North Curry*, (1825) 4 B. & C. at p. 959), and for the meaning, extent or interpretation of the word under statutes, see the particular statute, e.g., franchise, burial, company law, jurisdiction of courts, divorce, income tax, juries, poor law, local government, etc. See DOMICIL.

Residence of Party to an action. See INDORSEMENT OF ADDRESS.

Resident, an agent, minister, or officer residing in any distant place with the dignity of an ambassador; the chief representative of the Government at certain native states in India. Residents are a class of public ministers inferior to ambassadors and envoys; but, like them, they are under the protection of the law of nations.

Also, a tenant, who was obliged to reside on his lord's land, and not to depart from the same; called also *homme levant et couchant*, and in Normandy, *resseant du fief.—Leg. H. I.*

Residual, or **Residuary,** relating to the residue; relating to the part remaining.

Residuary Devisee, the person named in a will who is to take all the real property remaining over and above the other devises.

It is provided by the Wills Act, 1837, s. 35, 'that unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.'

Residuary Legatee, the person to whom the surplus of the personal estate, after the discharge of all debts and particular legacies, is left by the testator's will.

Residue, the surplus of a testator's or intestate's estate after discharging all his liabilities. Unless it appear in the will that the executor was intended to have the residue, he will be deemed to be trustee for the next of kin (Executors Act, 1830 (11 Geo. 4 & 1 Wm. 4, c. 40)); repealed and replaced by the Administration of Estates Act, 1925, s. 49; see *Re Glukman*, 1908, 1 Ch. 552; affirmed, *nom. A.-G.* v. *Jeffereys*, 1908, A. C. 411. The distribution of the surplusage of an intestate's estate was provided for by the Statute of Distribution (22 & 23 Car. 2, c. 10), explained by 29 Car. 2, c. 3, and 1 Jac. 2, c. 17. The distribution of the estates of persons dying after 1925 is regulated by Part IV. of the Administration of Estates Act, 1925. See LAPSE; WIDOW.

Resignatio est juris proprii spontanea refutatio. *Godb.* 284.—(Resignation is a spontaneous relinquishment of one's own right.)

Resignation, the giving up a claim, office, or possession; also, the yielding up a benefice into the hands of the ordinary, called by the canonists 'renunciation'; and though it is synonymous with surrender, yet it is by use restrained to yielding up a spiritual living to the bishop, as surrender is the giving up of temporal land into the hands of the lord.

Ecclesiastical Resignations.—By the Incumbents Resignation Act, 1871 (34 & 35 Vict. c. 44), as amended by 50 & 51 Vict. c. 23, and see Clergy Pensions Measure (16 & 17 Geo. 5), No. 5, and Church Assembly Measure (20 & 21 Geo. 5), No. 6, provision is made for enabling the incumbent of any benefice, provided he has been the incumbent of such benefice for seven years continuously, to resign on the ground of incapacity by permanent mental or bodily infirmity from the due performance of his duties, and to obtain a pension.

The resignation of infirm archbishops or bishops is provided for by 32 & 33 Vict. c. 111. A pension is provided (see Episcopal Pensions Measure, 1926).

The resignation of deans and canons is provided for by the Deans and Canons Resignation Act, 1872 (35 & 36 Vict. c. 8), repealed and replaced by the Clergy Pensions Measure (16 & 17 Geo. 5), No. 6.

A covenant to resign a living on request, given to the patron before and in consideration of presentation thereto, was formerly simoniacal, and, therefore, illegal (see *Fletcher* v. *Lord Sondes*, (1827) 3 Bing. 501), but by the Clergy Bonds Resignation Act, 1828 (9 Geo. 4, c. 94) (repealed, see Church Assembly Measure (14 & 15 Geo. 5), No. 1), every engagement for the resignation of any living 'to the intent, manifested by the engagement, that any *one person whatsoever*, specially named therein, or *one or* (*sic*) *two persons* specially named, each of them by blood or marriage, an uncle, son, grandson, brother, nephew, or grand-nephew of the patron, shall be presented' to the living was made valid.

Resignation of Judge.—The office of a judge of the High Court of Justice, or of the Court of Appeal, may be vacated by resignation in writing under his hand, addressed to the Lord Chancellor, without any deed of surrender.—Jud. Act, 1873, s. 7 (see now Jud. Act, 1925, s. 10). A county court judge desirous of resigning, and afflicted with permanent infirmity, may be recommended by the Lord Chancellor to the Treasury for a pension.—County Courts Act, 1934, s. 9.

Resignation of Borough Councillors, etc.—The resignation by writing, and on payment of a fine, of corporate offices under the Municipal Corporations Act, 1882, is provided for by s. 36 of that Act. See also Local Government Act, 1933 (c. 51), s. 62.

Resignation of Member of Parliament.—A member of the House of Commons cannot resign his seat. All he can do is to accept an office of profit under the Crown, which has the effect of vacating his seat. See CHILTERN HUNDREDS.

Res integra, a point not covered by the authority of a decided case, so that a judge may decide it upon principle alone.

Res inter alios acta alteri nocere non debet (a transaction between strangers ought not to injure another party), e.g., the sworn evidence of a witness in one cause cannot be made available in another cause between other parties. Consult *Best on Evidence*, bk. 3, pt. 2, ch. 5, where it is pointed out that the maxim, in many varying forms, was well known both in the Civil and Canon Law; and see also *Broom's Legal Maxims*, citing the *Duchess of Kingston's case*, (1771) 20 How. St. Tr. 335; 2 *Sm. L. C.*, and other cases in illustration of the rule, and *Higham* v. *Ridgway*, (1808) 10 East, 109; 2 *Sm. L. C.*, and other cases in which entries of a deceased stranger declarant against his interest, or in the course of his business, have been held admissible, in illustration of the exceptions.

Res ipsa loquitur (the thing speaks for itself), a phrase used in actions for injury by negligence where no proof of negligence is required beyond the accident itself, which is such as necessarily to involve negligence, e.g., a collision between two trains upon a railway: see *Carpue* v. *London, Brighton, and South Coast Ry. Co.*, (1844) 5 Ex. 787.

Res judicata, a final judgment already decided between the same parties or their privies on the same question by a legally constituted Court having jurisdiction is conclusive between the parties, and the issue cannot be raised again. The judgment may have been given by a foreign Court (*Tarleton* v. *Tarleton*, 4 M. & S. 21). A matter which is *res judicata* cannot be further gone into; but if the decision was obtained by fraud it can be set aside (*Cole* v. *Langford*, 1898, 2 Q. B. 36). Criminal proceedings do not constitute a *res judicata* as regards civil proceedings arising out of the same facts (*Caine* v. *Palace Shipping Co.*, 1907, 1 K. B. 670; and see also *Anderson* v. *Collinson*, 1901, 2 K. B. 107). See ESTOPPEL.

Res judicata pro veritate accipitur. *Co. Litt.* 103 *a.*—(A thing adjudicated is received as true.) See *Broom's Leg. Max.*

Res Mancipi. The *Res Mancipi* of old Roman law were, land—in historical times, land on Italian soil—slaves, and beasts of burden, such as horses and oxen; and the mode of conveyance by which they were transferred was called a Mancipium or Mancipation. Distinguished from them was another class called *Res nec Mancipi*, 'things which did not require a Mancipation,' i.e., could be transferred by a simpler mode of assurance, and were held to pass by mere delivery: see *Maine's Ancient Law*, Ch. VIII.

Res nova, a matter not yet decided.

Res nullius (a thing which has no owner).

Resolution, a solemn judgment or decision; a revocation of a contract. As to the cases in which resolutions of the House of Commons varying or renewing taxation have

statutory effect for a limited period, see Provisional Collection of Taxes Act, 1913 (3 Geo. 5, c. 3). As regards companies, resolutions are of three kinds: (*a*) Ordinary, i.e., a resolution passed by a simple majority of members; (*b*) Extraordinary, i.e., a resolution passed by three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting, of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given; (*c*) Special, i.e., when passed by such a majority as is required for the passing of an extraordinary resolution and at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution has been duly given, or if all members entitled to attend and vote agree, a special resolution may be passed at a meeting at less than 21 days' notice. At any meeting for the passing of an extraordinary or special resolution the chairman's declaration that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the resolution (Companies Act, 1929, s. 117). For the purposes of the Bankruptcy Act, 1914, 'ordinary resolution' means a resolution decided by a majority in value of creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution: 'special resolution' means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution: 'resolution' means ordinary resolution (s. 167).

Resolutory Condition, one the accomplishment of which revokes a prior obligation.

Resort. A court whose decision is for the particular case before it final and without appeal is, in reference to that case, said to be a Court of Last Resort. The House of Lords has been especially so spoken of.

As to place of public resort, see PUBLIC PLACE.

Respectu computi vicecomitis habendo, a writ for respiting a sheriff's account addressed to the treasurer and barons of the Exchequer.—*Reg. Brev.* 139.

Respectum, Challenge propter. See JURY.

Res perit domino (the loss falls on the owner). For illustrations of this maxim, see *Taylor* v. *Caldwell*, (1863) 32 L. J. Q. B. 164; *Krell* v. *Henry*, 1903, 2 K. B. 740; CONTRACT FOR SALE and SALE OF GOODS ACT, 1893.

Respite, to postpone—thus, to enter and respite an appeal is to enter the same, and postpone the hearing to a future day. Consult *Pritch. on Q. Sess.*

Also, interval, reprieve, suspension of a capital sentence, a delay, forbearance, or continuation of time.

There are respite of execution, of debt, of homage, and of a jury.

Respondeat ouster (let him answer over). If a demurrer is joined in a plea to the jurisdiction, person, or writ, etc., and it be judged that the defendant put in a more substantial plea, interlocutory judgment is given that he shall answer. Also, if a prisoner fail upon a plea in bar, he has judgment of *respondeat ouster*, and may plead over to the offence the general issue, not guilty.—*Steph. Com.*, 7th ed., iii. 569; iv. 405.

Respondeat superior. 4 *Inst.* 114.—(Let the principal be held responsible.) The person directing an unlawful act to be done by his servant or agent is answerable as if he had done the act with his own hand. See *Knott* v. *London County Council*, 1934, 1 K. B. 126; VICARIOUS RESPONSIBILITY.

Respondent, a party answering in a suit, whether for himself or another; the defendant in an appeal; the defendant in a suit in the Court for Divorce.

Respondentia, money which is borrowed not upon the vessel, as in bottomry, but upon the goods and merchandise contained in it, in cases of extreme urgency, as a last resort and where communication with the owners is impossible in the circumstances. The shipowner must indemnify the owner of the cargo thus hypothecated.

Respondere non debet [Lat.] (he ought not to answer).

Responsa prudentium (the answers of the learned in the law), the opinions and decisions of learned lawyers, forming part of the Roman laws.—*Cum. C. L.* 6; *Maine's Anc. Law*, Ch. II.

Responsalis ad lucrandum vel petendum, he who appears and answers for another in court at a day assigned; a proctor, attorney, or deputy.—1 *Reeves*, 169.

Resseisor, the taking of lands into the hands of the Crown, where a general livery or *ouster le main* was formerly misused.—*Staundf. Prærog.*

Rest. Periodical balancing of accounts for the purpose of determining and allocating interest; also, in banking, a reserve fund.

Restaur, or **Restor,** the remedy or recourse which assurers have against each other,

according to the date of their assurances ; or against the master, if the loss arise through his default, as through ill loading, want of caulking, or want of having the vessel tight ; also, the remedy or recourse a person has against his guarantee or other person, who is to indemnify him from any damage sustained.—*Encyc. Londin.*

Restitutio in integrum, the rescinding of a contract or transaction, so as to place the parties to it in the same position, with respect to one another, which they occupied before the contract was made, or the transaction took place. The *restitutio* here spoken of is founded on the edict. If the contract or transaction is such as not to be valid, according to the *jus civile* this *restitutio* is not needed, and it only applies to cases of contracts and transactions, which are not in their nature or form invalid. In order to entitle a person to the *restitutio*, he must have sustained some injury capable of being estimated, in consequence of the contract or transaction, and not through any fault of his own, except in the case of one who is *minor xxv. annorum*, who was protected by the *restitutio* against the consequences of his own carelessness.

The following are the chief cases in which a *restitutio* might be decreed :—

The case of *vis et metus*. When a man had acted under the influence of force or reasonable fear, caused by the acts of the other party, he had an *actio quod metus causâ* for restitution against the party who was the wrongdoer ; and also against an innocent person, who was in possesion of that which had thus illegally been got from him ; and also against the *heredes* of the wrongdoer, if they were enriched by being his *heredes*. If he were sued in respect of the transaction, he could defend himself by an *exceptio quod metus causâ*. The *actio quod metus* was given by the *prætor*, L. Octavius, a contemporary of Cicero.

The case of *dolus*. When a man was fraudulently induced to become a party to a transaction, which was legal in all respects saving the fraud, he had his *actio de dolo malo* against the guilty person and his *heredes*, so far as they were made richer by the fraud, for the restoration of the thing of which he had been defrauded ; and if that were not possible, for compensation. Against a third party, who was in *bonâ fide* possession of the thing, he had no action. If he were sued in respect of the transaction, he could defend himself by the *exceptio doli mali*.

The case of *minores xxv. annorum*. A minor could by himself do no legal act, for which the assent of a *tutor* or *curator* was required ; and, therefore, if he did such act by himself, no *restitutio* was necessary. If the *tutor* had given his *auctoritas* or the *curator* his assent, the transaction was legally binding ; but yet the minor could claim *restitutio* if he had sustained injury by the transaction.

There were, however, cases in which *minores* could obtain no *restitutio ;* for instance, when a minor with a fraudulent design gave himself out to be a major, when he confirmed the transaction after coming of age, and in other cases.

The case of *absentia*, which comprehends not merely absence in the ordinary sense of the word, but absence owing to madness or imprisonment, and the like causes.

The case of *error*. Mistake comprehends such error as cannot be imputed to blame ; and in such a case a man could always have *restitutio* when another was enriched by his loss.

The case of *alienatio in fraudem creditorum facta* (*Dig.* 42, tit. 8). When a man was insolvent (*non solvendo*), and alienated his property for the purpose of injuring his creditors, the *prætor's* edict gave the creditors a remedy.

In the imperial times *restitutio* was also applied to the remission of a punishment (*Tac. Ann.* xiv. 12 ; *Plin. Ep.* x. 64, 65 ; *Dig.* xlviii., tit. 19, s. 27), which could only be done by the imperial grace.—*Sand. Just.*, 7th ed. 48, 74, 219.

Restitution, the restoring anything unjustly taken from another ; also putting in possession of lands or tenements him who had been unlawfully disseised of them ; a person being attainted of treason, etc., he or his heirs may be restored to his lands, etc., by royal charter of pardon.

Restitution, Writ of. If the judgment below was reversed in a court of error, the plaintiff in error might have had a writ of restitution in order that he might be restored to all he had lost by the judgment. If execution on the former judgment had been actually executed, and the money paid over, the writ of restitution issued without any previous *scire facias ;* but if the money had not been paid over, *scire facias quare restitutionem non*, suggesting the matter of fact, viz., the sum levied, etc., must have previously issued. Error is now abolished (Jud. Act, 1875, Ord. LVIII., r. 1). And, generally, if money, etc., be levied under a writ of

execution, and the judgment be afterwards reversed or set aside, the party against whom the execution was sued out may have his writ of restitution; but where the judgment is set aside for irregularity, etc., restitution (when necessary) forms part of the rule; and if the goods or money be not restored, the Court will grant an attachment. A writ of restitution may also be awarded when a judgment in ejectment is upset. *Restitution* takes place when there has been a writ of restitution before granted; and restitution is generally a matter of duty; but re-restitution is matter of grace.—*Raym.* 35. See *Dan. Ch. Pr.*; *Chitty's Archbold.*

Restitution of Conjugal Rights. See CONJUGAL RIGHTS.

Restitution of Minors, a restoring them to rights lost by deeds executed during their minority.—*Scots Law.*

Restitution of Stolen Goods. By the Common Law there was no restitution of goods upon an indictment, because it is at the suit of the Crown only; therefore the party was enforced to bring an appeal of robbery in order to have his goods again; but a writ of restitution was authorized to be granted by 21 Hen. 8, c. 11, and it became the practice of the court, upon the conviction of a felon, to order, without any writ, immediate restitution of such goods as were brought into court to be made to the several prosecutors. The Larceny Act, 1916, s. 45, gives power to the court to award from time to time writs of restitution for stolen property, or to order the restitution thereof in a summary manner, upon a conviction of the guilty party. This restitution reaches the stolen goods (unless they be negotiable instruments) notwithstanding that the guilty party may have sold them for value to an innocent purchaser (see s. 24 (1), Sale of Goods Act, 1893), but see MARKET OVERT; a sum not exceeding the proceeds of such sale out of the moneys taken from the guilty party on his apprehension may be delivered to such innocent purchaser. The order is suspended pending an appeal by s. 6 of the Criminal Appeal Act, 1907. See *R.* v. *Elliott*, 1908, 2 K. B. 452. The property in goods obtained by fraud or other wrongful means not amounting to stealing does not revest in the owner by reason of the conviction of the offender. As to the tracing, following, and recovery of proceeds of fraud, see *Banque Belge* v. *Hambrouk*, 1921, 1 K. B. 321.

Restitutione extracti ab ecclesiâ, a writ to restore a man to the church, which he had recovered for his sanctuary, being suspected of felony.—*Reg. Brev.* 69.

Restitutione temporalium, a writ addressed to the sheriff, to restore the temporalities of a bishopric to the bishop elected and confirmed.—*Fitz. N. B.* 169.

Restraining Order. 5 Vict. c. 5, s. 4, extended the preventive powers of Chancery by giving its judges authority, upon the application of any party interested, by motion or petition, to restain the Bank of England, or other public company, from permitting the transfer of stock in the name of any person or body politic or from paying any dividends due or to become due; but this procedure is superseded by the procedure under R. S. C. Ord. XLVI., rr. 3–14, first made in 1880. See DISTRINGAS.

Restraining Statutes, those which restrict previous rights and powers, as 1 Eliz. c. 19; 13 Eliz. cc. 10, 20; 14 Eliz. c. 11; 18 Eliz. cc. 6, 11; and 43 Eliz. c. 9, restraining bishops and others from granting leases binding on their successors for more than a limited time. See 5 *Reeves*, c. xxiii., p. 26.

A large proportion of modern legislation is of this nature, e.g., Public Health, Housing, Rent Restriction, Shops and Factory Acts, Road Traffic, Law of Property, etc.

Restraint of Marriage. On the ground of public policy, conditions attached to gifts or bequests to a person who has never been married, if in *general* restraint of marriage, are void, i.e., the donee or legatee takes the gift or bequest whether he or she marry or not; but a condition in restraint of the second marriage, whether of a man or woman, is not void (see *Allen* v. *Jackson*, (1875) 1 Ch. D. 399), and a condition is good if the restraint be *partial* only, e.g., if there be a bequest, with a gift over if the legatee should marry a particular person, or without a particular person's consent. Consult *Theobald on Wills.*

Restraints of Princes. The expression occurs in marine insurance policies, bills of lading, etc., usually as part of the phrase 'Arrests or Restraints of Princes, Rulers or People,' being one of the group of contingencies against which provision is made. It covers any forcible interference with the voyage or adventure at the hands of the constituted government or ruling power of any country. See *Carver on Carriage by Sea*, 6th ed., pp. 113–117, and the Carriage of Goods by Sea Act, 1924, Sched., Art. iv. 2.

Restraint of Trade. Contracts in general restraint of trade—that is, that a party shall

not carry on a particular trade at all—are void on the ground of public policy (*Mitchel* v. *Reynolds*, (1711) 1 P. Wms. 181; 1 *Sm. L. C.*), but contracts in partial restraint of trade—that is, where the restraint does not extend further than is necessary for the reasonable protection of the party for whose protection it has been agreed to—are good, if made, although by deed, for some consideration, and if not injurious to the public interests of this country. See the *Nordenfelt case*, 1894, A. C. 535, in which it is recognized that the law of this subject has been gradually growing in liberality: *Attwood* v. *Lamont*, 1920, 3 K. B. 571; *Dewes* v. *Fitch*, 1921, 2 A. C. 158; and consult *Leake* or *Chitty on Contracts*.

Restraint on Alienation. Although conditions in restraint of alienation of an absolute interest in possession in either real or personal property are generally void on the ground of repugnancy (see *Re Dugdale*, (1888) 38 Ch. D. 176, and REPUGNANT), gifts of a life estate or of income or apparently of a reversionary interest (*Churchill* v. *Marks*, (1844) 1 Coll. 441), until alienation or charging, are permissible, if there is a gift over and the gift is properly expressed (see *Re Mabbett*, 1891, 1 Ch. 707, and Trustee Act, 1925, s. 33). A settlement upon himself by a settlor determining his estate upon bankruptcy is void. As to alienation of advowson, see Benefices Act, 1898 (61 & 62 Vict. c. 48), and ADVOWSONS. As to church property, see *Halsb. Laws of England*, tit. '*Ecclesiastical Law*,' and as to married woman, see ANTICIPATION.

Restraint upon Anticipation. See ANTICIPATION.

Restriction. Under the Land Registration Act, 1925, s. 58, and rules 56 and 58, L. R. Rules, 1925, is an entry on the register, usually requiring notice to or consent by a named person before any further dealing is registered. The restriction may be limited to a special class of dealings and may have a continuous effect unlike a 'caution,' which can only operate once. Restrictions are frequently entered for the protection of settled land. Consult *Fortescue-Brickdale and Stewart-Wallace on the Land Registration Act*, 1925.

Restrictive Covenant, defined by the Land Charges Act, 1925, s. 10, Class D (ii.), as a covenant or agreement (not being made between lessor and lessee), restrictive of the user of the land, and see s. 20 (11), *ibid.* Such a covenant is in the nature of an equitable easement restricting the use or enjoyment or certain land for the benefit of other land and binding on every owner (see Law of Property Act, 1925, ss. 78 and 79) of the (servient) land having notice of the covenant (see *Tulk* v. *Moxhay*, 2 Phil. 774, and *Smith's L. C., Notes to Spencer's case*). Upon sale of land under a building scheme, of which the restriction formed part, the purchasers of plots may enforce the covenant (see *Elliston* v. *Reacher*, 1908, 2 Ch. 665; see also *Drake* v. *Gray*, 1936, 1 Ch. 465; *Re Union of London and Smith's Bank*; *Miles* v. *Easter*, 1933, Ch. 611). Under the Land Charges Act, 1925, s. 10, Class D (ii), restrictive covenants made after 31st December, 1925, must be registered as a land charge (*q.v.*), and under s. 13, if not so registered before completion of the purchase, shall be void against a purchaser of the (servient) land for money or money's worth. See also REGISTRATION OF LAND and PRIORITY NOTICE. As to extinction or modification of these covenants, see Law of Property Act, 1925, s. 84, enabling an 'authority,' being one or more of the official arbitrators under the Acquisition of Land (Assessment of Compensation) Act, 1919, to discharge or modify the covenants under the conditions imposed by the Act.

Restrictive Indorsement, prohibits the further negotiation of a bill of exchange or promissory note, or cheque, by expressing that 'it is a mere authority to deal with the bill, etc., as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill be endorsed, "pay D. only," or "pay D. for the account of X.," or "pay D. or order for collection." '—Bills of Exchange Act, 1882, s. 35.

Resulting Trust, a trust created by operation of law. Resulting trusts are of two kinds: (1) Where an owner of property makes a disposition of the legal estate and there is nothing to show that he meant to deal with the equitable interest, but by s. 60 of the Law of Property Act, provides that in a voluntary conveyance executed after 1925, a resulting trust for the grantor will not be implied merely because the property is not expressed to be conveyed for the benefit of the grantee; (2) where a purchaser of property takes the conveyance not in his own name but in that of some one else. In either of these cases the law creates a 'resulting trust'—in the former case, in favour of the owner of the legal estate; in the latter, in favour of the purchaser, i.e., the man who paid the purchase money. See *Lewin on Trusts*.

Resulting Use, an implied use.

A resulting use arose where the legal seisin was transferred, and no use was expressly declared, nor any consideration nor evidence of intent to direct the use ; the use then remained in the original grantor, for it cannot be supposed that the estate was intended to be given away, and the statute immediately transferred the legal estate to such resulting use. The Statute of Uses has been repealed by the Law of Property Act, 1925.

Re-summons, a second summons, calling upon a person to answer an action where the first summons is defeated. Obsolete.

Resumption. 1. The taking again by the Crown of such lands or tenements, etc., as on false suggestion had been granted by letters-patent.—*Bro. Ab.* 291.

2. By agricultural landlord, before legal tenancy ended, of the tenant's land (generally in part only) for building, etc., purposes, making an abatement of rent and giving compensation for damage to crops. Notice to quit part only being invalid at common law (*Doe* v. *Archer*, (1811) 14 East, 245), this resumption has frequently to be specially stipulated for ; but in many cases of yearly tenancy recourse may be had to s. 27 of the Agricultural Holdings Act, 1923, by which :—

Where a notice to quit is given by the landlord of a holding to a tenant from year to year with a view to the use of land for any of the following purposes :—

(i.) The erection of farm labourers' cottages or other houses with or without gardens ;
(ii.) The provision of gardens for farm labourers' cottages, or other houses ;
(iii.) The provision of allotments ;
(iv.) The provision of small holdings as defined by the Small Holdings and Allotments Acts, 1908 to 1919 ;
(v.) The planting of trees ;
(vi.) The opening or working of any coal, ironstone, limestone, brick earth, or other mineral, or of a stone quarry, clay, sand, or gravel pit, or the construction of any works or buildings to be used in connexion therewith ;
(vii.) The making of a watercourse or reservoir ;
(viii.) The making of any road, railway, tramroad, siding, canal, or basin, or any wharf, pier, or other work connected therewith ;

and the notice is given with a view to any such use—

(a) it shall, by virtue of this Act, be no objection that it relates to part only of the holding . . .

See as to counter-notice to quit the entire holding by the tenant upon notice by the landlord in regard to part of the land, Law of Property Act, 1925, s. 140 (2), as amended by the L. P. (Amendment) Act, 1926, s. 2.

There is also, by s. 46 of the Small Holdings and Allotments Act, 1908 (amended by the Land Facilities Act, 1919, s. 25, and Sched. II.), a power of resumption of possession by a landlord of land compulsorily hired by a local authority when it is needed for industrial purposes.

Res universitatis, property belonging to a city or municipal corporation.

Retail, to sell goods in small parcels and not in gross. For the purpose of the Licensing Acts, retail of spirits is a sale of less than two gallons (Spirits Act, 1880, s. 104), of wine, of less than two gallons, or one dozen quart bottles (Refreshment Houses Act, 1860, s. 4), and of beer or cider, of less than four gallons and a half (Beerhouse Act, 1834, s. 19).

Retainer. (1) The contract between client and solicitor or between solicitor and counsel for professional services : the contract that such services shall not be given to the opposite party ; (2) a document given by a solicitor to counsel, engaging the person who receives it to appear for a party, either in some particular suit or action in prospect (which is called a *special* retainer), or in all matters of litigation in which such party may at any time be involved ; this is called a *general* retainer. Subject to rr. 20 and 21 of the Retainer Rules, a special retainer is binding if duly tendered, whether accepted or not, but there is no rule of the profession which makes a general retainer binding on a counsel unless it is accepted by him.

Rules 20 and 21 are shortly as follows.

By rule 20 counsel who has drawn pleadings or advised, or accepted a brief, during the progress of an action on behalf of any party must not accept a retainer or brief from any other party without giving the party for whom he has drawn pleadings or advised, or on whose behalf he has accepted a brief, the opportunity of retaining or delivering a brief to him.

By rule 21 no counsel can be required to accept a retainer or brief or to advise or draw pleadings in any case where he has previously advised another party on or in connection with the case, and he ought not to do so in any case in which he would be embarrassed in the discharge of his duty by reason of confidence reposed in him by the other party.

As to enforcement of rule 20, it is a rule of the profession that when a brief is offered or delivered to any counsel, and he finds that another counsel has become entitled to a brief within the meaning of that rule and has not been briefed, 'such first named counsel ought, where practicable, to ascertain from the solicitor offering or delivering

such brief whether there is any sufficient explanation why a brief has not been offered or delivered to such other counsel, and unless a satisfactory explanation is given ought to refuse or return the brief.' See *Annual Practice*.

Retainer of Debts. An executor or administrator (not being a creditor-administrator, who is now precluded from retaining by the form of the administration bond) has a legal right to retain his own debt out of the legal or equitable (Administration of Estates Act, 1925, s. 34 (2)) assets in priority to all other creditors of equal degree, and before the costs of all parties, including the plaintiff (see EXECUTOR). The right is not affected by a judgment for administration (*Re Barrett*, (1889) 43 Ch. D. 70), nor by payment into court (*Richmond* v. *White*, (1879) 12 Ch. D. 361); but it cannot be exercised by a bankrupt administrator (*Wilson* v. *Wilson*, 1911, 1 K. B. 327). Since the Administration of Estates Act, 1869, the right may be exercised against specialty as well as simple contract creditors (*Re Harris*, 1914, 2 Ch. 395). Consult *Williams* or *Ingpen on Executors; Seton on Judgments*, 7th ed., p. 1466.

Retaliation, the *lex talionis*, which see.

Retenementum, detaining, withholding, or keeping back.

Retention, in Scots law, the right of withholding a debt or retaining property until a debt due to the person claiming the right of retention shall be paid; a lien.

Retinentia, a retinue, or persons retained by a prince or nobleman.

Retiring a Bill, taking up and paying a bill of exchange when due.—*Byles on Bills*.

Retorna brevium, the returns of writs.

Retorno habendo. When the defendant has judgment in replevin for the return of the goods, there issues in his favour a writ *de retorno habendo*, whereby the goods are returned again into his custody, to be sold or otherwise disposed of, as if no replevin had been made. See REPLEVIN.

Retorsion, retaliation.

Retour, an extract from the chancery of the service of an heir to his ancestor.—*Bell's Scots Law Dict.*

Retour sans protêt [Fr.] (return without protest), a request or direction by a drawer of a bill of exchange, that should the bill be dishonoured by the drawee, it may be returned without protest or without expense (*sans frais*).—*Byles on Bills*.

Retractus aquæ, the ebb or return of a tide.

Retraxit (he has withdrawn), a disused proceeding somewhat similar to a *nolle prosequi*, except that a *retraxit* was a bar to any future action for the same cause; whereas a *nolle prosequi* is not, unless made after judgment. See DISCONTINUANCE.

Retrocession, a re-assignment of inheritable rights to the cedent or original assignor.—*Civ. Law*.

Rette, a charge or accusation.—*Co. Litt.* 173 *b*.

Return-Days. These were certain days in term for the return of writs.—1 *Chit. Arch. Prac.*, 12th ed. 160.

Returning Officer, the official who conducts an election. The Representation of the People Act, 1918, s. 28, provides that in parliamentary elections the sheriff shall be the returning officer in counties, and in parliamentary boroughs which have a sheriff and in other boroughs the mayor, or in some cases the chairman of the council. As to returning officers at university elections, see Sched. V., Part I., s. 1. As to county council, municipal, parish council, rural district, and urban district elections, see the same Act as amended by the R. P. Act, 1922, and Local Government Act, 1933.

The same Acts provide that the duties of the returning officer are to be discharged by the registration officer (see REGISTRATION OF ELECTORS). In parliamentary elections the returning officer, if registered, is to have the casting vote but no other vote, by the Parliamentary Elections (Returning Officers) Act, 1875 (38 & 39 Vict. c. 84).

Returno habendo. See RETORNO HABENDO.

Returnum averiorum, a judicial writ similar to the *retorno habendo*—*Cowel*.

Returnum irreplegiabile, a judicial writ addressed to the sheriff for the final restitution or return of cattle to the owner when unjustly taken or distrained, and so found by verdict; it is granted after a nonsuit in a second deliverance.—*Reg. Judic.* 27.

Reus, a defendant, properly the debtor to whom the question was put. *Rei*, the parties or litigants.—*Cum. C. L.* 251.

Reve, or **Greve,** the bailiff of a franchise or manor, an officer in parishes within forests, who marks the commonable cattle.

Reveach, rebellion.—*Domesday*.

Reveland, the land which in Domesday is said to have been thane-land, and afterwards converted into reveland. It seems to have been land which, having reverted to the king after the death of the thane, who had it for life, was not granted out to

any by the king, but rested in charge upon the account of the reve or bailiff of the manor.—*Spelm. Feuds*, c. 24.

Revels, sports of dancing, masking, etc., formerly used in princes' courts, the inns of court, and noblemen's houses, commonly performed by night; there was an officer to order and supervise them, who was entitled the Master of the Revels.

Revendication. Upon the sale of goods on credit, by the law of some commercial countries, a right is reserved to the vendor to retake them, or he has a lien upon them for the price, if unpaid: and in other countries he possesses a right of stoppage *in transitu* (*q.v.*) only in cases of insolvency of the vendee. The Roman law did not generally consider the transfer of property to be complete by sale and delivery alone without payment or security given for the price, unless the vendor agreed to give a general credit to the purchaser; but it allowed the vendor to reclaim the goods out of the possession of the purchaser, as being still his own property. *Quod vendidi* (say the Pandects), *non aliter fit accipientis, quam si aut pretium nobis solutum sit, aut satis eo nomine datum, vel etiam fidem habuerimus emptori sine ullâ satisfactione.* The present code of France gives a privilege or right of revendication against the purchaser for the price of goods sold, so long as they remain in possession of the debtor. In respect to ships, a privilege is given by the same code to a certain class of creditors, such as vendors, builders, repairers, mariners, etc., upon the ship, which takes effect even against subsequent purchasers, until the ship has made a voyage after the purchase; and, by the general maritime law, acknowledged in most, if not in all, commercial countries, hypothecations and liens are recognized to exist for seamen's wages and for repairs of foreign ships, and for salvage.—*Story's Confl. of Laws*, s. 401.

Revenue, income, annual profit received from land or other funds; also money at the disposal of the Crown, i.e., the executive. The chief sources are (1) Crown property, surrendered to the nation; (2) taxation—income tax, death duties, customs and excise, stamp duties; (3) certain managed enterprises, such as the Post Office, and Lands, Woods and Forests and miscellaneous holdings such as shares in the Suez Canal, and other profits or fiscal prerogatives of the Crown.

See *Halsb. Encycl. Laws of England*, tit. '*Revenue*'; *Chitty's Statutes*, tits. '*Customs*,' '*Property Tax*,' '*Death Duties*,' *Stamps*,' and '*Revenue*.'

Revenue causes were peculiarly within the province of the Court of Exchequer; the practice of which court in matters of revenue was regulated by the Queen's Remembrancer Act, 1859 (22 & 23 Vict. c. 21), ss. 9 *et seq.*, and the Crown Suits Act, 1865 (28 & 29 Vict. c. 104).

The jurisdiction of the Court of Exchequer was transferred to the High Court of Justice (Jud. Act, 1873, s. 16, see now Jud. Act, 1925, s. 18 (2) (iv.); but all causes which would have been within the exclusive cognizance of the Court of Exchequer were assigned to the Exchequer Division of the High Court (*ibid.*, s. 34), see now Jud. Act, 1925, s. 56 (2) (*a*); but in 1881, by Order in Council, under s. 32 of that Act, the Exchequer Division was merged in the Queen's Bench (now King's Bench) Division. The practice and proceedings on the revenue side of that division are, except as provided by R. S. C. Ord. LXVIII., not affected by the Rules of the Supreme Court.

Reverend, not a title of honour or dignity, and a person prefixing it to his name does not thereby claim to be in Holy Orders; see *Keet* v. *Smith*, (1875) 1 P. D. 73, in which case the incumbent of a parish having refused to allow a tombstone describing the deceased as a daughter of the 'Rev. H. Keet, Wesleyan Minister,' to be erected in his churchyard, the Judicial Committee of the Privy Council, allowing an appeal, ordered a faculty to issue for the erection of the tombstone.

Reversal of Judgment. A judgment might have been reversed without a writ of error, for matters foreign to or *dehors* the record, i.e., not apparent upon the face of it, so that they could not be assigned for error in the superior Courts, or by writ of error, which lay from all inferior jurisdictions to the King's Bench and thence to the Exchequer Chamber and the House of Lords. It was brought for mistakes as to matters of substance, appearing in the judgment or other parts of the record. See *Steph. Com.*, 7th ed., iii. 579; iv. 463. See now R. S. C. Ord. LVIII.

Reverse, to undo, repeal, or make void.

Reverser, a reversioner.

Reversio terræ est tanquam terra revertens in possessione donatori, sive hæredibus suis post donum finitum. *Co. Litt.* 142 *b.*—(A reversion of land is, as it were, the return of the land to the possession of the donor or his heirs after the termination of the estate granted.)

Reversion [fr. *revertor*, Lat.], that portion left of an estate after a grant of a particular portion of it, short of the whole estate, has been made by the owner to another person. It is thus described by Mr. Watkins (*Conv.* c. 16) : ' When a person has interest in lands, and grants a *portion of that interest*, or in other terms, *a less estate than he has in himself*, the possession of those lands shall, on the determination of the granted interest or estate, *return*, or *revert to the grantor*. This interest is what is called the grantor's reversion, or, more properly, his right of reverter, which, however, is deemed an actual estate in the land, bearing the fruits of seigniory. Thus a grant to an estate by the owner of the fee-simple " to A. for life," leaves in the grantor the reversion in fee-simple, which will commence in possession after the determination of A.'s life-estate ; and this is called the particular estate ; particular, as carved or sliced out of the larger estate or reversion.'

Settled reversions of freehold or leasehold estates have been reduced to equitable interests by the Law of Property Act, 1925, but the word is also used to mean the freehold or leasehold reversion to a lease or term of years absolute in which case there is an estate in possession of the rents and profits as well as in the freehold or leasehold reversion, which together may form a legal estate subject to the term.

Reversion Duty. A duty imposed by the Finance (1909–10) Act, 1910, in certain cases on the determination of leases of more than twenty-one years. Repealed.

Reversionary, that which is to be enjoyed in reversion. Unconscionable bargains for the sale of reversionary interests may be set aside, but by the Sale of Reversions Act, 1867, reproduced by the L. P. Act, 1925, s. 174, not merely on the ground of under value. See EXPECTANT HEIR.

Reversionary Interests of Married Women in Personalty. See Married Women's Reversionary Interests Act, 1857 (' Malins's Act '), 20 & 21 Vict. c. 57, enabling married women to dispose of such interests ; Conveyancing Act, 1911 (1 & 2 Geo. 5, c. 37), s. 7, and Law of Property Act, 1925, s. 167, abolishing acknowledgments by married women.

Reversionary Lease, one to take effect *in futuro*. A second lease to commence after the expiration of a former lease. It did not create any term or estate, but only an *interesse termini* (see that title). By the L. P. Act, 1925, s. 149, a term at a rent or in consideration of a fine cannot be created in law to take effect more than twenty-one years from the date of the instrument purporting to create it, and see RENEWAL and OPTION. Consult *Foa* or *Woodfall on Landlord and Tenant*.

Reversioner, one who has a reversion.

Reverter, reversion.

Review. Under Workmen's Compensation Act, 1925, s. 11, weekly payments can be reviewed at any time by either party. An application to a taxing master to reconsider certain items in a bill of costs which has been taxed is called an application to review (R. S. C. Ord. LXV., r. 27 (39)–(40)).

Review, Bill of, was in the nature of proceedings in error, and its object was to procure an examination and alteration or reversal of a final decree in Chancery duly signed and enrolled.

The objects of this proceeding may now be attained by an appeal to the Court of Appeal. See APPEAL.

Review, Bill in Nature of Bill of, filed where decree had not been enrolled.

Review, Commission of, a commission which was sometimes granted in extraordinary cases, to revise the sentence of the Court of Delegates, when it was apprehended they had been led into a material error. The Court of Delegates is abolished.

Reviling Church Ordinances, an offence against religion, punishable by fine and imprisonment.—4 *Steph. Com.*

Revised Reports. A republication of such cases in the English Courts of Law and Equity from 1785 to 1865 as are still of practical utility. Edited by Sir F. Pollock.

Revised Statutes. A republication by Government authority of such public general statutes as are still unrepealed, or parts of them. See ACT OF PARLIAMENT.

Revising Assessors, two officers elected by the burgesses of non-parliamentary municipal boroughs for the purpose of assisting the mayor in revising the parish burgess lists (Municipal Corporations Act, 1882, s. 29, and Sched. III.) ; but their duties were transferred to the revising barristers, and their office abolished by the County Electors Act, 1888.

Revising Barristers' Courts were courts presided over by a revising barrister which were held throughout the country each autumn to revise the list of voters for members of Parliament, for town councillors, and for county councillors. A revising barrister was appointed for one year, and was a member of the junior Bar of at least seven (originally three) years'

standing. An appeal lay on a point of law to the High Court. These courts were finally abolished by the Representation of the People Act, 1918, which repealed the statutes under which they existed (Sched. VIII.).

Revive, to make oneself liable for a debt barred by the Statute of Limitations by acknowledging it; or for a matrimonial offence once condoned by committing another. The legal effect of an acknowledgment of a statute-barred debt is that of a promise to pay the old debt, and for this purpose the old debt is a consideration in law (*Philips* v. *Philips*, (1844) 3 Ha. 281, 299). As to what will amount to an acknowledgment, see *Tanner* v. *Smart*, (1827) 6 B. & C. 603; *Re River Steamer Co.*, (1871) L. R. 6 Ch. 822; and LIMITATION OF ACTIONS, and, as to testamentary instruments, REPUBLICATION.

Revivor. By R. S. C. 1883, Ord. XLII., r. 23, where six years have elapsed since the judgment, or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court or a judge for leave to issue execution accordingly. And such Court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or judge may impose such terms as to costs or otherwise as shall be just. Ord. XVII. also provides for the non-abatement of a cause prior to judgment. See ABATEMENT.

Revivor, Bill of, was a bill filed to revive and continue the proceedings, whenever there was an abatement of the suit before its final consummation either by death or marriage. Bills of revivor were abolished by 15 & 16 Vict. c. 86, s. 52.

Revocation, the undoing of a thing granted, or a destroying or making void of some deed that had existence until the act of revocation made it void. It may be either *general*, of all acts and things done before; or *special*, to revoke a particular thing.—5 *Rep.* 90.

Revocation and New Appointment. The appointor may reserve a power of revocation and new appointment in the deed of appointment, although not expressly authorized so to do by the assurance creating the power; and such a power may be reserved *toties quoties*. By a revocation the original power revives. When a deed of appointment contains no power of revocation it is absolute and cannot be revoked, although there be a power of revocation in the assurance creating the power. When a power is executed by will, an express power of revocation need not be reserved, since a will is always revocable. Consult *Sugden* or *Farwell on Powers*.

Revocation of Agency. An agency is dissolved or determined in several ways:—

(I.) By the act of the principal, either

(*a*) Express, as

(1) By direct and formal writing, publicly advertised;

(2) By informal writing to the agent privately;

(3) By parol; or

(*b*) Implied from circumstances, as by appointing another person to do the same act, where the authority of both would be incompatible.

The exceptions to the power of the principal to revoke his agent's authority at mere pleasure are—

(1) When the principal has expressly stipulated that the authority shall be irrevocable, and the agent has also an interest in its execution.

(2) Where an authority or power is coupled with an interest, or is given for a valuable consideration, or is a part of a security, unless there is an express stipulation that it shall be revocable.

(3) When an agent's act in pursuance of his authority has become obligatory, for *nemo potest mutare consilium suum in alterius injuriam*.

(II.) By the agent's giving notice to his principal that he renounces the agency; but the principal must sustain no damage thereby; otherwise the agent would be responsible therefor.

(III.) By operation of law, as

(*a*) By the expiration of the period during which the agency was to exist or to have effect.

(*b*) By a change of condition or of state, producing an incapacity of either the principal or the agent, as

(1) Mental disability established by inquisition, or where the party is placed under guardianship.

(2) Bankruptcy, excepting as to such rights as do not pass to the trustee under the adjudication.

(3) Death, unless the authority is coupled with an interest in the thing vested in the agent.

(4) By the extinction of the subject of the agency.

(5) By the ceasing of the principal's powers.

(6) By the complete execution of the trust confided to the agent, who then is *functus officio*. Consult *Halsbury's Laws of England*, tit. '*Agency*.'

As to the law when the agent is constituted by power of attorney, see POWER OF ATTORNEY.

Revocation of Will. There are four modes in which a will can be revoked, viz.: (1) by another will or express declaration in, or by intention to be inferred from another properly executed testamentary instrument; (2) by burning or other act done *animo revocandi*; (3) by the disposition of the property by the testator in his lifetime; (4) by marriage, except in certain cases of testamentary appointment. By the first and third of these modes, the will may be revoked either entirely or partially; by the second and last, the revocation will be total, unless under the provisions of the Law of Property Act, 1925, s. 177, the will has been made in contemplation of a particular marriage (*Sallis* v. *Jones*, 1936, P. 43).

Revocatione parliamenti, an ancient writ for recalling a parliament.—4 *Inst.* 44.

Reward, a recompense for anything done.

By the Criminal Law Act, 1826, s. 28, the Courts may order the sheriff of the county, in which certain offences have been committed, to pay the person active in or towards the apprehension of persons charged with felonies a reasonable sum to compensate for expense, exertion, and loss of time, and by s. 30, if a man be killed in attempting to take such offenders, the Court may order compensation to his wife or relatives. See *Archbold, Crim. Pleading, etc.*, 25th ed., pp. 276 *et seq.*

Corruptly taking a reward for helping to the recovery of stolen property without exercising all due diligence to cause the offender to be brought to trial is punishable by penal servitude up to seven years (Larceny Act, 1916, s. 34, and cf. s. 5 (3)).

The offering of rewards by the Government has been discontinued for several years in England on the ground that persons committed crimes for the purpose of obtaining them by false accusations, and the Home Office, though urgently requested to offer a reward for the discovery of a series of murders in Whitechapel in 1888, steadily refused to do so. Advertising a reward for the return of property stolen or lost with the use of words 'purporting that no questions will be asked,' etc., or publishing any advertisement to that effect, entails a forfeiture of 50*l.* to any person who will sue for the same, by s. 102 of the Larceny Act, 1861; but by the Larceny (Advertisements) Act, 1870, an action under this section against a newspaper must be brought within six months, and with the consent of the Attorney-General.

As to notice to be given to the local authority of reception, death or removal of infants kept for reward, see Children and Young Persons Act, 1932, ss. 65 and 77, and Sch. II.; and see BRIBE.

Action for Reward.—An offer for reward for information is a contract to pay the reward to the first person giving it and to him only, his motive being immaterial. See *Williams* v. *Carwardine*, (1833) 4 B. & Ad. 621, and other cases in *Chitty on Contracts*.

Rex. See KING.

Rhandir, a part in the division of Wales before the Conquest; every township comprehended four gavels, and every gavel had four rhandirs, and four houses or tenements constituted every rhandir.—*Taylor's Hist. Gav.* 69.

Rhetoric, the art of speaking not merely correctly, but with art and elegance.—*Latham.* See *Whateley's Elements of Rhetoric, Introduction*, s. 1.

Rhodian Law, a code of maritime law made by the people of Rhodes.

Ribaud, a rogue, vagrant, whoremonger; a person given to all manner of wickedness.

Ribbonmen, associations or secret societies formed in Ireland, having for their object the dispossession of landlords by murder and fire-raising. See *Alison's Hist. of Europe from* 1815 *to* 1852, vol. 4, cap. 20, s. 13.

Richmond Forest, a royal forest founded by Charles I. As to Richmond Park, see 2 *Hall. Const. Hist.* 14, and PARKS.

Richmondshire, the part of Yorkshire about Richmond, North Yorkshire.

Rider, an inserted leaf or clause; an additional clause tacked to a bill passing through Parliament. Now usually applied to an additional opinion put forward by a jury in a criminal case with their verdict, as, for example, a recommendation to mercy.

Rider-roll, a schedule or small piece of parchment, often added to some part of a roll, record, or Act of Parliament.

Riding armed. The offence of riding or going armed with dangerous or unusual weapons is a misdemeanour tending to dis-

turb the public peace by terrifying the good people of the land.—4 *Steph. Com.*

Riding Clerk, one of the Six Clerks in Chancery, who, in his turn, for one year, kept the controlment books of all grants that passed the Great Seal. The Six Clerks were superseded by the Clerks of Records and Writs.

Riding or Driving furiously, an offence against the Highway Act, 1835, s. 78 (if it endanger the life or limb of any passenger), punishable by fine up to 5*l.* (10*l.* if the owner) in addition to liability to civil action. See also Town Police Clauses Act, 1847, s. 28 : Metropolitan Police Act, 1839, s. 54 ; Offences against the Person Act, 1861, s. 35 ; Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 11 ; and see *Chit. Stat.*, tits. '*Highways*,' '*Police*,' and '*Police* (*Metropolis*).'

Ridings [corrupted from *trithings*], the names of the three parts or divisions of Yorkshire, viz., East Riding, North Riding, and West Riding.

Riens in Arrear, a plea which was used in an action for debt for arrearages of account, whereby the defendant alleged that there was nothing in arrear. See STATEMENT OF DEFENCE.

Riens passe per la fait (nothing passes by the deed), the form of an exception taken in some cases to an action on a deed. Obsolete.

Riens per descent (nothing by descent), the plea of an heir where he was sued for his ancestor's debts, and had no land from him by descent or assets in his hands.—3 *Cro.* 151. See now STATEMENT OF DEFENCE.

Rier, or **Reer-county** [fr. *retro-comitatus*, Lat.], close county, in opposition to open county. It appears to be some public place which the sheriff appoints for the receipt of the king's money after the end of the county court. Fleta says it is *dies crastinus post comitatum.*

Riffare [fr. *reife*, Sax.], to take away anything by force.

Right [fr. *recht*, Teut. ; *rectus*, Lat. The application of the same word to denote *a straight line and moral rectitude of conduct*, has obtained in every language I know.—*Dugald Stewart*], in its primitive sense, that which the law directs ; in popular acceptation, that which is so directed for the protection and advantage of an individual, is said to be his right.—1 *Stark. Evid.* 1, n. (*b*). It has been described as a liberty of doing or possessing something consistently with law, or more strictly, the liberty of the doing or possessing something for the infringement of which there is a legal sanction. It is often confused in the popular mind with licence for the doing of something which is not prohibited by law, however damaging the act may be to individuals or the community. See MALUM IN SE.

Right Close, Writ of, a writ which is directed unto the lord of ancient demesne, which lieth for those tenants within ancient demesne who hold their lands by charter in fee-simple, or in fee tail, or for life, or in dower.—*Fitz. N. B.* 11 F. ; and see *Merttens* v. *Hill*, 1901, 1 Ch. p. 853.

Right in Court. See RECTUS IN CURIA.

Right Patent. An obsolete writ which was brought for lands and tenements, and not for an advowson, or common, and lay only for an estate in fee-simple, and not for him who had a lesser estate, as tenant-in-tail, tenant-in-frank marriage, or tenant for life.—*Fitz. N. B.* 1.

Right, Petition of. See PETITION OF RIGHT.

Right to Begin. If the affirmative of the issue is on the plaintiff, he, in general, has a right to begin. If in replevin the defendant avow for rent in arrear, and the plaintiff reply riens in arrear, the plaintiff must begin. In any action where the plaintiff seeks to recover damages of an unascertained amount, he is entitled to begin, though the affirmative be with the defendant.

In considering, however, which party ought to begin, it is not so much the form of the issue which is to be considered as the substance and effect of it, and the judge will consider what is the substantial fact to be made out, and on whom it lies to make it out. And it seems that, as a general rule, the party entitled to begin is he who would have a verdict against him if no evidence were given on either side.

In the Court of Appeal, and in all other civil appeals, the appellant's counsel begins.

On an appeal to quarter sessions from the petty sessions, the person who appears in support of the order of the magistrate begins. Consult *Best on Evidence*, ss. 636–639.

Right, Writ of [*breve de recto*, Lat.], a procedure for the recovery of real property after not more than sixty years' adverse possession ; the highest writ in the law, sometimes called the writ of right proper. Abolished by 3 & 4 Wm. 4, c. 27 ; last used in 1835 in *Davies* v. *Lowndes*, (1835) 1 Bing. N. C. 597.

Rights, Bill of. See BILL OF RIGHTS.

Ring-dropping, a trick variously practised. One mode is as follows, the circumstances being taken from *Patch's case*, 2 East, P. C. 678 :—The prisoner, with accomplices, being

with their victim, pretends to find a ring wrapt in paper, appearing to be a jeweller's receipt for a 'rich brilliant diamond ring.' They offer to leave the ring with the victim if he will deposit some money and his watch as a security. He lays his watch and money, is beckoned out of the room by one of the confederates, while the others take away his watch, etc. This is a larceny. See further 2 *Russ. on Cr.*

Ringing the Changes, a trick practised by a criminal, by which, on receiving a good piece of money in payment of an article, he pretends it is not good, and, changing it, returns to the buyer a counterfeit one, as in *Frank's case*, 2 Leach, 64 :—A man having bargained with the prisoner, who was selling fruit about the street, to have five apricots for sixpence, gave him a good shilling to change. The prisoner put the shilling into his mouth, as if to test it by biting, and returning a shilling, said it was a bad one. The buyer gave him a second, which he treated like the first, and returned with the same words, and so with a third shilling. The shillings he returned being bad, this was an uttering of false money.—1 *Russ. on Cr.*, 5th ed. 231.

Riot, a tumultuous disturbance of the peace by three persons or more assembling of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people, whether the act intended were of itself lawful or unlawful. By 13 Car. 2, c. 5, more than ten persons coming to present a petition to the King, and by 57 Geo. 3, c. 19, more than fifty persons near Westminster when Parliament is sitting, constitute a riot. The punishment for riots not falling within the provisions of the Riot Act is fine and imprisonment to which hard labour may, by 3 Geo. 4, c. 114, be superadded.

As to riots at elections, see 2 Wm. 4, c. 45, s. 70, and 5 & 6 Wm. 4, c. 36, s. 8.

In any case of riot, or even apprehended riot, all places where intoxicating liquors are sold may be ordered to be closed by justices of the peace, under s. 63 of the Licensing (Consolidation) Act, 1910, and in Scotland by the sheriff, under s. 12 of the Temperance (Scotland) Act, 1913 (3 & 4 Geo. 5, c. 33).

The riotous demolition of buildings or machinery is felony by the Malicious Damage Act, 1861, s. 11, and see PUBLIC ORDER ACT.

Riot Act (1 Geo. 1, st. 2, c. 5), whereby if twelve or more persons assemble unlawfully, to the disturbance of the peace, and do not disperse within one hour after proclamation by a justice of the peace, sheriff, undersheriff, or mayor, they are felons, punishable by penal servitude for life, originally by death.

Riot Damages Act, 1886 (49 & 50 Vict. c. 38), providing compensation, out of the police rate, to any person sustaining damage by riot. From very early times (see the repealed Acts scheduled to 7 & 8 Geo. 4, c. 27) compensation of some kind for damage by riot was recoverable from 'hundredors' (see HUNDREDORS), and the consolidating Act (7 & 8 Geo. 4, c. 31), regulated the procedure for obtaining the compensation, limiting the title to recover to cases where there had been a felonious demolition of property, and giving no compensation for property stolen. A serious riot occurring in the metropolis on February 8th, 1886, and disclosing insufficiency in the law of compensation, led very quickly to the Metropolitan Police Compensation Act, 1886 (49 & 50 Vict. c. 11), applicable to the metropolis only and retrospective, and shortly afterwards to the general Riot Damages Act, 1886, by which (1) the police district is substituted for the hundred as the area liable to compensation ; (2) simple demolition is substituted for felonious demolition as giving the right to compensation ; (3) compensation is given for stolen property ; and (4) in fixing the amount of compensation, regard is to be had to the conduct of the claimant, whether as respects precautions taken by him, or the part taken by himself in the riot, or the provocation offered by him to the rioters. The time for sending in claims, and the procedure generally as to claims, is fixed by regulations of a Secretary of State. See the Riot (Claims for Compensation) Regulations dated October 1st, 1921 (No. 1536), which provide that claims shall be made in a specified form and within fourteen days ; the time may, however, be extended to forty-two days. As to the elements which must have existed in the disturbance in order to constitute a 'riot' within the meaning of this Act, see *Field* v. *Receiver for Metropolitan Police District*, 1907, 2 K. B. 853.

Riparia, a mediæval-Latin word, which Sir Edward Coke takes to mean water running between two banks ; in other places it is rendered 'bank.' See MAGNA CHARTA, cap. 15 ; 2 *Inst.* 478.

Riparian Nations, those who possess oppo-

site banks or different parts of banks of one and the same river.—*Inter. Law.*

Riparian Proprietors, owners of lands bounded by a river or water-course. As to their duties, see *Clayton* v. *Sale Urban District Council*, 1926, 1 K. B. 415; WATER.

Ripon, Bishopric of, created pursuant to the report of the Ecclesiastical Commissioners.

Riptowell, or **Reaptowel,** a gratuity or reward given to tenants after they had reaped their lord's corn or done other customary duties.

Ripuarian Laws, a code of laws belonging to the Franks who occupied the country upon the Rhine.

Risk, in insurance, the danger, peril, or event insured against.

Risk Note, the name sometimes given to the special contract, sanctioned by s 7 of the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), but not binding on the consignor unless signed by him and also just and reasonable, exempting a railway or canal company from liability for loss of or injury by their negligence or that of their servants to goods or animals carried by them. Both before and after the decision of the House of Lords in *Peek* v. *North Staffordshire Ry. Co.*, (1868) L. R. 10 H. L. 473, in which it was held, after summoning the judges, that the contracts must be *both* reasonable *and* signed, these risk notes have occasioned much litigation; see especially *Great Western Ry. Co.* v. *McCarthy*, (1887) 12 App. Cas. 218, to the effect that by offering alternative rates—a higher rate with the ordinary carrier's liability, and a lower rate with exemption from liability—a company may exempt themselves from all liability except for wilful misconduct: *Sutcliffe* v. *G. W. Ry.*, 1910, 1 K. B. 478.

Ritual, the order of ministration and ceremonies in the Church of England.

Ritualism. See PUBLIC WORSHIP REGULATION ACT, 1874.

Rivage, or **Rivagium,** a toll anciently paid to the Crown for the passage of boats or vessels on certain rivers.—*Jac. Law Dict.*

Riveare, to have the liberty of a river for fishing and fowling.—*Ibid.*

Rivers Pollution Prevention Acts, 1876 (39 & 40 Vict. c. 75), and 1893 (56 & 57 Vict. c. 31). See *Peebles* v. *Oswaldtwistle Council*, 1897, 1 Q. B. 384, 625; *Butterworth* v. *Yorkshire Rivers Board*, 1909, A. C. 45; *Brook* v. *Meltham Council*, *ib.* 438, and see 13 & 14 Geo. 5, c. 16, s. 8.

Rixa, a dispute or quarrel.—*Civ. Law.*

Rixatrix communis, a common scold.—4 *Steph. Com.*

Road, (1) a way or passage (see HIGHWAYS; WAY); (2) a secure place for the anchoring of vessels.

Road Board. A body established by the Road Improvement Funds Act, 1909 (s. 7), of persons appointed by the Treasury. The Ministry of Transport now exercises its powers and carries out its duties through the Ministry's Roads Department.

Road Fund. A fund established under s. 3 of the Roads Act, 1920, for dealing with moneys applicable to the improvement of roads received under the Act, and also under Part II. of the Development and Road Improvement Funds Act, 1909. The Fund is administered by the Ministry of Transport in accordance with these Acts and regulations made by the Treasury.

Road, Rule of the, the old common law rule, in riding or driving, to keep on the left side (sometimes called the near side) when meeting, and on the right when passing—a departure from which rule is punishable by s. 78 of the Highways Act, 1835, and also by Motor Vehicles (Construction and Use) Regulations, 1931, S. R. & O. 1931, No. 4. See HIGHWAYS.

Robbery, the unlawful and forcible taking from the person of another, of goods or money to any value, by violence or putting him in fear. See Larceny Act, 1916, ss. 23 and 37, and the Garrotters Act, 1863, by which robbery with violence is felony punishable by penal servitude and whipping, if the offender be a male.

Roberdsman, or **Robertsman,** a bold and stout robber or night thief, so called from Robin Hood, the famous robber, but, perhaps, a corruption of 'robber's-man.'—3 *Inst.* 197.

Rod, a measure of sixteen feet and a half long, otherwise called a perch.

Rod Knights, certain servitors who held their land by serving their lords on horseback.

Roe, Richard, otherwise **Troublesome,** the casual ejector and fictitious defendant in ejectment, whose services are no longer invoked. See JOHN DOE, and EJECTMENT.

Rogatio testium, bidding persons present to be witnesses to a nuncupative will.—1 *Wms. Exs.*

Rogation [fr. *rogatio*, Lat.], the demand by the consul or tribunes of law, to be passed by the people.—*Civ. Law.*

Rogation Week [fr. *rogando* (*Deum*), Lat., supplicating God], the second week before

Whit Sunday ; thus called from three fasts observed therein, the Monday, Tuesday, and Wednesday, called Rogation days, because of the extraordinary prayers then made for the fruits of the earth, or as a preparation for the devotion of Holy Thursday, or the Ascension of our Lord.

Rogatory Letters, a commission from one judge to another requesting him to examine a witness.

Rogue, a wandering beggar, vagrant, vagabond. As to 'incorrigible rogue,' or 'rogue and vagabond,' see VAGRANT.

Rogus, a funeral pile ; a great fire wherein dead bodies were burned ; a pile of wood.—*Claus.* 5 *Hen.* 3.

Rôle d'équipage [Fr.], the list of a ship's crew ; a muster-roll.

Roll, a schedule of parchment that may be turned up with the hand in the form of a pipe.—*Staundf. P. C.* 11. A list, as a burgess roll, a freeman's roll under the Municipal Corporations Act. All pleadings, memorials, and acts of court are entered on rolls, and filed with the proper officers, and then they become records of the Court.

Roll of Court, the court-roll in a manor, wherein the business of the court, the admissions, surrenders, names, rents, and services of the tenants are copied and enrolled. 'Copyhold lands are lands holden by *copy* of court roll ; that is, the muniments of the title are *copies* of the *roll* or book in which an account is kept of the proceedings in the *Court* of the manor to which the lands belong.'—*Williams on Real Property.* As to custody, and superintendence, of the Master of the Rolls, see COPYHOLD, and Law of Property Act, 1924, 2nd Sched.

Rolling Stock. By the Railway Rolling Stock Protection Act, 1872 (35 & 36 Vict. c. 50), rolling stock of a railway company, when out on sidings, etc., belonging to private occupiers, is exempted from *distress* for rent due from the occupiers. The rolling stock is protected from *execution* by s. 4 of the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), made perpetual by 38 & 39 Vict. c. 31.

Rolls, Master of the. See MASTER OF THE ROLLS.

Rolls Office of the Chancery, an office in Chancery Lane, London, which contained rolls and records of the High Court of Chancery.

This house or office was anciently called *Domus Conversorum,* as being appointed by King Henry III. for the use of converted Jews, but their irregularities occasioned King Edward II. to expel them thence, upon which the place was deputed for the custody of the rolls.

Rolls of the Exchequer. There are several in this court relating to the revenue of the country.

Rolls of Parliament, the manuscript registers of the proceedings of our old Parliaments. In these rolls are likewise a great many decisions of difficult points of law which were frequently, in former times, referred to the determination of this supreme court by the judges of both benches, etc.

'Formerly all bills were drawn in the form of petitions which were entered upon the *parliament rolls,* with the king's answer thereunto subjoined ; not in any settled form of words, but as the circumstances of the case required ; and at the end of each parliament, the judges drew them into the form of a statute, which was entered on the *statute rolls.*'—1 *Bl. Com.* 181.

Rolls of the Temple. In the two Temples was a roll called the Calves-head Roll, wherein every bencher, barrister, and student, was taxed yearly at so much to the cook and other officers of the houses, in consideration of a dinner of calves-head, provided in Easter term.—*Orig. Jurid.* 199.

Rolypoly, a form of roulette. See GAMING.

Roman Catholics. Very severe laws, commonly called the penal laws, were passed against Roman Catholics, generally under the name of Papists (see that title), after the Reformation, an Act of Elizabeth, for instance, 13 Eliz. c. 2, punishing with the penalties of a præmunire (see that title) any person bringing into this country any Agnus Dei, cross, picture, etc., from Rome ; an Act of James, 3 Jac. 1, c. 5, penalizing the sale or purchase of Popish primers ; and an Act of William and Mary (11 & 12 Wm. 3, c. 4), punishing any Papist assuming the education of youth with imprisonment for life. Exclusion from Parliament was effected by the requirement of the Declaration against Transubstantiation (see TRANSUBSTANTIATION) from members of either House by 30 Car. 2, s. 2, and disfranchisement by the requirements of the Oath of Supremacy by 7 & 8 Wm. 3, c. 27, s. 19 ; while 7 & 8 Wm. 3, c. 24, effected (until 1791) exclusion from the profession of barrister, attorney, or solicitor by requiring a declaration against Transubstantiation under 25 Car. 2, c. 2.

Roman Catholic disabilities have now been almost completely removed, the Roman Catholic Relief Acts of 1791 (31 Geo. 3, c. 32), for freedom of worship with unlocked doors,

and that of 1829 (10 Geo. 4, c. 7), for enfranchisement and qualification for seat in Parliament, being the main factors in the removal, and the Roman Catholic Charities Act, 1832 (2 & 3 Wm. 4, c. 115), subjecting Roman Catholics to the same laws as Protestant dissenters in respect to schools and places for religious worship, education, and charitable purposes.

Diplomatic relations with the 'Sovereign of the Roman States' were allowed by 11 & 12 Vict. c. 108, which, however, prohibited the sovereign of this country from receiving as ambassador accredited by him any priest, Jesuit, or 'member of any other religious order bound in monastic or religious vows.'

The Act of Settlement, however, 12 & 13 Wm. 3, c. 2 (see SETTLEMENT, ACT OF), requires the sovereign to be a Protestant; and the Act of 1829 itself contains a series of enactments directed to the purpose of the 'gradual suppression and final prohibition' of "Jesuits, and members of other religious orders, communities, or societies of the Church of Rome, bound by religious or monastic vows,' with a saving, however, for any 'religious order, community, or establishment of females bound by religious or monastic vows.' The Roman Catholic Charities Act, 1832 (see s. 4), does not in any way repeal these sections, which provide for the banishment of the persons named therein. In January, 1902, it was sought for the first time (see JESUITS) to enforce the sections. See *Anstey's Guide to the Law affecting Roman Catholics* (1842) and *Lilly and Wallis's Manual of the Law specially affecting Catholics* (1893). The authors of the latter work, and also the writer of the article '*Roman Catholic*' in the *Encyclopædia of the Laws of England*, seem to be of the opinion that the Act of 1829 disables the religious orders therein mentioned to hold property in their corporate capacity.

The Act does not, it seems, operate to render void an absolute immediate bequest to individuals ascertained at the death of the testator (*Re Smith*, 1914, 1 Ch. 937).

As to whether or not a Roman Catholic may be Lord Chancellor, see the statement of Sir J. Coleridge, A.-G. (afterwards Lord Chief Justice of England), in the House of Commons on May 6, 1872. The Act of 1829 merely provides (by s. 12) that nothing in it shall extend to enable 'any person professing the Roman Catholic religion to hold the office of regent,' nor 'to enable any person, otherwise than he is now by law enabled,' to hold the office of Lord Chancellor of Great Britain or Ireland, or of Lord Lieutenant of Ireland, or Commissioner to the General Assembly of the Church of Scotland. See also Office and Oath Act, 1867, which permitted the Lord Chancellor of Ireland to be a Roman Catholic. The office was abolished by Part II. of the Irish Free State (Consequential Provisions) Act, 1922 (session 2). See JESUITS.

See also the Roman Catholic Relief Act, 1926 (16 & 17 Geo. 5, c. 55), which does not apply to Northern Ireland, and safeguards powers to regulate and control processions and repeals and amends a number of Acts (see Sched., *ibid.*).

Roman Civil Law. See CIVIL LAW.

Roma-Peditæ, pilgrims who travelled to Rome on foot.—*Mat. Paris*, anno 1250.

Rome. See ROMAN CATHOLICS and PRÆMUNIRE. 25 Hen. 8, c. 21, ss. 1 and 17, and 1 Eliz. c. 1, s. 2, forbade the payment of Peter-pence to the Pope of Rome.

Rome-scot, or **Rome-penny,** Peter-pence, which see.—*Cowel.*

Romilly's Act (52 Geo. 3, c. 101) (the Charities Procedure Act, 1812). As to charity abuses, see CHARITIES.

Romney Marsh, a tract of land, in Kent, governed by certain ancient and equitable laws of sewers, from which commissioners of sewers may receive light and direction.—4 *Inst.* 276; 3 *Steph Com.*; and see also the Municipal Corporations Act, 1883 (46 & 47 Vict. c. 18), saving certain rights in respect of Romney Marsh.

Rood, or **Holy Rood,** holy cross.

Rood of Land, the fourth part of an acre, or 1210 square yards.

Rooks are animals (*feræ naturæ*), and no action is maintainable for scaring them away from a rookery by discharging guns near it (*Hannam* v. *Mockett*, (1824) 2 B. & C. 934). But see FERÆ NATURÆ and the qualified right of property, and therefore of action, *ratione impotentiæ* in regard to young birds' nests.

Rope-dancers. Unlicensed booths and stages for rope-dancers and mountebanks are public nuisances, and may, upon indictment, be suppressed, and the keepers of them fined.—1 *Hawk. P. C.* 75, s. 6.

Ros, a kind of rushes, which some tenants were obliged by their tenure to furnish their lords withal.

Rosland, heathy ground, or ground full of ling; also, watery and moorish land.—See *Co. Litt.* 5 *a.*

Roster, a list of persons who are to perform certain legal duties when called upon in their

turn. In military affairs it is a table or plan by which the duty of officers is regulated.

Rota, the system by which succession to the functions of a temporary office is regulated among the persons who are to discharge them. See, e.g., Parliamentary Elections Act, 1868, s. 11.

Rother-beasts, oxen, cows, steers, heifers, and suchlike horned animals.—*Jac. Law Dict.*

Rotulus Wintoniæ (the Roll of Winton), an exact survey of all England, made by Alfred, not unlike that of Domesday; so called because kept at Winchester, among other records of the kingdom: but this roll time has destroyed.—*Ingulph. Hist.* 516.

Roulette. See GAMING.

Round-robin, a circle divided from the centre, like King Arthur's Round Table, whence its supposed origin. In each compartment is a signature, so that the entire circle, when filled, exhibits a list without priority being given to any name. A common form of round-robin is simply to write the names in a circular form. For an account of perhaps the most famous round-robin on record, see *Boswell's Johnson*, ed. by Birkbeck Hill, vol. iii. p. 82.

Rout, a disturbance of the peace by persons assembling with an intention to do a thing which, if it be executed, will make them rioters, and actually making a motion towards its execution.—4 *Steph. Com.*

Roy. See KING.

Roy, Royan, a Hindoo title, given to the principal officer of the *Khalsa*, or chief treasurer of the exchequer.—*Indian.*

Royal Arms. There are two statutory provisions relating to the unauthorized use of the Royal Arms, namely, s. 68 of the Trade Marks Act, 1905 (see TRADE MARKS), which is as follows:—

68.—If any person, without the authority of His Majesty, uses in connexion with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorized so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connexion with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he may, at the suit of any person who is authorized to use such arms or such device, emblem, or title, or is authorized by the Lord Chamberlain to take proceedings in that behalf, be restrained by injunction or interdict from continuing so to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

And s. 90 of the Patents and Designs Act, 1907 (see LETTERS-PATENT), which is as follows:—

90.—(1) The grant of a patent under this Act shall not be deemed to authorize the patentee to use the Royal Arms or to place the Royal Arms on any patented article.

(2) If any person, without the authority of His Majesty, uses in connexion with any business, trade, calling, or profession the Royal Arms (or arms so nearly resembling them as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorized to use the Royal Arms, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing such arms to continue to use such trade mark.

The word 'Royal' may (*semble*) be used in such a way as to negative any suggestion of the enjoyment of royal patronage (*Re Royal Worcester, etc., Application*, 1909, 1 Ch. 459, per Parker, J.). As to the use of the Prince of Wales's feathers and motto, see *Re Imperial Tobacco Co.*, 1915, 2 Ch. 57.

Royal Assent. The act by which the Crown agrees to a bill which has already passed both Houses is called 'The Royal Assent,' which may be given by the sovereign in person in the House of Lords, the Commons standing at the bar; or by the Commissioners appointed by the Crown, under the Declaratory Act (33 Hen. 8, c. 21), for that special purpose and for the single occasion. The forms observed in both cases do not vary, and are as follows: The Lords being assembled in their own House, the Sovereign or the Commissioners seated, and the Commons at the bar, the titles of the several bills which have passed both Houses are read, and the king's or queen's answer is declared by the Clerk of the Parliaments in Norman-French. To a bill of supply, the assent is given in the following words: '*Le roy* (or, *la reyne*) *remercie ses loyaux sujets, accepte leur bénévolence et ainsi le veult.*' To a private bill it is thus declared: '*Soit fait comme il est désiré.*' And to public general bills it is given in these terms: '*Le roy* (or, *la reyne*) *le veult.*' Should the sovereign refuse assent, it is in the gentle language of '*Le roy* (or, *la reyne*) *s'avisera.*' As acts of grace and amnesty originate with the Crown, the Clerk, expressing the gratitude of the subject, addresses the throne as follows: '*Les prélats, seigneurs, et communs, en ce présent parlement assemblés, au nom de tout vos autres sujets*

remercient très humblement votre majesté et prient à Dieu vous donner en santé bonne vie et longue.' The moment the royal assent has been given, that which was a bill becomes an Act, and instantly has the force and effect of law as from the beginning of that day, unless some time for the commencement of its operation should have been specially appointed (*Tomlinson* v. *Bullock*, (1879) 4 Q. B. D. 230).

Queen Elizabeth, at the end of one session, rejected forty-eight bills agreed to by both Houses. The power of rejection was exercised in the year 1692 by William III., who at first refused, but in two years afterwards yielded, assent to the bill for triennial parliaments; and for the last time in 1707, when Queen Anne refused her assent to a Scotch militia bill.—*Dod's Parl. Com.* 94.

Royal Burghs in Scotland are incorporated by royal charter, giving jurisdiction to the magistrates within certain bounds, and vesting certain privileges in the inhabitants and burgesses. A burgh is called a royal burgh if it hold of the Crown; if it hold of a subject it is termed a burgh of barony.

Royal College of Physicians. See PHYSICIAN.

Royal College of Surgeons. See SURGEON.

Royal Courts of Justice, the statutory name, by Jud. Act, 1925, s. 222, replacing s. 28 of the Jud. (Officers) Act, 1879, of the Law Courts, on the north side of the Strand, between St. Clement Danes Church and Chancery Lane, in which the business of the Supreme Court is transacted. The erection of buildings for bringing together into one place 'all the superior Courts of Law and Equity, the Probate and Divorce Courts and the Court of Admiralty' recommended by a Royal Commission in 1858 was authorized by Parliament in 1865 by the Courts of Justice Building Act and the Courts of Justice Concentration (Site) Act (28 & 29 Vict. cc. 48, 49). The Royal Courts were formally opened by Queen Victoria on the 4th of December, 1882, and opened for business on the 11th of January, 1883, the Judges' Chambers and other offices having been opened for business in January, 1880. Prior to the opening, the Chancery Division of the High Court occupied courts at Lincoln's Inn, and the Queen's Bench and Probate, Divorce, and Admiralty Division Courts adjoining Westminster Hall.

'Guildhall Sittings' for the transaction of London City *nisi prius* business were also held in the Guildhall, but provision was made by s. 20 of the Courts of Justice Building Act, 1865, for removing such business to the Royal Courts on request of the City Common Council, which request having been made, the business was removed accordingly, an Order in Council directing in May, 1883, that London causes were to be tried for ever thereafter at the Royal Courts. But in 1891 the Supreme Court of Judicature (London Causes) Act, 1891 (54 Vict. c. 14), directed that, notwithstanding the Act of 1865 and any Order in Council thereunder, sittings may be held in the City of London by judges of the High Court; and two judges commenced to hold such sittings in November, 1891; but such sittings have been discontinued. See COMMERCIAL COURT.

Royal Fish. Whale and sturgeon. These, when either thrown ashore, or caught near the coast, are the property of the King, on account of their superior excellence.—1 *Bl. Com.* 290. Porpoises are also said to be royal fish; see *Hall on the Sea Shore*, 2nd ed. p. 80, App. xli. The right to royal fish may be vested in a subject by grant from the Crown or prescription.

Royal Forests. A hunting territory for the King's princely delight and pleasure. Its boundaries are ascertained by record, or prescription; formerly administered by laws and officers belonging to the forest, with special courts and a particular law. These were obsolescent as long since as the end of the sixteenth century. Control and jurisdiction are now vested in the Commissioners of Crown lands. See Crown Lands Acts, 1851 and 1866, and Forestry Acts, 1919 (9 & 10 Geo. 5, c. 58), and 1927 (17 Geo. 5, c. 6); and see *Manwood's Forest Laws* and *Halsb. L. E.*, tit. '*Constit. Law.*'

Royal Grants, conveyances of record. They are of two kinds: (1) letters-patent; and (2) letters-close, or writs-close.—1 *Steph. Com.*

Royal Marriage Act (12 Geo. 3, c. 11), by which no descendant of King George II. may marry without the previous consent of the sovereign, signified under the Great Seal, unless above the age of twenty-five, in which case the marriage may take place after twelve months' notice, unless disapproved by Parliament.

Royal Mines, gold and silver mines: the Crown has a right of pre-emption of any gold or silver found in mines of copper, tin, iron, or lead, by virtue of 1 & 2 W. & M. sess. 1, c. 30, s. 4; 5 & 6 W. & M. c. 6; and 55 Geo. 3, c. 134.

Royal Title, '[George VI.] by the Grace of God of the United Kingdom of Great

Britain and Ireland and of all the British dominions beyond the seas, King, Defender of the Faith, Emperor of India.' The words 'British dominions beyond the seas' were added by King Edward VII. in pursuance of the Royal Titles Act, 1901, and the title of Empress of India had been added by Queen Victoria in pursuance of the Royal Titles Act, 1876, to the Royal Titles given under the Union Acts.

Royalty, payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised.

R. S. C., Rules of the Supreme Court. See that title and RULES OF COURT.

Rubric, directions printed in books of law and in prayer-books, so termed because they were originally distinguished by red ink.

Rubric of a Statute, its title, which was anciently printed in red letters. It serves to show the object of the legislature, and thence affords the means of interpreting the body of the Act. Hence the phrase of an argument *à rubro ad nigrum.*

Rubricas, constitutions of the Church founded upon the Statutes of Uniformity and Public Prayer. viz., 5 & 6 Edw. 6, t. 1; 1 Eliz. c. 2; 13 & 14 Car. 2, c. 4.

Rudmas-day [fr. *rode,* Sax., cross, and mass-day], the feast of the Holy Cross. There are two of these feasts: one on the 3rd of May, the Invention of the Cross; and the other on the 14th of September, called the Holy Rood-day, the Exaltation of the Cross.

Ruffanamah, an agreement.—*Indian.*

Rules of Court, orders regulating the practice of the Courts; or orders made between parties to an action or suit.

(1) General rules regulating the practice of the Courts, both of Common Law and Equity, have from time to time been made by the Courts in pursuance of the powers of various Acts of Parliament. See as to the Common Law Courts, which promulgated consecutive Rules without any division into Orders, *Day's Common Law Procedure Acts;* and as to the Court of Chancery, which promulgated Orders subdivided into Rules, *Morgan's Chancery Acts and Orders.* The scheme of the Chancery Procedure Acts was that the Orders made thereunder should come into force as soon as made, subject to the power of Parliament to annul them afterwards (see, e.g., Chancery Procedure Act, 1858, s. 12), while that of the Common Law Procedure Acts was that Rules made thereunder should not come into force until they had lain before Parliament for three months (see 13 & 14 Vict. c. 16, and Common Law Procedure Act, 1852, s. 223). The present practice (see Judicature Act, 1875, s. 25) follows that of the Chancery Procedure Acts, allowing Rules to come into force as soon as made, but requiring them to be laid before each House of Parliament, an address from which within a limited time may invalidate them; and the Rules Publication Act, 1893 (56 & 57 Vict. c. 66), also provides for the consideration by any public body interested, of draft Rules, and for the consideration by the authority making the Rules of suggestions by any such body.

A large body of Orders subdivided into Rules was appended to the Judicature Act, 1875, s. 17, of which allowed a majority of the judges to alter, annul, or add to them from time to time. The 17th section of the App. Jur. Act, 1876, as amended by s. 19 of the Jud. Act, 1881, delegates this power to a committee, commonly called the 'Rule Committee,' of any five or more of eight judges, to whom have been added two practising barristers and two practising solicitors by the Judicature (Rule Committee) Act, 1909 (9 Edw. 7, c. 11). The Rules made from time to time under the authority of these Acts are called 'Rules of the Supreme Court.' They were consolidated with many amendments in 1883 by the 'Rules of the Supreme Court, 1883.' Further amendments are made in them as need arises.

By the Interpretation Act, 1889, s. 14, 'Rules of Court' means (when used in relation to any Court), in any Act passed in or after 1890, 'rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such Court,' and as regards Scotland, 'includes acts of adjournal and acts of sederunt.'

(2) *Rules by Order of Court.* At Common Law, rules on the plea side of the Courts were *common,* being obtained from the master, without motions by counsel; or *special,* obtained upon motion by counsel.

Those granted upon motion by counsel might be classed under the following heads: 1st, those which were granted upon the motion-paper being merely signed by a counsel without any motion being actually made in Court; 2nd, those which were considered so much as a matter of course, that the grounds of the motion were not particu-

larized by counsel, and where, in some instances, counsel might hand the motion-paper to one of the masters, without making the motion *viva voce*; and, 3rd, those which were granted upon the grounds of the motion being particularized by counsel.

The first class of the above rules were absolute in the first instance; the second and third were either absolute in the first instance, or rules to show cause, commonly called rules *nisi*, which were made absolute after service unless good cause shown to the contrary.—2 *Chit. Arch. Prac.*, 12th ed., 1577 *et seq.*

By the Judicature Act, 1875, Ord. LIII., rr. 2, 3, no rule or order to show cause shall be granted in any action except in the cases in which an application for such rule or order is expressly authorized by the Rules; and a notice of motion must be given where the motion is not for a rule to show cause or a motion on which, by the old practice, a rule was granted *ex parte* absolute in the first instance. See, further, MOTION; NEW TRIAL; and consult the *Annual Practice*.

Rules of the Supreme Court, the Rules scheduled to the Judicature Act, 1875, and subsequent Rules amending the same. So called by virtue of the Rules of the Supreme Court, December, 1875. See RULES.

Rules of the Supreme Court (Costs). The Rules respecting costs made by Order in Council of the 12th of August, 1875, repealed and re-enacted with amendments by the Rules of 1883. See *A. P.*, Appx. N.

Ruling Cases, cases having much the same character and effect as Leading Cases (see that title).

Run, to take effect in point of place, as to the king's writ in given localities; or in point of time, as of the Statute of Limitations.

Runcaria, land full of brambles and briars. —*Co. Litt.* 5 *a*.

Runcilus, Runcinus, a load-horse, sumpter-horse, cart-horse.

Rundlet, or **Runlet,** a measure of wine, oil, etc., containing eighteen gallons and a half.—1 Rich. 3, c. 13.

Running Days. See LAY DAYS.

Runrig Lands. Lands in Scotland where the ridges of a field belong alternately to different proprietors. Anciently this kind of possession was advantageous in giving a united interest to tenants to resist inroads. By Act 1695, c. 23, a division of these lands was authorized, with the exception of lands belonging to corporations.

Run with the Land—Run with the Reversion. A covenant is said to 'run with the land,' either leased or conveyed in fee, when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that land. A covenant is said to 'run with the reversion' to land leased when either the liability to perform it, or the right to take advantage of it, passes to the assignee of that reversion. Consult *Spencer's case*, (1583) 1 *Sm. L. C.* 1, where a list of the covenants running with the land and not so running is given; and see, too, *Woodfall, L. & T.*; *Dyson* v. *Forster*, 1909, A. C. 98.

The benefit of a covenant made after 1925 running with the land is to be deemed to be made with the covenantee, his successors in title and the persons deriving title under him or them; and in connection with restrictive covenants, 'successors in title' includes owners and occupiers for the time being of the land intended to be benefited (Law of Property Act, 1925, s. 78). Sect. 58 of the Conveyancing Act, 1881, is repealed without affecting the operation of the covenants made under that Act.

A corresponding provision is made in regard to the burden of such covenants if made after 1925, and these covenants may relate to some Act relating to the land notwithstanding that the subject-matter is not in existence. In none of these cases of benefit or burden of covenants made after 1925 is it necessary that the successors in title or assigns or other persons should be expressly referred to. In regard to covenants running with the reversion upon conveyance, assignment, or severance, or on cesser of a lease as to part of the land, see ss. 140, 141 and 142 of the L. P. Act, 1925, replacing and extending 32 Hen. 8, c. 34; the Law of Property Amendment Act, 1859, s. 3; ss. 10 to 12 of the Conveyancing Act, 1881; and s. 2 of the Conveyancing Act, 1911. Under s. 140 of the Act of 1925, as amended by the L. P. Amendment Act, 1926, where the assignee of part of a reversion to an agricultural holding can give notice to quit in respect of that part, the lessee has the right within one month of the notice to give notice to determine the lease as to the whole of the land demised (see *Bebington* v. *Wildman*, 1921, 1 Ch. 559, and COVENANT).

Rupee, a silver coin rated at 2*s.* for the current, and 2*s.* 3*d.* for the Bombay, rupee.

The value, however, fluctuates. And see SICCA RUPEE.

Ruptarii or **Ruttarii,** soldiers.—*Mat. Paris*, anno 1199.

Ruptura, arable land, or ground broke up.

Rural Authority. Under the Public Health Act, 1936, s. 1, means the council of a rural district, provided that where a direction such as is mentioned in the Local Government Act, 1933, s. 42 (2) is in force; a reference to a rural authority in the P. H. Act shall be construed as a reference to the council temporarily administering the affairs of the district. So far as a rural district council is a council of a county district, it is an authority invested with the duty of carrying the P. H. Act into execution as provided by the Act without prejudice to the exercise by a parish council of any powers conferred upon such councils. Under s. 12, *ibid.*, rural districts may constitute special purpose areas for charging exclusively sewage, water, or drainage expenses, and see s. 308, *ibid.*, as to such expenses. Sect. 13 enables the Minister of Health to invest any rural district or any contributory place therein with urban powers. See WATCHING AND LIGHTING.

Rural Deanery, the circuit of an archdeacon's and rural dean's jurisdictions. Every rural deanery is divided into parishes.

Rural Deans, very ancient officers of the Church (almost grown out of use, until, about the middle of the last century, they were generally revived), whose deaneries are an ecclesiastical division of the diocese or archdeaconry. They are deputies of the bishop, planted all round his diocese, to inspect the conduct of the parochial clergy, to inquire into and report dilapidations, and to examine candidates for confirmation, armed in minuter matters with an inferior degree of judicial and coercive authority.

Rural District Council. The council of an administrative area, such as existed at the passing of the Local Government Act, 1933, forming a county district part of an administrative county under that Act (see s. 1, *ibid.*), and a local authority under that Act (s. 305). See RURAL AUTHORITY.

Rural Sanitary District. Under the public Health Act, 1875, the area of any union (see that title) not coincident in area with an urban sanitary district (see that title), nor wholly included in an urban sanitary district; the guardians of the union formed the rural authority. See now RURAL AUTHORITY.

Rustici, churls, clowns, or inferior country tenants, who held cottages and lands by the services of ploughing, and other labours of agriculture, for the lord. The land of such ignoble tenure was called by the Saxons *gafalland*, as afterwards socage tenure, and was sometimes distinguished by the name of *terra rusticorum.—Paroch. Antiq.* 136.

Ruta, things extracted from land, as sand, chalk, coal, and other such matters.—*Civ. Law.*

Rutland, Statute of, 12 Edw. 1.

Ryot, a peasant, subject, tenant of house or land.—*Indian.*

S.

S. P., *sine prole,* without issue; **d.s.p.** means '*demisit sine prole,*' i.e. 'died without issue.'

Sabbatum, the Sabbath; also peace.—*Domesday.* See SUNDAY.

Sabbulonarium, a gravel pit, or liberty to dig gravel and sand; money paid for the same.

Sable, the heraldic term for black. It is called *Saturn* by those who blazon by planets, and *Diamond* by those who use the names of jewels. Engravers commonly represent it by numerous perpendicular and horizontal lines crossing each other.

Sac, the privilege enjoyed by a lord of a manor of holding courts, trying causes, and imposing fines.

Saca, cause, sake.

Sacaburth, Sacabere, Sakabere, he that is robbed, or by theft deprived of his money or goods, and puts in surety to prosecute the felon with fresh suits.—*Bract.*, l. 3, c. 32. The Scots term it *sikerborgh* (that is, *securum plegium*).—*Spelm.*

Sacculatii [Lat.] cut-purses.

Saccus cum brochiâ, a service or tenure of finding a sack and a broach (pitcher) to the sovereign for the use of the army.— *Bract.* l. 2, c. 16.

Sacquier, an ancient officer, whose business was to load and unload vessels laden with salt, corn, or fish, to prevent the ship's crew defrauding the merchant by false tale, cheating him of his merchandise.—*Mar. Law.*

Sacrament. In the Church of England there are two sacraments only—Baptism and the Supper of the Lord; Confirmation, Penance, Orders, Matrimony, and Extreme Unction are not recognized as sacraments (*Art.* XXV.). The term 'Sacrament' is commonly used to mean the Holy Communion. Reviling the Sacrament is punishable by fine and imprisonment (1 Edw. 6, c. 1), and administration of the Sacrament in both kinds is enjoined by s. 7 of the same Act, 'excepte necessitie otherwise require,' and the same section enacts that 'the

minister shall not without lawful cause denye the same.' In the Roman Catholic Church the cup is not administered to the laity.

For a clergyman to refuse without lawful cause to administer the Sacrament to a parishioner is an offence against the laws ecclesiastical, for which he may be proceeded against under the Church Discipline Act (*Jenkins* v. *Cook*, (1876) 1 P. D. 80). The Holy Communion cannot be refused to a person because he has married his deceased wife's sister (*Thompson* v. *Dibdin*, 1912, A. C. 533); and see Canon 27 and the ante-Communion Rubrics in the Prayer Book. The reservation of the Sacrament is unlawful (*Oxford (Bishop of)* v. *Henly*, 1907 P. 88).

Sacramentum, an oath. As to the *sacramenti actio* of the Civil Law, see *Sand. Just.*, and *Cum. C. L.* 313.

Sacramentum si fatuum fuerit, licet falsum, tamen non committit perjurium. 2 *Inst.* 167.—(A foolish oath, though false, makes not perjury.)

Sacrilege, larceny from a church. By s. 24, Larceny Act, 1916, breaking and entering any church, chapel, meeting-house, or other place of Divine worship and committing any felony therein, or being therein and committing any felony therein, and breaking out of the same, is felony punishable by penal servitude or imprisonment. The offence was for a long time capital, the last execution having taken place in 1819.

Also the alienation to laymen of property given to pious uses.—*Par. Ant.* 390.

Sacristan, a sexton, anciently called *sagerson* or *sagiston*; the keeper of things belonging to Divine worship.

Sadberge, a denomination of part of the county palatine of Durham.—*Camd. Brit.*

Sæmend, an umpire, arbitrator.—*Anc. Inst. Eng.*

Sævitia [Lat.], cruelty. See CRUELTY.

Safe-conduct, (1) convoy; guard through an enemy's country; (2) a document allowing such a journey. It is a prerogative of the Crown to grant safe-conducts.

Safe-guard, a protection of the Crown to one who is a stranger, that fears violence from some of its subjects, for seeking his right by course of law.—*Reg. Brev.* 26.

Safe-pledge, a surety appointed for one's appearance at a day assigned.—*Bract.* l. 4.

Sagaman, a tale-teller; secret accuser.

Sagibaro, Sachbaro, a judge.—*Leg. Inæ.*, c. vi.

Sailing Instructions, written or printed directions delivered by the commanding officer of a convoy to the several masters of the ships under his care, by which they are enabled to understand and answer his signals, to know the place of rendezvous appointed by the fleet in case of dispersion by storm, by an enemy, or otherwise. Without sailing instructions no vessel can have the protection and benefit of convoy.—*Mar. Ins.*; *Anderson* v. *Pitcher*, (1800) 2 Bos. & P. 164.

Saint Martin-le-Grand, Court of. A writ of error formerly lay from the sheriff's courts in the City of London to the court of hustings, before the mayor, recorder, and sheriffs; and thence to justices appointed by the royal commission, who used to sit in the church of St. Martin-le-Grand; and from the judgment of those justices a writ of error lay immediately to the House of Lords.—*Fitz. N. B.* 32.

Saisie-arret [Fr.], an attachment of property in the possession of a third person.

Saladine Tenth, a tax imposed in England and France, in 1188, by Pope Innocent III., to raise a fund for the crusade undertaken by Richard I. of England and Philip Augustus of France against Saladin, Sultan of Egypt, then going to besiege Jerusalem. By this tax every person who did not enter himself a crusader was obliged to pay a tenth of his yearly revenue and of the value of all his movables, except his wearing apparel, books, and arms. The Carthusians, Bernardines, and some other religious persons were exempt. Gibbon remarks that when the necessity for this tax no longer existed, the Church still clung to it as too lucrative to be abandoned, and thus arose the tithing of ecclesiastical benefices for the Pope or other sovereigns; and see the preamble to 23 Hen. 8, c. 20, wherein it is recited that the Court of Rome exacted great sums of money under the title of annates or first-fruits, which were first suffered to be taken within the realm 'for thonelye defence of Cristen people ayenst thinfideles.'—*Encyc. Londin.*

Salary, a recompense or consideration generally periodically made to a person for his service in another person's business; also wages, stipend, or annual allowance. See RECEIPT.

The ancients derive the word from *sal*, salt (*Plin. H. N.* xxxi. 42)—the most necessary thing to support human life being thus mentioned as a representative of all others.

Sale. Blackstone (2 *Com.* 446) defines it as 'a transmutation of property from one man to another in consideration of some price,' and the Sale of Goods Act (see below) defines a contract of sale of goods as 'a

contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price.'

As to sales of land, see ABSTRACT; CONDITIONS OF SALE; CONTRACT FOR SALE OF LAND; ESTATE CONTRACT; LAND CHARGES; PRIORITY NOTICE; and *Williams* or *Dart on Vendors and Purchasers;* and as to sale of goods, see *Benjamin on Sales and Sale of Goods Act.*

All causes and matters for the specific performance of contracts between vendors and purchasers of real estates are assigned to the Chancery Division of the High Court of Justice, as are also all causes and matters for the partition or sale of real estates (Jud. Act, 1925, s. 56 (1) (*b*)).

Sale, Bill of. See BILL OF SALE.

Sale by the Court. It constantly happens that in the course of an action in the Chancery Division a sale of property becomes necessary, as, for instance, in administration suits, also, under Admin. of Estates Act, 1925, s. 38, or actions to enforce mortgages. After an order has been made for sale, the further proceedings take place before the Master in Chambers. An estate, when sold by the Court, is usually sold by public auction, but a private advantageous offer may be accepted at once, without going to an auction. For the procedure on sales by the Court, see R. S. C. Ord. LI., and consult *Dart's V. & P.*

Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), codifying the law of the sale of goods, in the same fashion as the law of bills of exchange, promissory notes, and cheques was codified (see CODE) by the Bills of Exchange Act, 1882, and the law of partnership by the Partnership Act, 1890.

The parts of the Act are :—

I. *Formation of the Contract*, in which it is provided, amongst other things, that an infant or person by mental incapacity or drunkenness incompetent to contract must pay a reasonable price for 'necessaries' sold and delivered to him; that (re-enacting a part of the Statute of Frauds) a contract for the sale of goods of the value of 10*l.* or more is not enforceable unless the buyer accept and receive part, *or* give something in earnest to bind the contract, *or* 'unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf'; that a contract for the sale of specific goods which have perished without the knowledge of the seller is void; and full provision is made for conditions and warranties, and for sale by sample.

II. *Effects of the Contract*, in which, amongst other things, are dealt with the transfer of property as between seller and buyer (five rules being laid down for ascertaining the time when the property passes), the transfer of risk, the transfer of title, and the effect of sale in 'market overt' and of the conviction for larceny on the property in stolen goods.

III. *Performance of the Contract*, in which, amongst other things, are dealt with the rules as to time and place of delivery, the effect of delivery of short or excessive quantity, the rules as to delivery by instalments and as to delivery to a carrier, the right of the buyer to examine goods, and the liability of the buyer for not taking delivery.

IV. *Right of Unpaid Seller*, in which are dealt with, amongst other things, the right of lien or right to retain the goods, and the right to stop in transition if the buyer becomes insolvent, notwithstanding any sale by the buyer.

V. *Actions for Breach of Contract*, in which, amongst other things, are dealt with the action of the seller for price and the action for non-acceptance, and the action by the buyer for non-delivery, specific performance, or breach of warranty.

VI. *Supplementary*, in which, amongst other things, it is laid down that 'what is a reasonable time is a question of fact'; rules as to sale by auction are enumerated, as that, 'where a sale is not notified to be subject to a right to bid on behalf of the seller, he may not bid himself or employ any person to bid'; savings for bankruptcy rules, common law rules, bills of sale, mortgages, and landlord's right of hypothec in Scotland are contained, and twenty-three definitions are given.

Definitions.—These are provided by s. 62. The most important definitions are that of 'goods,' which 'includes all chattels personal' (and therefore all animals) 'other than things in action and money, and in Scotland all corporeal movables except money,' also 'emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale'; and that of 'warranty,' which as regards England and Ireland 'means an agreement with reference to goods which are the subject of a contract for sale, but collateral to the main purpose of such contract, the breach of which gives rise

to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated,' it being added that, ' as regards Scotland, a breach of warranty shall be deemed to be a failure to perform a material part of the contract.' And see SALE OR RETURN.

Sale Notes. See BOUGHT AND SOLD NOTES.

Sale of Settled Estates. See SETTLED LAND.

Sale or Return. By s. 18, Rule 4, of the Sale of Goods Act, 1893, *supra* :—

When goods are delivered to the buyer on approval or ' on sale or return ' or other similar terms [e.g., on trial : *Elphick* v. *Barnes*, (1880) 5 C. P. D. at p. 326] the property therein passes to the buyer :—

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction :

As to the meaning of adopting the transaction, see *London Jewellers Ltd.* v. *Attenborough*, 1934, 2 K. B. 206.

(b) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Salic, or **Salique** [*lex salica*, Lat.], an ancient and fundamental law of the kingdom of France, usually supposed to have been made by Pharamond, or at least by Clovis, in virtue of which males only are to reign.

It is a popular error to suppose that the Salic law was established purely on account of the succession of the Crown, since it extended to private persons as much as to the royal family.

The Salic law had not in view a preference of one sex to the other, much less had it a regard to the perpetuity of a family, a name, or the succession of land. It was purely a law of economy which gave the house, and the land dependent on the house, to the males who should dwell in it, and to whom it consequently was of more service.

In proof of this, the title of allodial lands of the Salic law may be thus stated :—

(1) If a man die without issue, his father or mother shall succeed him.

(2) If he have neither father nor mother, his brother or sister.

(3) If he have neither brother nor sister, the sister of his mother.

(4) If his mother have no sister, the sister of his father.

(5) If his father have no sister, the nearest relation by the male.

(6) No part of the Salic land shall pass to the females, but it shall belong to the males ; the male children shall succeed their father. —*Encyc. Londin.* ; preferring males but not excluding females in default of male successors ; see *Hallam's Mid. Ages*, note 3 to c. 2, p. 278.

Salmon Fishery. See the Salmon and Freshwater Fisheries Act, 1923, and the Amendment Act of 1929, which consolidated prior legislation, and FISHERY.

Salt Duty in London, a custom in the City of London called *granage*, formerly payable to the Lord Mayor, etc., for salt brought to the port of London, being the twentieth part.

Salt Silver, one penny paid at the feast day of St. Martin, by the tenants of some manors, as a commutation for the service of carrying their lord's salt from market to his larder.— *Paroch. Antiq.* 496.

Salus populi est suprema lex. 11 *Rep.* 139. —(The safety of the people is the supreme law.) See *Broom's Leg. Max.* Thus a condition in a will divesting property in the event of a beneficiary entering the naval or military service of the country is absolutely void (*Re Beard*, 1908, 1 Ch. 383).

Salute, a coin made by Henry V., after his conquests in France, whereon the arms of England and France were stamped and quartered.—*Stow's Chron.* 589.

Salvage, allowance or compensation made by maritime law to those by whose exertions ships or goods have been saved from the dangers of the seas, fire, pirates, or enemies.

This was allowed by the laws of Rhodes, Oleron, and Wisby, and is also allowed by all modern maritime states ; the person who saves goods from loss or imminent peril has a lien upon them, and may retain them till payment of salvage. In this, however, the maritime law differs from the Common Law. No doctrine similar to ' salvage ' applies to things lost upon land, nor to anything except ships or goods in peril at sea (*Falcke* v. *Scottish Imperial Insurance Co.*, (1886) 34 Ch. D. p. 248, per Bowen, L.J.).

If the salvage be performed at sea, or on land (Judic. Act, 1925, s. 22), the Court of Admiralty has jurisdiction, and fixes the sum to be paid, adjusts the proportions, and takes care of the property pending the suit ; or, if necessary, directs a sale and divides the proceeds between the salvors and the proprietors. In fixing the rate of salvage, the Court has regard not only to the labour and perils of the salvors, but also to the situation

in which they stand to the property saved, to the promptitude and alacrity manifested by them, and the value of the ship and cargo, and the danger from which they were rescued. In some cases as much as half of the property saved has been allowed as salvage; in others only a tenth.

The crew of a ship are not entitled to salvage or any unusual remuneration for extraordinary efforts they have made in saving her, it being their duty as well as interest to contribute their utmost upon such occasions, the whole of their possible service being pledged to the master and owners. Neither are passengers entitled to anything for the ordinary assistance they may have afforded a vessel in distress. But a passenger is not bound to remain on board a ship in danger, if he can leave her; and if he performs any *extraordinary* service, he is entitled to a proportionable recompense. Consult *Kennedy on Salvage, Abbott on Shipping, Maude and Pollock on Shipping, Maclachlan on Shipping;* and see Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60) (substituted for Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104)), ss. 544–565, *Chitty's Statutes*, tit. '*Shipping.*' By s. 510 (2) of the Act of 1894, 'salvage' in that Act 'includes all expenses properly incurred by the salvor in the performance of the salvage services.' See also the Merchant Shipping (Safety and Load Line Conventions) Act, 1932; and SUE AND LABOUR CLAUSE.

Salvage-loss, the difference between the amount of salvage, after deducting the charges, and the original value of the property.

Salvo [*salvo jure*, Lat.], without prejudice to.

Salvor, a person who renders assistance to a ship or vessel in distress, whereby he becomes entitled to a reward. See SALVAGE.

Sample, a small quantity of a commodity exhibited at public or private sales as a specimen. Where goods are warehoused, certain small specified quantities may, by the regulations of the Custom House, be taken out as samples without payment of duty.

On a sale of goods by sample, conditions are implied that the bulk shall correspond with the sample, that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, and that the goods shall be freed from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.—Sale of Goods Act, 1893, s. 15.

As to samples for the purpose of analysis, see Food and Drugs (Adulteration) Act, 1928 (18 & 19 Geo. 5, c. 31), and ADULTERATION.

Sanatorium Benefit. See NATIONAL INSURANCE ACT.

Sancta, reliques of saints, upon which oaths were made.

Sanction of a Law, the provision for enforcing or promoting its observance. 'The evil which will probably be incurred in case a command be disobeyed, or (to use an equivalent expression) in case a duty be broken, is frequently called a *sanction*, or an *enforcement of obedience*. Or (varying the phrase) the command of the duty is said to be *sanctioned* or *enforced* by the chance of incurring the evil' (*Austin's Jurisprudence*, 3rd ed. pp. 91, 92).

Sanctuary, privilege of, existed in England from a period commencing soon after the conversion of the Saxons to Christianity. Its effect was that a person accused of any crime except treason or sacrilege might by flying to any church or churchyard, or even to certain other places in Westminster, Wells, Norwich, or York, or in London to Whitefriars or the Savoy, within forty days, on confession and taking oath of abjuration of the realm (see ABJURATION), escape to a foreign country, under the disability of not being able to return without the royal licence. If arrested during the forty days, he might put in the plea of Sanctuary. The privilege extended to civil as well as criminal process, but was attended by attainder of blood and forfeiture of goods.

Sanctuary and abjuration were abolished in 1625 by 21 Jac. 1, c. 21, after having been restricted by 26 Hen. 8, c. 13, 27 Hen. 8, c. 19, and 39 Hen. 8, c. 12.

Sanctus Bell, a bell tolled in the Communion Service at the moment of the elevation of the sacred elements. The rite is illegal in the Church of England (*Re St. John the Evangelist*, 1909, P. 6).

Sand-gavel, a payment due to the lord of the manor of Rodley, in the county of Gloucester, for liberty granted to the tenants to dig sand for their common use. —*Cowel.*

Sand-grouse are protected by the Sand-grouse Protection Act, 1888 (51 & 52 Vict. c. 55), as continued by the Expiring Laws Continuance Acts, in order that they may, if possible, become acclimatized.

Sane Memory, perfect and sound mind and memory to do any lawful act, etc.

Sang, or **Sanc** [Old Fr.], blood.

Sanguine or **Murrey,** blood-colour, called in the arms of princes *Dragon's tail,* and in

those of lords *Sardonyx*. It is a tincture of very unfrequent occurrence, and not recognized by some writers. In engraving it is denoted by numerous lines in saltire.—*Heraldic Term.*

Sanguinem emere, a redemption by villeins, of their blood or tenure, in order to become freemen.

Sanguis, the right or power which the chief lord of the fee had to judge and determine cases where blood was shed.—*Dugd. Mon.*, tom. i. 1021.

Sanitary Acts, enactments protecting the public health by provisions for the inspection and removal of nuisances, etc.; especially those so called in, and repealed by, Public Health Act, 1875 (see Sched. V.). See PUBLIC HEALTH, and *Chitty's Statutes*, tit. '*Public Health*.'

Sanitary Authority. The name, under the Public Health Acts prior to the P. H. Act, 1936, of the authorities for the purposes of those Acts. Under the Act of 1936 they are (i.) in a county borough, the council of the borough, (ii.) in an administrative county, as respects certain matters, the county council, and as respects all other matters, the councils of county districts without prejudice to the exercise by a parish council of any powers conferred on such councils, and 'local' authority means the council of a borough, urban district or rural district. 'Urban' or 'rural' authority means the respective council (see RURAL AUTHORITY), 'district' in relation to the local authority of a borough means the borough, and 'parish' in relation to a common parish council acting for two or more grouped parishes means those parishes. As to Port Health Authorities, see QUARANTINE.

Sans ceo que [Nor.-Fr.] (without this). See ABSQUE HOC.

Sans frais (without expense). See RETOUR SANS PROTÊT.

Sans nombre, Common, a common in gross which is absolutely unlimited; a common without stint. As to common in gross, see *Williams on Rights of Common.*

Sans recours [Fr.] (without recourse to me). A bill of exchange may be so marked by the endorser or any other party (see Bills of Exchange Act, 1882, s. 16) apparently absolving him from liability as such party under the bill.

Saol [fr. *sagol*, Sax., a staff], a tipstaff or serjeant-at-arms.

Sarculatura una, a tenant's service of one year's weeding for his lord.—*Paroch. Antiq.* 403.

Sardin-time, the time or seasons when husbandmen weed their corn.

Sarkellus, an unlawful net or engine for destroying fish.

Sart, a piece of woodland turned into arable. See ASSART.

Sassons, a corruption of Saxons: a name of contempt formerly given to the English, while they affected to be called Angles.

Satisdare, to guarantee the obligation of a principal.—*Civ. Law.*

Satisdation, satisfaction; suretyship.—*Civ. Law.*

Satisfaction, legal compensation; the recompense for an injury done, or the payment of money due and owing. See ACCORD.

The doctrine of satisfaction of legacies, portions, and debts means the gift of a thing with the intention, either expressed or implied, that it is to be taken either wholly or partly in extinguishment of some prior claim or demand. Of course, it is open to a donor expressly to provide that his subsequent gift shall be a satisfaction of a prior demand, so as to prevent such donee from claiming both. With regard to implied or presumable satisfactions, they have been divided into the three following classes:—

(1) The satisfaction of legacies by portions, otherwise called the ademption of legacies. Upon this subject Lord Eldon laid down in *Ex parte Pye*, (1811) 18 Ves. 140; 2 *W. & T. L. C.*, that 'where a parent (or person *in loco parentis*) gives a legacy to a child, not stating the purpose with reference to which he gives it, the Court understands him as giving a portion; and by a sort of artificial rule—upon an artificial notion, and a sort of feeling of what is called a leaning against double portions—if the father (or *quasi* parent) afterwards advance a portion on the marriage, or preferment in life, of that child, though of less amount, it is a satisfaction of the whole, or in part'; i.e., if the portion be equal to or greater than the legacy, it operates as a total ademption of such legacy; but if it be of a lesser amount than the legacy, such portion will then only adeem the legacy *pro tanto*.

(2) The satisfaction of a portion by a legacy. The rule is, that wherever a legacy given by a parent, or a person standing *in loco parentis*, is as great as, or greater than, a portion or provision previously secured to the legatee upon marriage or otherwise, then, from the already quoted inclination of equity against double portions, a presumption arises that the legacy was intended by the testator as a complete satisfaction. When

the legacy is not so great as the portion or provision, it is then only a satisfaction *pro tanto*.—*Hinchcliffe* v. *Hinchcliffe*, (1797) 3 Ves. 516. The bequest of a whole or part of a residue will, according to its amount, be presumed either a satisfaction of a portion in full or *pro tanto*.

(3) The satisfaction of a debt by a legacy. Subject to any expression or indication in the will to the contrary, if a debtor bequeath to his creditor a sum of money as great as, or greater than, the debt, without taking any notice at all of the debt, this shall be deemed a satisfaction of the debt, so that the creditor cannot have the debt and also the legacy—a doctrine founded upon the maxim *Debitor non præsumitur donare*.

Satisfaction on the Roll, Entry of. As soon as a judgment is satisfied, by payment, levy, or otherwise, the defendant is entitled to have satisfaction entered upon the roll.—1 *Chit. Arch. Prac.*, 12th ed., 721 *et seq*, and see QUIETUS.

Satisfied Terms Act (8 & 9 Vict. c. 112). See OUTSTANDING TERMS.

Saturday's Stop, a space of time from evensong on Saturday till sun-rising on Monday, in which it was not lawful to take salmon in Scotland and the northern parts of England.

Saunkefin, the determination of the lineal race ; a descent of kindred.—*Brit.* c. 119.

Saver-de-fault, to excuse.—*Termes de la Ley*.

Savigny, Friedrich Karl von, 1779-1861, German professor and jurist of great eminence, author of *Law of Obligations*, *Right of Possession*, etc.

Savings Banks, institutions for the safe custody and increase of the small savings of the poor. See *Chitty's Statutes*, tit. '*Savings Banks*.' They are : (1) Trustee ; (2) Post Office ; (3) Military ; (4) Statutory ; (5) Uncontrolled.

(1) *Trustee Savings Banks* are regulated by a long series of Acts (the Trustee Savings Banks Acts, 1861 to 1934), which provide that they must not be described in a manner which implies that the Government is responsible to depositors, that the money received must be paid to the Bank of England or Ireland and carried to an account kept in the names of the National Debt Commissioners, and that annual accounts must be sent to the Commissioners. An 'Inspection Committee,' established under the Savings Bank Act, 1891, has extensive powers of supervision for the purpose of detecting any breaches of the Acts or rules regulating a bank. Deposits by any depositor in more than one Trustee Savings Bank is prohibited, and the Treasury have power to limit the amount from one person in the year.

(2) *Post Office Savings Banks* (which have the direct security of Government) are established under the Post Office Savings Bank Act, 1861, which enacts that the Postmaster-General, with the consent of the Treasury Commissioners, may direct such of his officers as he shall see fit to receive deposits for remittance to the principal office, and repay the same under such regulations as may be prescribed (s. 1). Every such deposit (which may not be of less amount than one shilling, nor of any sum not a multiple thereof) is to be entered in the depositor's book, attested by the receiving officer and by the dated stamp of his office, and the amount received is to be reported on the same day to the Postmaster-General.

For the power of the Public Trustee in opening accounts, see Post Office Savings Bank (Public Trustee) Act, 1908.

(3) *Military Savings Banks* are constituted under 22 & 23 Vict. c. 20, repealing former Acts. The Naval Savings Bank Act, 1869, established similar banks for the use of the Royal Navy and Marines. The Military Savings Bank Act has been extended to the Air Force since 1918.

(4) There are also various Savings Banks established for the use of special classes of depositors which are regulated by Act of Parliament, e.g., the Savings Bank for the Merchant Service : see s. 148, Merchant Shipping Act, 1894.

(5) *Uncontrolled Savings Banks*, which are not subject to the statutory control which gives security to the other four classes. Many of these institutions are quite solvent and well managed, though cases of failure of 'share-out' clubs and similar Savings Bank institutions are frequent owing to want of competent supervision by depositors who are chiefly of the working classes, or poor people.

Savour, to partake of the nature of ; to bear affinity to. Money in any way connected with land, e.g., money secured by mortgage of real or leasehold property, or a legacy charged on land, was said to 'savour of the realty,' and prior to the Mortmain and Charitable Uses Act, 1891, could not be bequeathed to a charity.

Savoy, one of the old privileged places, or sanctuaries. See SANCTUARY.

Saxon-lage, the law of the West Saxons.

Sayer, that which moves : variable im-

posts distinct from land, rent, or revenues, consisting of customs, tolls, licences, duties on goods; also taxes on houses, shops, bazaars, etc.—*Indian.*

Scabini, a word used for wardens at Lynn, Norfolk.—*Norf. Chart. Hen. VIII.*

Scaccarium, a chequered cloth resembling a chess-board which covered the table in the Exchequer, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. Hence the Court of Exchequer or *curia scaccarii* obtained its name.—3 *Bl. Com.* 44.

Scalam [fr. *ad scalam*, Lat., at the scale], the old way of paying money into the Exchequer.

Scale of Costs. By Rules made by Order in Council, dated the 12th August, 1875, a new scale of costs for the Supreme Court was provided, and these Rules were re-enacted in 1883. There is a higher and a lower scale, applicable respectively to the matters specified in the Rules; but costs on the higher scale 'may be allowed . . . if on special grounds arising out of the nature and importance or the difficulty or urgency of the case, the Court or a judge shall . . . so order' (Ord. LXV., r. 9). Scales of costs are also provided by the County Court Rules: the respective scales are applicable according to the amount recovered or in dispute, or the nature of the proceedings. See COSTS.

Scandal, a report or rumour, or an action whereby one is affronted in public.

Scandal, in pleadings, is injurious, by making the records of the Court the means of perpetuating libellous and malignant slanders; and the Court, in aid of the public morals, is bound to interfere to suppress such indecencies.

It is provided by R. S. C. 1883, Ord. XIX., r. 27, that scandalous matter may be ordered to be struck out from any pleading, and by Ord. XXXVIII., r. 11, from affidavits.

Scandalum magnatum, words spoken in derogation of a peer or judge, or other great officer, both actionable and punishable under 2 Ric. 2, st. 1, c. 5, and also under 3 Edw. 1, c. 34; repealed by the Statute Law Revision Act, 1887.

Scavage, Schevage, Schewage, or **Shewage,** a toll or custom, exacted by mayors, sheriffs, etc., of merchant strangers, for wares showed or offered for sale within their liberties. Prohibited by 19 Hen. 7, c. 7.

Scavaidus, the officer who collected the scavage money.

Sceat, a small coin among the Saxons equal to four farthings.

Sceppa salis, an ancient measure of salt, the quantity of which is now not known.

Schaffa, a sheaf.

Schar-penny, Scharn-penny, or **Schorn-penny,** a small duty or compensation.

Schedule, a small scroll; a writing additional or appendant, as a list of fixtures in a lease or details of any matter contained in the body of a deed, document., or of enactments repealed and other supplementary matter in an Act of Parliament, e.g., the Merchant Shipping Act, 1894, which has twenty-two schedules; an inventory.

Schetes, usury.

Schilla, a little bell used in monasteries.

Schireman, a sheriff; the ancient name for an earl.

Schirrens-geld [fr. *shiregeld*, Sax.], a tax paid to sheriffs for keeping the shire or county court.

Schism Bill, the name of an Act passed in the reign of Queen Anne, which restrained Protestant dissenters from educating their own children, and forbade all tutors and schoolmasters to be present at any conventicle or dissenting place of worship. The Queen died on the day when this Act was to have taken effect (August 1, 1714), and it was repealed in the fifth year of Geo. I.

School. See EDUCATION; PUBLIC SCHOOLS; REFORMATORY SCHOOLS; *Chitty's Statutes*, tit. '*Education.*'

School Attendance Committee, a committee appointed annually (in 'school districts' not within the jurisdiction of a 'school board') for the purpose of enforcing the Elementary Education Act, 1876, by proceeding against parents who neglected to send their children to a public elementary school. The duties of this Committee were transferred to the local education authorities by the Education Act, 1902. This Act was repealed by the Education Act, 1921, but the responsibilities of the local education authorities in this respect were confirmed (s. 43).

School Board, a body corporate of persons elected triennially, for the purpose of managing 'public elementary schools' within their respective districts (Elementary Education Acts, 1870 and 1873). School Boards were abolished by the Education Act, 1902, their powers and duties being transferred to the local education authorities; this provision has been re-enacted by the Education Act, 1921.

School, Certified Efficient. By s. 170 (2) of the Act of 1921, a 'certified efficient school'

means a public elementary school, a school certified by the Board of Education as suitable for blind, deaf, defective or epileptic children, a certified workhouse school, a Scottish public or State-aided elementary school, a national school in (Northern) Ireland, and any elementary school which is not conducted for private profit and is open to inspection and requires the like attendance from scholars as a public elementary school, and keeps certain registers of attendances and is certified by the Board of Education as efficient.

School District, a municipal borough; a parish; the metropolis.—Elementary Education Act, 1870, s. 4 and Sched. I. (repealed). School districts were abolished by the Act of 1902, the areas dealt with by the local education authorities being substituted. See now Part I. of the Act of 1921.

School, Elementary. By s. 170 (1), a school or department of a school at which elementary education is the principal part of the education given, and does not include any school or department of a school at which the ordinary payments from each scholar exceed ninepence per week, or any evening school under the Board of Education, or courses of advanced instruction under the Act, or any continuation school.

The Education Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 41), provides that the compulsory school age be raised to fifteen; enables local educational authorities to make grants to non-provided schools in certain cases; and makes provision with respect to religious instruction in non-provided schools, when the parents desire the children to receive such religious instruction.

Schools of Anatomy, regulated by 2 & 3 Wm. 4, c. 75, and 34 Vict. c. 16.

The local education authority will be liable for injury to a scholar caused by negligence (*Ching* v. *Surrey County Council*, 1910, 1 K. B. 736—defective playground; *Morris* v. *Carnarvon County Council*, 1910, 1 K. B. 840—dangerous premises). Consult *Maclean on Schools*.

Schoolmaster. To an action of trespass for an assault and battery the defendant pleaded that he was the headmaster of a school or college, of which the plaintiff was a pupil, and that the plaintiff combined with other pupils for purposes subversive of the discipline of the school, and the plea was held good: see *Fitzgerald* v. *Northcote*, (1865) 4 F. & F. 656. As to the extent of the powers of a schoolmaster in this respect, see *Cleary* v. *Booth*, 1893, 1 Q. B. 465. As to the power of an assistant teacher in a public elementary school to administer corporal punishment, see *Mansell* v. *Griffin*, 1908, 1 K. B. 160, 947. As to the dismissal of a schoolmaster or mistress of a public elementary school, see *Smith* v. *Macnally*, 1912, 1 Ch. 816; *Meyers* v. *Humell*, 1912, 2 Ch. 256; *Mitchell* v. *East Sussex C. C.*, (1914) 109 L. T. 778; *Price* v. *Rhondda U. D. C.*, 1923, 2 Ch. 372.

Science and Art Department. Constituted by charter. See also 38 & 39 Vict. c. 68.

Scienter [Lat.] (knowingly, wilfully). In an action of deceit, the *scienter* must be averred and proved. In case of injury to cattle and sheep by dogs, the proof of *scienter* of ferociousness, necessary at Common Law (see *Cox* v. *Burbidge*, (1863) 13 C. B. N. S. 430), is dispensed with by the Dogs Act, 1906, as amended by the Dogs Amendment Act, 1928. See DOG. In the case of animals naturally dangerous, it is immaterial whether the owner knew the individual beast to be mischievous. See ANIMALS.

Sclethman, a pirate or thief.

Scilicet [Lat., abbrev. *scil.*, or *sc.*, i.e., *scire licet*] (that is to say, to wit).

This is not a direct and separate clause, nor a direct and entire clause, in a conveyance, but *intermedia;* neither is it a substantive clause of itself, but it is rather to usher in the sentence of another, and to particularize that which was too general before, or distribute that which was too gross, or explain that which was doubtful; and it must neither increase nor diminish the premises nor *habendum*, for it gives nothing of itself; but it may make a restriction where the precedent words are not so very express but that they may be restrained.—*Hob.* 171.

Scintilla juris et tituli [Lat.] (a spark of law and title).

A possibility of seisin, which was supposed to exist in the grantee to uses, when all actual seisin was taken from him by the operation of the statute, upon a limitation of springing uses and the creation of contingent ones. 'If land be given to A. and his heirs, to the use of B. and his heirs until the marriage of C., and then to the use of C. and his heirs, here B. immediately becomes tenant in fee by force of the statute; and to give him this estate the whole seisin of A. is exhausted; now the marriage takes effect, and who is seised to the use of C.?' (*Burt. Comp.*, 6th ed. p. 59).

This doctrine of *scintilla juris*, the knowledge of the exact character of which appears to be rendered unnecessary by s. 7 of the Law of Property Amendment Act, 1860

(now repealed by the Law of Property Act, 1925, 7th Sched.), has been warmly contested. Lord Coke admitted it (*Chudleigh's case*, 1 Co., p. 121 *a*), so did Mr. Booth (see his opinion at the end of Sheppard's *Touchstone*), Mr. Sanders (1 *Uses and Trusts*, c. 2, s. 2, pp. 107 *et seq.*), and Mr. Burton (*Comp.*, p. 59, 6th ed.); but Lord Bacon *On Uses*, p. 47), Mr. Fearne (*Cont. Rem.*, p. 300), Lord St. Leonards (1 *Powers*, c. 1, s. 3, and note 10 to *Gilb. Uses*, p. 296), and Mr. Preston (1 *Prest. Est.*, p. 170), and 1 *Hayes' Conv.*, p. 61) opposed it; and Lord St. Leonards contends that the doctrine never received a regular judicial decision.

Scire facias [Lat.](that you cause to know), a judicial writ, founded upon some record, and requiring the person against whom it is brought to show cause why the party bringing it should not have advantage of such record.

The writ, though not abolished, is now out of use except in Crown Practice on the Revenue side of the King's Bench Division for recovery of Crown debts and also for rescinding Crown grants and charters, etc. *Scire facias* on recognizances and to repeal letters patent have been abolished: see as to patents, Patents and Designs Act, 1907. Formerly the issue of the writ was considered in some cases as an original proceeding; in others, interlocutory, and in the nature of process. Consult *Hals. L. E.*, tit. '*Crown Practice.*'

A *scire facias* was formerly resorted to in Chancery suits, when they became abated; but this mode became superseded in practice by the order of revivor, which see.

Scire facias for the Crown. The summary proceeding by extent is only resorted to when a Crown debtor is insolvent, or there is good ground for supposing that the debt may be lost by delay. In ordinary cases where a debt or duty appears by record to be owing to the Crown, the process for the Crown is a writ of *sci. fa. quare executionem non*; but should the defendant become insolvent pending this writ, the Crown may abandon the proceeding and resort to an extent. Consult *Robertson on the Crown.*

Scire feci, the sheriff's return on a *scire facias*, that he has caused notice to be given to the party against whom the writ was issued.

Scirewyte, the annual tax or prestation paid to the sheriff for holding the assizes or county courts.— *Paroch. Antiq.* 573.

Scite, or **Site** [fr. *situs*, Lat.], the setting or standing on any place; the seat or situation of a capital messuage, or the ground whereon it stands.

SCTm., a common mode of writing Scitum, a decree of the Roman people.

Scold [*communis rixatrix*, Lat.], a troublesome and angry woman who, by brawling and wrangling amongst her neighbours, breaks the public peace, increases discord, and becomes a public nuisance to the neighbourhood.—4 *Steph. Com.* See CASTIGATORY.

Sconce, a mulct or fine.

Scot. A fee payable under the Saxon kings for church services, in the name of Church Scot, light Scot, soul Scot (burials), and Rome Scot. See *Halsb. Laws of England*, tit. '*Eccles. Law.*'

Scot and Lot [fr. *sceat*, Sax., part, and *lot*], a customary contribution laid upon all subjects according to their ability. Whoever were assessed to any contribution, though not by equal portions, were said to pay scot and lot.

Scot and Lot Voters, voters in certain boroughs entitled before the Reform Act of 1832 to the franchise in virtue of their paying this contribution; the rights of those living in 1832 were reserved by that Act.

Scotal, or **Scotale,** an extortionate practice by officers of the forest who kept ale-houses, and compelled the people to drink at their houses for fear of their displeasure. Prohibited by the Charter of the Forest, c. 7.

Scotland and Ireland. As to service of writ, by leave of judge, upon a defendant resident in Scotland or Ireland, see R. S. C. Ord. XI., rr. 1 (*e*), 2 and 2A; *Williams* v. *Cartwright*, 1895, 1 Q. B. 142. Process for compelling the attendance of witnesses from Scotland or Ireland before English Courts and *vice versâ* may be issued under 17 & 18 Vict. c. 34. Appeals from courts in Scotland and Northern Ireland are heard by the House of Lords under s. 3 of the App. Jur. Act, 1876: see also Irish Free State (Consequential Provisions) Act, 1922 (Session 2), Sched. I., 6 (3); but appeals from the Supreme Court of the Irish Free State are to the Privy Council (see Irish Free State Constitution Act, 1922 (Session 2), Sched. I., art. 66).

The removal of Scottish and Irish poor from England to Scotland or Ireland is regulated by 8 & 9 Vict. c. 117, 10 & 11 Vict. c. 33 (Scotland); 24 & 25 Vict. c. 76 (Ireland); 25 & 26 Vict. c. 113, and 26 & 27 Vict. c. 89 (Ireland); but irremovability to Ireland is acquired by five years' continuous residence in England, under the Poor Removal Act, 1900.

Acts of Parliament passed since the Unions bind Scotland or Ireland unless they be expressly or impliedly (see *Westminster Fire Office* v. *Glasgow Provident Investment Society*, (1888) 13 App. Cas. at p. 716) limited to England, Ireland, or Scotland only. As to the present position of Northern Ireland and the Irish Free State, see IRELAND.

Scotland.—The Union with Scotland Act, 1706, is 6 Anne, c. 11, or 5 Anne, c. 8, and may be found in *Chitty's Statutes*, tit. '*Union Acts*,' and in the *Revised Statutes*. This Act confirms twenty-five Articles of Union, gives Scotland sixteen Representative Peers (to be elected for life by the whole body) in the House of Lords (see SCOTS PEERS), and forty-five Representative Members in the House of Commons.

A Secretary for Scotland, now a Secretary of State (*q.v.*), was established, by the Secretary for Scotland Act, 1904, and the Statute Law Revision (Scotland) Act, 1906, has expressly repealed very numerous Acts which had long ceased to have any operation.

Scots, assessments by commissioners of sewers. See SCOT AND LOT VOTERS.

Scots, derived from or pertaining to Scotland. The term 'Scots' is universal in Scotland itself, and the term 'Scotch' is incorrect.

Scots Judgments. See INFERIOR COURTS, and JUDGMENT.

'It is desirable that the decisions in the Scottish Court and in the Courts of this country should, if possible, be uniform': per Farwell, L.J., in *Chislett* v. *Macbeth & Co.*, 1909, 2 K. B. at p. 815, approved per Lord Shaw (*ib.*, 1910, A. C. at p. 224).

Scots Law is mainly derived from the Civil Law, and differs in many points from the English, as by assuring a man's widow and children two-thirds of his personal property (see LEGITIM), and by the legitimation of children born before marriage (see LEGITIMATION).

Scots Peers, peers of the kingdom of Scotland; of these, sixteen are elected by the rest and represent the whole body. They are elected for one Parliament only. See the Union with Scotland Act, 1706 (6 Anne, c. 11), sometimes numbered 23, amended by 10 & 11 Vict. c. 52; 14 & 15 Vict. c. 87; and 15 & 16 Vict. c. 35.

Scottare, to pay scot, tax, or customary dues.

Scrip, a certificate or schedule; also evidence of the right to obtain shares or debentures in a limited company, sometimes called 'scrip-certificate,' generally part paid and exchangeable for the certificate of share or the debenture upon payment in full. Scrip to bearer appears to be negotiable and to pass by delivery: see *Goodwin* v. *Robarts*, (1875) L. R. 10 Ex. 337; 1 App. Cas. 476; *Rumball* v. *Metropolitan Bank*, (1877) 2 Q. B. D. 194.

Script, a writing; the original or principal document.

Scripture. The canonical books of the Old and New Testaments. See *Articles of Religion*. Art. VI. All profane scoffing of the Holy Scripture, or exposing any part thereof to contempt and ridicule, is punishable by fine and imprisonment (*Roscoe on Criminal Evidence*, 8th ed. p. 666); and by 9 & 10 Wm. 3, c. 32, a conviction of a person educated in the Christian religion of having by writing or advised speaking denied the Divine authority of Scripture entails deprivation of all offices ecclesiastical, civil, or military. See CHRISTIANITY. Consult *Odgers on Libel*, 5th ed. p. 485.

Scrivener [fr. *scrivano*, Ital.; *escrivain*, Fr.], or **Money Scrivener,** a professional man whose business of receiving men's money and investing it for them when he should find a proper opportunity, being trusted as a banker in the meantime, died out about the middle of the eighteenth century. He was subjected to the law of bankruptcy by 21 Jac. 1, c. 19 (repealed by 6 Geo. 4, c. 16), where, and also in Sched. I. of the repealed Bankruptcy Act, 1869, he is defined as 'using the trade or profession of a scrivener, receiving other men's monies or estates into his trust or custody.' See *Adams* v. *Malkin*, (1814) 3 Camp. 539, where the question whether an attorney could be made bankrupt as a scrivener was decided in the negative, and *Boswell's Life of Johnson*, where it is related that one Jack Ellis, a contemporary of Dr. Johnson, and mentioned by him with great respect, was the last of the scriveners. By s. 13 of the Public Notaries Act, 1801, no person can become a notary within the limits of the jurisdiction of the Incorporated Company of Scriveners of London, unless a freeman. See NOTARY.

Scroll, a mark which supplies the place of a seal.

Scroop's Inn, an obsolete law society, also called *Serjeant's Place*, opposite to St. Andrew's Church, Holborn, London.

Scrutiny. An examination into the validity of votes recorded for a candidate at an election.

Sculpture, in the Copyright Act, 1911, is

included in the term ' artistic work ' (s. 35) ; see COPYRIGHT.

Scutage, a tax or contribution raised by those that held lands by knight's service in commutation of such service towards furnishing the king's army, at the rate of one, two, or three marks for every knight's fee (obsolete long before 12 Car. 2, c. 24, which abolished the military tenure.—*Steph. Com.*, ii., *Ch. on ' Tenures.'* See ESCUAGE.

Scutagio habendo, a writ that anciently lay against tenants by knight's service to serve in the wars, or send sufficient persons, or pay a certain sum.—*Fitz. N. B.* 83.

Scute, an ancient French gold coin of the value of 3*s.* 4*d.*

Scutella, a scuttle ; anything of a flat or broad shape like a shield.

Scutella eleemosynaria, an alms-basket.

Scutum armorum, a shield or coat of arms.

Scyldwit, a mulct for any fault.

Scyra, a fine imposed upon such as neglected to attend the *scyre-gemot* courts, which all tenants were bound to do.

Scyre-gemot, or **Sciremot,** a court held by the Saxons twice every year, by the bishop of the diocese and the ealdorman in shires that had ealdormen ; and by the bishop and the sheriff where the counties were committed to the sheriff, etc., wherein both the ecclesiastical and temporal laws were given in charge to the county.—*Seld. Titles of Hon.*

Sea. See FOUR SEAS. The main or high seas are part of the realm of England, for thereon the Courts of Admiralty have jurisdiction, but they are not subject to the Common Law. The main sea begins at the low-water mark, but between the high-water mark and the low-water mark, where the sea ebbs and flows, the Common Law and Admiralty have, *divisum imperium,* an alternate jurisdiction, the one upon the water when it is full sea, the other upon the land when it is an ebb. See FORESHORE.

The jurisdiction of the Admiralty within three miles of the low-water mark will be found elaborately discussed in *Reg.* v. *Keyn*; (1876) 2 Ex. D. 63. In that case it was held by a majority of seven judges to six that the Central Criminal Court had no jurisdiction to try for manslaughter the foreign captain of a foreign ship—the *Franconia*—which, in passing within three miles of the British shore, ran into a British ship and sank her ; but this state of the law was soon afterwards altered by the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73). Section 2 of that Act enacts that any offence committed by a person, whether a British subject or not, within one marine league of the coast, ' although it may have been committed on board or by means of a foreign ship,' is an offence within the jurisdiction of the Admiralty. As to jurisdiction of English Quarter Sessions to try a case of larceny alleged to have been committed in Scottish waters, see *R.* v. *Devon Justices,* 1924, 1 K. B. 503. See TERRITORIAL WATERS.

Sea greens, grounds overflowed by the sea in spring-tides.—*Bell's Scots Law Dict.*

Sea-laws, laws relating to the sea, as the laws of Oleron, etc.

Sea-letter, or **Sea-brief,** a document expected to be found on board of every neutral ship. It specifies the nature and quantity of the cargo, the place whence it comes, and its destination. See *Arnould on Mar. Ins.*

Sea Marks. See BEACON.

Seal, wax or wafer with an impression. By the Law of Property Act, 1925, s. 73, deeds executed after 1925 must be signed or marked (by illiterates or blind persons), as well as sealed. As to the forgery of seals and dies, see Forgery Act, 1913, s. 5 ; and for the definition of ' seal,' see s. 18.

By R. S. C. Ord. LXI., r. 7, the seal of the central office is sufficient to authorize as evidence office copies, or certificates and other documents issued from the central office of the Supreme Court. As to the seal of district registrars, see Judic. Act, 1925, s. 9, and see CORPORATION.

Seal Day, motion-day in the Court of Chancery, so called because every motion had to be stamped with the seal, which did not lie in court in the ordinary sittings out of term, and was therefore specially brought in on days when motions were taken, hence called Seal-days. Accordingly ' the Seal is closed ' meant that motions were over for that day. See GREAT SEAL ; PRIVY SEAL.

Sealer [fr. *sigillator,* Lat.], an officer in Chancery who sealed writs and instruments. The offices of sealer and deputy-sealer are abolished by 15 &16 Vict. c. 87, s. 23.

Seal Fisheries. The Seal Fishery Act, 1875 (38 & 39 Vict. c. 18), was passed to enable a close time to be established by Order in Council for the seal fishery in the seas adjacent to the eastern coasts of Greenland. The area to which the Act applies is specified in a schedule to the Act. See also the Seal Fisheries (North Pacific) Acts, 1895 and 1912, and the Grey Seals Protection Act, 1932 (22 & 23 Vict. c. 23), establishing a close season from 1st Sept-

ember to 31st December for grey seals in England and Scotland.

Seal-paper, a document formerly issued by the Lord Chancellor, previously to the commencement of the sittings, detailing the business to be done for each day in his court, and in the courts of the Lords Justices and Vice-Chancellors. The Master of the Rolls in like manner issued a seal-paper in respect of the business to be heard before him.—*Smith's Ch. Pr.* 9.

Seamen, persons engaged in navigating ships, barges, etc., upon the high seas. Those employed for this purpose upon rivers, lakes, or canals are denominated watermen.

The Merchant Shipping Acts, 1894 and 1906 (57 & 58 Vict. c. 60, and 6 Edw. 7, c. 48), contain numerous and elaborate provisions. In Part II. of the Act of 1894 there are regulations as to engagement and discharge of seamen, and payment of their wages. The Act also (s. 168) gives power to a court to rescind a contract between owner or master, and seaman or apprentice, where a proceeding is instituted in the court in relation to a dispute between them, protects (ss. 212–219) seamen from imposition, and (ss. 198–210) protects them in the matter of provisions, health, and accommodation. As to seamen's allotment notes, see Merchant Shipping (Seamen's Allotment) Act, 1911 (1 & 2 Geo. 5, c. 8). Part III. of the Act of 1906 deals with seamen's food, and Part IV. contains provisions for the relief and repatriation of distressed seamen.

Seamen are not within the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), but a rigger is (*Chislett* v. *Macbeth & Co.*, 1910, A. C. 220). Seamen, however, are provided for in s. 35 of the Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), and as to the mode of estimating their earnings for the purpose of that Act, see *Rosenqvist* v. *Bowring*, 1908, 2 K. B. 108. As to the position of seamen under the National Health Insurance Act, 1936, see ss. 135–138, which makes special provision in relation to them, and NATIONAL INSURANCE.

See *Chitty's Statutes*, tit. '*Shipping*,' and as to seamen in the Royal Navy, see Naval Discipline Act, 1866 (29 & 30 Vict. c. 109), and other Acts, and tit. NAVY.

Searcher, an officer of the customs, whose business it is to examine ships outward bound, in order to ascertain if they have any prohibited or unaccustomed goods on board, etc.

Searches, an essential feature in the acquisition of land since registration under the Land Charges Act, 1925, in the land or local registries of any incumbrance which is required to be registered under that Act is notice (*q.v.*) to the purchaser and all persons connected with the land affected (see s. 198, Law of Property Act, 1925, and see LAND CHARGES). Searches are necessary, not only in the Land Registry, but at the office of the local authority for local land charges. Searches may be made personally in each of the registers under the Land Charges Act, 1925, but the usual practice is to apply for and obtain an official certificate of search at the Land Registry, which covers all the registers there, viz.: (1) pending actions or *lis pendens*; (2) writs and orders affecting land, such as writs of execution or orders appointing a receiver, bankruptcy petitions and receiving orders; (3) deeds of arrangement; and (4) land charges under s. 10 of the L. C. Act, 1925 (see those titles). The certificate is good against any charge registered between its date and completion of purchase if the purchase is completed within two days (L. P. (Amendment) Act, 1926, s. 4; see also PRIORITY NOTICE). At the Land Registry the application for search must be made in the separate and respective names of each beneficial or estate owner affected during the period required for registration. For local land charges, on the other hand, registration is made against the land affected and the danger of an accidental omission of the name of an *interim* owner or incumbrancer is avoided. For departmental reasons against this practice at the Land Registry, see an article by the Chief Land Registrar in 1931, Sol. Jo. 769. Searches against land registered under the Land Registration Act, 1925, are not necessary as a rule, the subject-matter being entered on the register (but see REGISTRATION) except for the local land charges, which are not covered by this Act. Searches against companies for mortgages or charges for securing money may be made at Somerset House under the Companies Act, 1929, s. 79, and see Land Charges Act, 1925, s. 10 (5), but the Somerset House Register does not effectively protect registered land (see REGISTRATION OF TITLE). As to searches at the Yorkshire and Middlesex Deeds Registries, see Law of Property Act, 1925, s. 11, and see, generally, a valuable dissertation on the subject in Part III., ch. I., *Wolst. and Ch. Conveyancing Statutes*. See also Land Charges Rules, 1925; S. R. & O., 1925, No. 1096 L.29; and 1926, 737/L.20; also, and the Land Registration Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 26),

closing the Middlesex Deeds Registry and enacting that no search shall be made therein except by the Chief Land Registrar and his officers; and NOTICE. In the proper cases, searches should also be made at the Central Office for deeds enrolled there, or the Record Office if not kept at the Central Office, such as disentailing deeds, etc. Searches in the general sense of the word does not absolve the party from making the usual prudent inquiries as to tenancies, over-riding interests (*q.v.*) in regard to registered land, etc., or inspections before purchase, or for tithe annuities. See TITHE.

Search Warrant, an authority requiring the officer to whom it is addressed to search a house, or other place therein specified, for stolen property therein reasonably suspected to be.—Larceny Act, 1861 (24 & 25 Vict. c. 96), s. 103. See *Jones* v. *German*, 1897, 1 Q. B. 374.

Sea-reeve, an officer in maritime towns and places who takes care of the maritime rights of the lord of the manor, watches the shore, and collects the wreck.

Sea Rovers, pirates and robbers at sea.

Seas, Beyond, (1) at Common Law, not being in Great Britain; (2) by statute (19 & 20 Vict. c. 97), s. 12, as to the operation of certain Statutes of Limitation, not being in Great Britain, or Ireland, or the Channel Islands, or Isle of Man. See LIMITATION.

Seashore, the space of land between high- and low-water mark. It belongs to the Crown, or, by grant from the Crown, to the lord of the manor or other grantee of the Crown, and the public have no right over it for bathing.—*Blundell* v. *Catterall*, (1821) 5 B. & Ald. 268, diss. Best, J., but followed with approval by the Court of Appeal in *Brinckman* v. *Matley*, 1904, 2 Ch. 313. Consult *Hall on the Seashore*. See FORESHORE.

Seaworthy, a term applied to a ship, indicating that she is, in every respect, fit for her voyage. It is provided in all charter-parties that the vessel chartered shall be tight, staunch, and strong, well apparelled, furnished with an adequate number of mariners, sufficient tackle, provisions, etc. If the ship be insufficient in any of these particulars, the owners, though ignorant of the circumstance, will be liable for whatever damage may in consequence be done to the goods of the merchant, and if any insurance have been effected upon her it will be void. In a voyage policy a warranty of seaworthiness is implied, but not in a time policy: see *Dudgeon* v. *Pembroke*, (1877) 2 App. Cas. 284. But see Carriage of Goods by Sea Act, 1924, s. 2 and Sched., Art. III. 1 and Art. IV. 2, and Merchant and Shipping Act, 1894, ss. 457, 459.

Seck [fr. *siccus* (Lat.), dry or barren]. Rent-seck is a rent-charge without a clause of distress. 'Rent seche *idem est quod redditus siccus;* for that no distress is incident unto it' (*Co. Litt.* 144 *a*); see now Law of Property Act, 1925, s. 44, reproducing Conveyancing Act, 1881, s. 44; Conveyancing Act, 1911, s. 6. See RENT.

Secondary, an officer who is next to the chief officer.—2 *Lilly, Abr.* 506. Also, an officer of the Corporation of London, before whom inquiries to assess damages are held, as before sheriffs in counties. See INQUIRY.

Secondary Conveyances, those which presuppose some other conveyance precedent, and only serve to confirm, alter, retain, restore, or transfer the interest granted by the original conveyance. They are otherwise called derivative, and are:—(α) Releases; (β) Confirmations; (γ) Surrenders; (δ) Assignments; and (ε) Defeasances.

Secondary Evidence, that species of proof which is admitted on the loss of primary evidence. There are no degrees of this evidence; for example, if a letter be lost it may be as good to recite it from memory as to produce a copy. It is the province of the judge to decide whether a document produced be original or not, and until he decides it is not, no secondary evidence can be put in. See NOTICE TO ADMIT; NOTICE TO PRODUCE; HEARSAY.

Secondary Use, a use limited to take effect in derogation of a preceding estate; otherwise called a shifting use, as a conveyance to the use of A. and his heirs, with a proviso that when B. returns from India, then to the use of C. and his heirs.—*Steph. Com.* Vol. II., '*Present and Future Interests.*'

Second Deliverance, Writ of, a judicial writ that lies, after a nonsuit of the plaintiff in replevin, and a *retorno habendo* of the cattle replevied, adjudged to him that distrained them, commanding the sheriff to replevy the same cattle again, upon security given by the plaintiff in the replevin for the re-delivery of them if the distress be justified. It is a second writ of replevin, and is practically obsolete.—*Fitz. N. B.* 68.

Second Distress. A landlord has a power at common law to make a second distress for the same rent (*Woodfall on Landlord and Tenant*), but a second distress for the same rent is not to be made if there was enough which might have been taken on a first

distress (*Hutchins* v. *Chambers*, (1758) 1 Burr. 579).

Second Surcharge, Writ of. If after admeasurement of common, upon a writ of admeasurement of pasture, the same defendant surcharged the common again, the plaintiff might have had this writ of second surcharge *de secundâ superoneratione*, which is given by Stat. West. 2, 13 Edw. 1, c. 8, *rep.*

Seconds, assistants at a duel. If either of the principals is killed, his adversary, and also the seconds, are all guilty of murder.

Secret. A solicitor, and it is presumed also a barrister, is bound by law not to disclose his client's secrets, and the same rule does not appear to apply as between medical men and their patients (see as to this *Chitty on Contracts*, and *Kitson* v. *Playfair*, *Times*, 28th March, 1896). As to privileged communications, however, the privilege is that of the client, not of the solicitor. The clerk of a professional or business man is under an implied contract not to disclose professional or trade secrets which he has learned in the course of his employment (*Merryweather* v. *Moore*, 1892, 2 Ch. 518; *Amber Size and Chemical Co., Ltd.* v. *Menzel*, 1913, 2 Ch. 239).

As to official secrets, see that title; and as to secrets of the confessional, see CONFESSION.

As to secret commission, corruptly taken by an agent from the party with whom he is employed by his principal to transact business for such principal, see COMMISSION; CORRUPT PRACTICES.

Secretaries of State. There are eight principal Secretaries of State, one for the Home Department, another for Foreign Affairs, a third for the Colonies, a fourth for War (26 & 27 Vict. c. 12), a fifth for India (21 & 22 Vict. c. 106), a sixth for Air (7 & 8 Geo. c. 5, 51, s. 8), a seventh for the Dominion affairs (1925), and, eighth, for Scotland, 1926 (16 & 17 Geo. 5, c. 18). The Secretaries of State have co-extensive authority, that is to say, any one of them can legally execute the duties of all, although separate spheres of action are for convenience assigned to them. They have under their management the most considerable affairs of the nation, and are obliged to attend on the sovereign when required.

Formerly the administration of colonial and military affairs was combined and the duty discharged by a 'Secretary-at-War,' who was not a Secretary of State.

Secretary, one entrusted with the management of business; one who writes for another; the head of a Government department; an officer of a company, or club, etc.

Secretary of a Registered Company, is an officer of the company (*McKay's case*, (1876) 2 Ch. D. 1), and as such liable for misfeasance under s. 276 (*ibid.*). He is entitled to preferential payment on account of salary in a winding-up (s. 264; *Cairney* v. *Back*, 1906, 2 K. B. 746).

Secretary of Degrees and Injunctions, an officer of Chancery. The office was abolished by 15 & 16 Vict. c. 87, s. 23.

Secta [fr. *sequendo*, Lat.], suit; anciently the witnesses or followers of a plaintiff.

Secta ad curiam, a writ that lay against him who refused to perform his suit either to the County Court or the Court-baron.

Secta ad furnum, suit to a public oven, or bakehouse. Abolished.

Secta ad justiciam faciendam, a service which a man is bound to perform by his fee. —*Bract.*

Secta ad molendinum, a writ that lay where a man, by usage, had ground his corn at the mill of a certain person, and afterwards went to another mill with his corn, thereby withdrawing his suit to the former.—*Fitz. N. B.* 123. Abolished by 3 & 4 Wm. 4, c. 27, s. 36.

Secta ad torrale, suit to a kiln or malthouse. Abolished.

Secta curiæ, suit and service done by tenants at the lord's court.—*Cowel.*

Secta facienda per illam quæ habet enicam partem, a writ to compel the heir, who has the elder's part of the co-heirs, to perform suit and services for all the coparceners.—*Reg. Brev.* 177.

Secta non faciendis, a writ for a woman, who, for her dower, ought not to perform suit of court.—*Reg. Brev.* 174.

Secta quæ scripto nititur a scripto variari non debet. *Jenk. Cent.* 65.—(A suit which is based upon a writing ought not to vary from the writing.)

Secta regalis, a suit or service by which all persons were bound twice a year to attend the sheriff's tourn.

Secta unica tantum facienda pro pluribus hæreditatibus, a writ for an heir who was distrained by the lord to do more suits than one, that he should be allowed to do one suit only in respect of the land of divers heirs descended to him.

Sectares, bidders at an auction.—*Civ. Law.*

Sectatores, suitors of court who, amongst the Saxons, gave their judgment or verdict in civil suits upon the matter of fact and law.—1 *Reeve's Hist. Eng. Law*, 22.

Secular, not spiritual; relating to affairs of the present world (*in seculo*).

Secular Clergy, parochial clergy who performed their ministry *in seculo*, and were contradistinguished from the regular clergy, who lived in monasteries, by rules (*regulæ*).

Secunda superonerationе pasturæ. See SECOND SURCHARGE, WRIT OF.

Secundum statutum. See APPEARANCE, SEC. STAT.

Secundum subjectam materiam (with reference to the subject-matter). The meaning of a word or phrase is often governed by the context.

Securitatem inveniendi, etc., an ancient writ, lying for the sovereign, against any of his subjects, to stay them from going out of the kingdom to foreign parts; the ground whereof is, that every man is bound to serve and defend the Commonwealth as the Crown shall think fit.—*Fitz. N. B.* 115.

Securitatis pacis, a writ that lay for one who was threatened with death or bodily harm by another, against him who so threatened.—*Reg. Brev.* 88.

Security for Costs. In certain cases a plaintiff, before proceeding with his action, may be required to give security for the costs of it. The principal cases in which security may be required are the following: (1) Where the plaintiff is resident abroad, but if he resides in Scotland or Northern Ireland security will not be required: *aliter*, in the Irish Free State (*Wakely* v. *Triumph Cycle Co.*, 40 T. L. R. 15 (C. A.)); (2) where he misdescribes his residence, or is keeping out of the way; (3) where he is only a nominal plaintiff and is insolvent; (4) where he is a privileged person, e.g., an ambassador's servant; (5) where the plaintiff is a limited company (Companies Act, 1929, s. 371). But security cannot be required from a plaintiff on the mere ground of poverty or insolvency; or from a defendant, unless by reason of a counterclaim he is really in the position of a plaintiff; or from a person compelled to litigate. Security for costs may extend as well to past as future costs.

The Rules under the Judicature Acts make no change with reference to the subject of security for costs, and R. S. C. Ord. LXV., rr. 6, 6A and 6B, provides as follows:—

6. In any cause or matter in which security for costs is required the security shall be of such an amount, and be given at such times, and in such manner and form, as the Court or a Judge shall direct.

6A. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.

6B. In actions brought by persons resident out of the jurisdiction where the plaintiff's claim is founded on a judgment or order or on a bill of exchange or other negotiable instrument, the power to require the plaintiff to give security for costs shall be in the discretion of the Court or Judge.

As to security for the costs of an appeal, see Ord. LVIII., r. 15.—Consult *Morgan and Wurtzburg on Costs.*

Security for Good Behaviour or Abearance. See KEEPING THE PEACE.

Security for Keeping the Peace. See PEACE; PEACE, BREACH OF.

Seeus [Lat.], contrariwise.

Se defendendo, Homicide, excusable manslaying in defence of one's own life, when attacked and put in jeopardy.—4 *Steph. Com.*

Sede plenâ, when a bishop's see is not vacant.

Sederunt, Acts of, ordinances of the Court of Session in Scotland, made originally under authority of the statute 1540, c. 93, and later enabling Acts, which may be said to be equivalent to the *Regulæ Generales* of the English Courts. Generally speaking, Acts of Sederunt regulate procedure in Scots litigation, terms of membership of legal Societies, etc. A quorum of nine judges is necessary. —48 Geo. 3, c. 151, s. 11.

Sedition, an offence against the Crown and government, not capital, and not amounting to treason. It cannot be tried at Quarter Sessions. See the Unlawful Assemblies Act, 1799 (39 Geo. 3, c. 79); the Seditious Meetings Act, 1817 (57 Geo. 3, c. 19), jointly called the 'Corresponding Societies Acts,' and much resembling one another. Registered friendly societies are exempted by s. 32 of the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25), if transacting no business not relating to the objects of the societies; and the Criminal Libel Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 8). By the Act of 1817, s. 23, which has no parallel in the Act of 1799, political meetings of more than fifty persons within one mile of Westminster Hall, except for parliamentary election purposes, are declared unlawful on any day on which Parliament is sitting. By s. 25 of the Act of 1817, and s. 2 of the Act of 1799, every society or club, the members of which subscribe to any test or declaration not required or authorized by law, is declared to be an illegal society, and by s. 2 of the Act of 1799 the same character is impressed on:—

Every society of which the names of the members or of any of them shall be kept secret from the

society at large, or which shall have any committee or select body so chosen or appointed that the members constituting the same shall not be known by the society at large to be members of such committee or select body, or which shall have any president, treasurer, secretary, delegate, or other officer so chosen or appointed that the election of such persons to such offices shall not be known to the society at large, or of which the names of all the members and of all committees or select bodies of members, and all presidents, treasurers, secretaries, delegates, and other officers shall not be entered in a book or books to be kept for that purpose, and to be open to the inspection of all the members of such society: and every society which shall be composed of different divisions or branches, or of different parts acting in any manner separately or distinct from each other, or of which any part shall have any separate or distinct president, secretary, treasurer, delegate, or other officer, elected or appointed by or for such part, or to act as an officer for such part.

On verdict or judgment by default against any person for composing, printing, or publishing any seditious libel 'tending to bring into hatred or contempt' the person of the sovereign 'or the Government and constitution of the United Kingdom as by law established or either House of Parliament,' or to excite the public 'to attempt the alteration of any matter in Church or State as by law established, otherwise than by lawful means,' the Court may make an order for the seizure of all copies of the libel, etc. See also Fire Arms Act, 1920, s. 16, amending the Unlawful Drilling Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 1), prohibiting any meeting for purposes of drill without authority of the Crown or a Secretary of State or deputed officer, and see the Public Order Act, 1936. Consult *Odgers on Libel*, 5th ed. p. 516.

Seducing to Leave Service, an injury for which a master may have an action on the case. See LABOURERS, STATUTE OF.

Seduction. The inducing a girl or woman to part with her virtue for the first time (*R.* v. *Moon*, 1910, 1 K. B. 818). An action of seduction may be brought by a parent or person standing *in loco parentis* for enticing away or debauching of the girl, *per quod servitium amisit*, but no express contract of service need be proved; see *Evans* v. *Walton*, (1867) L. R. 2 C. P. 615. There must be a legal right or interest by the plaintiff in the services of the woman who has been seduced (*Whitbourne* v. *Williams*, 1901, 2 K. B. 722). A master also, not standing in the relation of a parent, may maintain this action for debauching his servant. The woman herself has no right of action. In ascertaining the amount of damages, the jury should regard not merely the injury sustained by the loss of service, but also the wounded feeling of the parent or person standing *in loco parentis*.

The Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), expressly excepts actions for seduction, so that the old common law maxim applies, and the action does not subsist after death.

See [fr. *sedes*, Lat.], the diocese of a bishop.

Seeds Adulteration Act, 1869 (32 & 33 Vict. c. 112), amended as to meaning of 'dyeing' by the Adulteration of Seeds Act, 1878 (41 & 42 Vict. c. 17) (passed in consequence of *Francis* v. *Maas*, (1878) 3 Q. B. D. 341, where it was held no offence to make old seeds look like new). As thus amended the Act penalizes up to 5*l.* killing or dyeing seeds, the term 'to dye seeds' meaning 'to apply to seeds any process of colouring, dyeing, or sulphur smoking.' See also Seeds Act, 1920 (10 & 11 Geo. 5, c. 54), requiring delivery to the purchaser of particulars specifying (*inter alia*) that the seeds sold have been tested as required by the Act.

Seignior, or **Seigneur,** a lord of a fee or manor.

Seignior in Gross, a lord without a manor, simply enjoying superiority and services.

Seigniorage, a royalty or prerogative of the Crown, whereby an allowance of gold and silver, brought in the mass to be exchanged for coin, is claimed.

Seigniory, a manor or lordship.

Seised. See TENURE.

Seisin, possession. The word is now confined to the possession of an estate of freehold.

There is a seisin in deed, as when an actual possession is taken; or in law, where lands descend, and one has not actually entered upon them. Seisin of the freehold may be defined to be the possession of such an estate in land as was anciently thought worthy to be held by a free man (*Williams on Seisin*, p. 2). See *Leach* v. *Jay*, (1878) 9 Ch. D. 42; *Copestake* v. *Hoper*, 1908, 2 Ch. 10; *Thackray* v. *Norman*, 1914, W. N. 303; and consult *Williams on Seisin; Co. Litt.* 266 *b and* 330 *b* (*notes*).

See also *addenda*, REGISTER OF SASINES.

Seisin, Livery of, formal delivery of possession, called by the Feudists investiture of a fee or feudal estate. Applicable to corporeal hereditaments while incorporeal hereditaments such as a remainder or easement were conveyed by writing under seal. After the Real Property Act, 1845 (8 & 9 Vict.

c. 106), s. 2, all corporeal hereditaments might be conveyed by deed, and now by the Law of Property Act, 1925, s. 25, conveyance by livery of seisin has been abolished. See FEOFFMENT.

Seisina facit stipitem. Before the Inheritance Act, 1833, the old rule of intestate succession to real estate was that descent must be traced from the person last seised, i.e., in possession. (Seisin makes the heir.) But see now the Inheritance Act, 1833 (3 & 4 Wm. 4, c. 106), which enacted that descent should be traced from the last purchaser, i.e., the last person entitled who did not inherit (see PURCHASE), and the rule is still applicable in 'ascertaining the heir' under equitable limitations provided for by ss. 130, 131 and 132 of the Law of Property Act, and s. 51 of the Administration of Estates Act, 1925, and *Williams on Seisin*, pp. 51 *et seq.*

Seisina habenda, etc., a writ for delivery of seisin to the lord of lands and tenements, after the sovereign, in right of his prerogative, had had the year, day, and waste on a felony committed, etc.—*Reg. Brev.* 165.

Sel, denotes the bigness of a thing to which it is added, as *Selwood*, a big wood.

Selda [fr. *selde*, Sax., a seat], a shop, shed, or stall in a market; a wood of sallows or willows; also a saw-pit.—*Co. Litt.* 4.

Select Vestry. A vestry consisting of not less than twelve nor more than 120 householders, elected in parishes adopting the Vestries Act, 1831 (1 & 2 Wm. 4, c. 60) (Hobhouse's Act), repealed, except s. 39, as to charity estates, so far as it relates to parish meetings in rural parishes, by the Local Government Act, 1894.

Selecti judices, Roman judges returned by the prætor, drawn by lot, and subject to be challenged and sworn like our juries.—3 *Bl. Com.* 366.

Self-defence. Both the life and limbs of a man are of such high value, in the estimation of the law of England, that it pardons even homicide, if committed *se defendendo*, or in order to preserve them. See DEFENCE; HOMICIDE.

Self-murder. See FELO DE SE.

Sellon of Land [fr. *sillon*], a ridge of ground rising between two furrows, containing no certain quantity, but sometimes more and sometimes less.—*Termes de la Ley.*

Semble [abbrev. *semb.* or *sem.*, Fr.] (it seems). Used in reports to show that a point is not decided directly, but may be inferred from the decision.

Semestria, the collected decisions of the emperors in their councils.—*Civ. Law.*

Seminaufragium, half shipwreck, as where goods are cast overboard in a storm; also, where a ship has been so much damaged that her repair costs more than her worth. See CONSTRUCTIVE TOTAL LOSS.

Semi-plena probatio, a semi-proof: the testimony of one person, upon which the civilians would not allow any sentence to be founded. See UNUS NULLUS RULE.

Semper in obscuris quod minimum est sequimur. *D.* 50, 17, 9.—(In obscure constructions we always adopt that which is least obscure.]

Semper præsumitur pro legitimatione puerorum; et filiatio non potest probari. *Co. Litt.* 126 *a.*—(The presumption is always in favour of the legitimacy of children; and filiation cannot be proved.)

Semper præsumitur pro matrimonio.—(The presumption is always in favour of the validity of a marriage.) See MARRIAGE.

Semper præsumitur pro negante.—(The presumption is always in favour of the negative.) On an equal division of votes in the House of Lords the question passes in the negative (see *Reg.* v. *Millis*, (1844) 10 Cl. & F. 634; *Paquin* v. *Beauclerk* (formerly *Holden*), 1906, A. C. 148); and if any Court be equally divided (as was the Court of Queen's Bench in *Reg.* v. *Archbishop of Canterbury*, (1848) 11 Q. B. 483, on the question whether the opposition to the confirmation of a bishop is merely formal or not) things remain as they were before the Court was applied to; e.g., a rule for a mandamus is discharged.

Sen, justice.—*Co. Litt.* 61 *a.*

Senage, money paid for synodals.

Senators of the College of Justice. The judges of the Court of Session in Scotland are Senators of the College of Justice.—Act of 1540, c. 93.

Senatus consulta, abr. S.C. (ordinances of the senate), public Acts among the Romans, which regarded the whole community.—*Sand. Just.*

Senatus decreta (decisions of the senate), private Acts, which concerned particular persons or personal matters.—*Civ. Law.*

Seneschal [*sein*, Ger., a house; and *schale*, an office], a steward; also one who has the dispensing of justice.—*Co. Litt.* 61 *a*; *Kitch.* 13; *Cooke's Jurisp.* 102.

Seneschallo et mareshallo quod non teneat placita de libero tenemento, a writ addressed to the steward and marshal of England, inhibiting them from taking cognizance of an

action in their court that concerns freehold. —*Reg. Brev.* 185. Abolished.

Seneucia, widowhood.

Seney-days, play-days, or times of pleasure and diversion.

Sense (of words). See SECUNDUM SUBJECTAM MATERIAM.

Sensu honesto, to interpret words *sensu honesto* is to take them so as not to impute impropriety to the persons concerned.

Sentence of a Court, a definite judgment pronounced in a criminal proceeding. In the case of indictable offences (except murder, on conviction of which the Court is bound to pronounce sentence of death, by s. 2 of the Offences against the Person Act, 1861 (but see next title), and treason) the extent of the sentence is within a given maximum left to the discretion of the Court, such few maximum sentences as previously were enjoined having been abolished by the Penal Servitude Act, 1891. In passing sentence reference should not be made to the unexpired portion of any former sentence, as this has to be served by virtue of s. 9 of the Penal Servitude Act, 1864 (*R.* v. *Smith*, 1909, 2 K. B. 756).

See the Infanticide Act, 1922, when in certain cases a verdict of infanticide may be returned, notwithstanding that the circumstances were such that, but for the Act, would have amounted to murder.

There is an express power of refraining from sentencing at once to punishment, and of directing the conditional release of the offender given to the Court by the Probation of Offenders Act, 1907 ; and see the Criminal Justice Administration Act, 1914, ss. 7–9.

In sentencing any *misdemeanant* to imprisonment without hard labour, the Court may order that he be treated as a misdemeanant of the first division of misdemeanants, and not as a ' criminal prisoner ' (Prison Act, 1865, s. 67), and s. 6 of the Prison Act, 1898, provides for prisoners being divided into three divisions.

Sentence of Death, Recording of. See the disused but still unrepealed Judgment of Death Act, 1823 (4 Geo. 4, c. 48), ' to enable Courts to abstain from pronouncing sentence of death in certain capital felonies,' and enter judgment on the record instead—which had the effect of a reprieve.

The Children Act, 1933, s. 53 (1), provides as follows :—

> Sentence of death shall not be pronounced on or recorded against a person under the age of eighteen, but in lieu thereof the court shall sentence him to be detained during His Majesty's pleasure, and, if so sentenced, he shall, notwithstanding anything in the other provisions of this Act, be liable to be detained in such place and under such conditions as the Secretary of State may direct.

Separaliter [Lat.] (separatively or distributively).

Separate Estate. The Common Law did not allow a married woman to possess any property independently of her husband, but when property was settled to her separate use and benefit, equity treated her, in respect to that property, as a *feme sole*, or unmarried woman. A wife's separate property might be acquired by a pre-nuptial contract with her husband, or by gift, either from the husband, or from any other person. The Married Women's Property Act, 1882 (see MARRIED WOMEN'S PROPERTY), almost abolished the Common Law distinction between married and unmarried women in respect of property, and the amending Act of 1893 (56 & 57 Vict. c. 63) provided (s. 1) that :—

> 1. Every contract hereafter entered into by a married woman otherwise than as agent,
> (*a*) shall be deemed to be a contract entered into by her with respect to and to bind her separate property whether she is or is not in fact possessed of or entitled to any separate property at the time when she enters into such contract ;
> (*b*) shall bind all separate property which she may at that time or thereafter be possessed of or entitled to ; and
> (*c*) shall also be enforceable by process of law against all property which she may thereafter while discovert be possessed of or entitled to. Provided that nothing in this section contained shall render available to satisfy any liability or obligation arising out of such contract any separate property which at that time or thereafter she is restrained from anticipating.

The Law Reform (Married Women and Tortfeasors) Act, 1935 (25 & 26 Geo. 5, c. 30), repealed the provisions of this section and provides, subject to the provisions of the Act, that a married woman is to be capable of (1) acquiring ; rendering herself liable in contract or tort ; (2) being capable of being sued in contract or tort ; and (3) being subjected to bankruptcy law and the enforcement of judgments and orders in all respects as if she were a *feme sole*, and by s. 2, that her separate property belonging to her or held for her separate use in equity on the 2nd August, 1935, or belonging to her or acquired by or devolving upon her after that date shall belong to her in all respects as if she were a *feme sole*.

But marriage and other settlements made before the 1st January, 1936, frequently contain (see s. 19 of the Married Women's Property Act, 1882, and the Married

Women's Property Act, 1907) restrictions against the 'anticipation' of her settled property by a married woman. These restrictions are perfectly valid, but they are subject to the important qualification that under s. 7 of the Conveyancing Act, 1911 (replacing s. 39 of the Conveyancing Act, 1881), the Chancery Division of the High Court may, if it thinks fit, where it appears to the Court for the benefit of a married woman, bind her interest in any property, with her consent, notwithstanding that she is restrained from anticipation. The Law Reform (M. W. and T.) Act, 1935, does not invalidate or affect these restrictions upon anticipation created before the 1st January, 1936, but it avoids the creation of any such restriction by any instrument, exercise of a special power, or will of a testator dying after that date except any instrument attaching the restriction in consequence of an obligation entered into before that date. See MARRIED WOMEN'S PROPERTY.

Separation. If a husband and wife cannot agree so as to carry out the purpose of their union, they may resolve to live apart. A deed of separation, containing the terms and conditions upon which an *actual* and *immediate* separation is to be arranged, will be valid, so far as relates to the trusts and covenants of the husband; but if it contemplate a *contingent* or *future* separation it is void, as opposed to the policy of marriage, and the well-being of the community.

The concurrence of trustees is not essential, and a deed of separation will be binding on the wife as well as the husband, though entered into without the intervention of a trustee (*McGregor* v. *McGregor*, (1888) 21 Q. B. D. 424; *Sweet* v. *Sweet*, 1895, 1 Q. B. 12).

The Court will decree specific performance of an agreement to execute a deed of immediate separation if based upon sufficient consideration (*Gibbs* v. *Harding*, (1870) L. R. 5 Ch. 336).

If, after the separation, the husband and wife be reconciled, and live together again, that circumstance will put an end to the agreement, and determine the separate allowance.

See, further, HUSBAND AND WIFE, and JUDICIAL SEPARATION.

Separatists, seceders from the Church. They, like Quakers, solemnly affirm, instead of taking the usual oath, before they give evidence. See 3 & 4 Wm. 4, c. 82; Oaths Act, 1888 (51 & 52 Vict. c. 46); and AFFIRMATION.

Separia, several or severed and divided from other ground.—*Paroch. Antiq.* 336.

Sepoy, or **Sipoy** [fr. *sip.*, Hind., a bow and arrow], a native Indian soldier.

Septennial Act, 1715 (1 Geo. 1, st. 2, c. 38). By this Act (enlarging the time from three years) a parliament had continuance for seven years and no longer unless sooner dissolved. By the Parliament Act, 1911 (1 & 2 Geo. 5, c. 13), s. 7, five years was substituted for the seven years fixed by the Septennial Act.

Septuagesima, the third Sunday before Quadragesima Sunday in Lent, being about the seventieth day before Easter.

Septum, an inclosure; any place paled in.

Sepultura, an offering to the priest, for the burial of a dead body.

Sequatur sub suo periculo, a writ that lay where a summons *ad warrantizandum* was awarded, and the sheriff returned that he had nothing whereby he might be summoned; then issued an *alias* and a *pluries*, and if he came not in on the *pluries*, this writ issued.—*Old N. B.* 163.

Sequela causæ, the process and depending issue of a cause for trial.

Sequela curiæ, suit of court.

Sequela molendina. See SECTA AD MOLENDINUM.

Sequela villanorum, the family retinue and appurtenances to the goods and chattels of villeins, which were at the absolute disposal of the lord.—*Paroch. Antiq.* 216.

Sequels, small allowances of meal, or manufactured victual, made to the servants at a mill where corn was ground, by tenure, in Scotland. See THIRLAGE.

Sequendum et prosequendum, to follow and prosecute a cause.

Sequester, to renounce; to set aside from the use of the owners.

Sequestrari facias de bonis ecclesiasticis, Writ of, a process of execution issued against a beneficed clerk commanding the bishop to enter into the rectory and parish church, and to take and sequester the same, and hold them until, of the rents, tithes, and profits thereof, and of the other ecclesiastical goods of the defendant, he has levied the plaintiffs' debt.

The Rules of the Supreme Court provide that this writ may be issued and executed as theretofore: Ord. XLIII., r. 5.

The Sequestration Act, 1871 (34 & 35 Vict. c. 45), provides that on sequestration the bishop of the diocese shall appoint a curate and assign a stipend. And see the Benefices Sequestration Measure, 1933.

Sequestratio, the separating or setting aside of a thing in controversy, from the possession of both the parties that contend for it; it is twofold—*voluntary*, done by consent of all parties; and *necessary*, when a judge orders it.—*Civ. Law.*

Sequestration. This is a prerogative process (formerly confined to the Court of Chancery and the Courts of Probate and Divorce), addressed to certain commissioners empowering them to enter upon real estates, and sequester the rents, and upon the goods, chattels, and personal estate of a person in contempt for disobedience of a decree or order, and keep the same until the defendant clear his contempt. It has no return, and is granted upon a return of *non est inventus* by the sergeant-at-arms, or by a sheriff on an attachment.—1 *Eq. Rep.* 261. See R. S. C. Ord. XLIII., r. 6. It is the mode of enforcing an order against a corporation in the case of the order having been 'wilfully disobeyed.' See R. S. C. Ord. XLII., r. 31, and *Stancomb* v. *Trowbridge Urban Council*, 1910, 2 Ch. 190.

Sequestration of a Benefice. See SEQUESTRARI FACIAS.

Sequestro habendo, a judicial writ for the discharging a sequestration of the profits of a church benefice, granted by the bishop at the sovereign's command, thereby to compel the parson to appear at the suit of another; upon his appearance, the parson may have this writ for the release of the sequestration.—*Reg. Judic.* 36.

Serf, the slave of feudalism. See SERVI.

Sergeanty, or **Seargeanty,** or **Searjeanty,** or **Serjeanty,** a service anciently due to the Crown for lands held of it and which could not be due to any other lord. It was divided into *grand* and *petit*. See TENURE.

A peculiarity of the Law of Property Act, 1922, abolishing copyhold tenure is that by s. 136, the services incident to grand and petit serjeanty are preserved (following 12 Car. 2, c. 24, as to grand serjeanty), and are declared not to be manorial incidents but the special tenure, if any, is free and common socage, or if copyhold, is enfranchised under the Act.

Seriatim [Lat.] (severally, and in order).

Serjeant [fr. *serviens*, Lat.], used in several senses:—

(1) *Serjeants-at-law*, or *of the coif* (*servientes ad legem*), otherwise called serjeants counter, the highest degree in the Common Law, as doctors in the Civil Law; but, according to Spelman, a doctor of law is superior to a serjeant, for the very name of a doctor is magisterial, but that of a serjeant is only ministerial. Serjeants-at-law were made by the sovereign's writ, addressed unto such as are called, commanding them to take upon them that degree by a certain day.—*Fortescue*, c. 50; 3 *Cro.* 1; *Dyer*, 72; 2 *Inst.* 213.

The monopoly of exclusive audience enjoyed by the serjeants in the Court of Common Pleas, during term time, ineffectually attempted to be abolished by Royal Warrant in 1834 (see *In the matter of the Serjeants-at-law*, (1840) 6 Bing. N. C. 235), was abolished in 1846 by 9 & 10 Vict. c. 54.

The judges of the Common Law Courts were formerly required to take or to have taken the degree of Serjeant-at-law; but by the Judicature Act, 1873, s. 8, that requirement is dispensed with in the case of any person appointed a judge of the High Court of Justice or of the Court of Appeal; and since 1868 no person except a Judge Designate has taken the degree, which, however, has never been formally abolished. See *Pulling's Law of the Coif*. Lord Lindley, d. 1921, was the last surviving Serjeant-at-Law.

(2) *Serjeants-at-arms*, officers attending the sovereign's person to arrest individuals of distinction offending, and give attendance on the Lord High Steward of England, sitting in judgment on any traitor, etc. Two of these, by the royal permission, attend on the two Houses of Parliament, and each has a deputy; the office of him in the House of Commons is the keeping of the doors, and the execution of such commands, touching the apprehension and taking into custody of any offender, as the House shall enjoin him. Another of them attended the Court of Chancery, and one on the Lord Treasurer of England; also one upon the Lord Mayor of London on extraordinary solemnities, etc. They are in old books called *virgatories*, because they carried the silver rods gilded, as they now do maces, before the sovereign.—*Fleta*, l. 2, c. 38.

(3) *Serjeants of the household* were officers who executed several functions within the royal household.—33 Hen. 8, c. 12.

(4) *The Common Serjeant*, a judicial officer in the City of London, who attends the Lord Mayor and Court of Aldermen on court days. He acts as one of the judges of the Central Criminal Court.

(5) *Inferior serjeants*, such as serjeants of the mace in corporations, officers of the county; and there are serjeants of manors, of the police, etc.

Serjeantia idem est quod servitium. *Co. Litt.* 105.—(Serjeanty is the same as service.)

Serjeants' Inn. A society consisting of the entire body of serjeants-at-law, which included all the Common Law judges appointed before the commencement of the Judicature Acts. Their property in Chancery Lane was sold by auction in 1877, and the proceeds, 57,000*l.*, divided amongst the then members of the Society. See title SERJEANT.

Sermo relatus ad personam intelligi debet de conditione personæ. 4 *Co.* 16.—(A speech relating to a person is to be understood as relating to his condition.) Thus, saying to an attorney that he is known to deal corruptly is to be understood as meaning that he deals corruptly in his office of an attorney. See *Birchley's case*, 4 *Rep.* 16.

Sermones semper accipiendi sunt secundum subjectam materiam, et conditionem personarum. 4 *Rep.* 14.—(Language is always to be understood according to its subject-matter, and the condition of the persons.) See SECUNDUM SUBJECTAM MATERIAM.

Servage, when a tenant, besides payment of a certain rent, finds one or more workmen for his lord's service. King John brought the Crown of England in servage to the see of Rome: 2 *Inst.* 174; 1 Rich. 2, c. 6.

Servants. See MASTER AND SERVANT.

Servi, bondmen, or servile tenants.

They were of four sorts: (1) Such as sold themselves for a livelihood. (2) Debtors sold because they were unable to pay their debts. (3) Captives in war, retained and employed as perfect slaves. (4) *Nativi*, servants born as such, solely belonging to the lord. There were also said to be *servi testamentales*, those which were afterwards called covenant-servants.

Servi redemptione [Lat.], criminal slaves in the time of Henry I.—1 *Kemble's Saxons*, 197 (1849).

Servi testamentales, covenant-servants.

Service [fr. *servitium*, Lat.], that duty which a tenant, by reason of his estate, owes to his lord. There are many divisions of this duty in our ancient law books, as into personal and real, which is either *urbane* or *rustic*, free and base, continual and annual, casual and accidental, intrinsic and extrinsic, certain and uncertain, etc. See TENURE.

The formal mode of bringing a writ or other process, or a notice in a suit, to the knowledge of the person affected by it.

The service of writs of summons is regulated by R. S. C. 1883, Ord. IX., which by r. 1 dispenses with service, when (*as is usual*) the defendant, by his solicitor, agrees to accept service, and enters an appearance. By r. 2, service, when required, must be personal, unless an order for 'substituted service, or the substitution of notice for service,' be made. Personal service is effected by tendering a copy of the writ to the defendant, and producing the original if required by him; and actual knowledge will not be equivalent to or dispense with a necessity for personal service (*Re Tuck*, 1906, 1 Ch. 692). As to service by post, see R. S. C. Ord. LXVII., r. 2.

By the Law of Property Act, 1925, any notice to or by lessees, mortgagors, mortgagees, and any notice affecting property required by any instrument coming into operation after 1925 unless a contrary intention appears, must be in writing and may be effected by registered letter through the post. See L. P. Act, 1925, s. 196, replacing and extending the Conveyancing Act, 1881, s. 67 (4). See POST.

As to address for service, see, as to plaintiff, INDORSEMENT OF ADDRESS; and as to defendant, APPEARANCE.

As to the expression 'service by post' in a statute passed after Jan. 1st, 1890, by s. 26 of the Interpretation Act, 1889, 'Service is deemed to be effected on properly addressing, prepaying, and posting a letter containing the document' to be served, 'and unless the contrary is proved, to have been effected at the time at which the letter would have been delivered in the ordinary course of post.'

Service Franchise, a franchise given by s. 3 of the Representation of the People Act, 1884, to male persons occupying, by virtue of their service or employment, a dwelling-house not occupied by their master. Obsolete. See ELECTORAL FRANCHISE.

Service of an Heir. Originally in Scotland no heritable estate vested in the heir merely by survivance, and this procedure (by petition) was necessary to vest the right.

Service out of the Jurisdiction of a writ of summons may be allowed by the Court or a judge in certain specified cases, e.g., where the contract sued upon was entered into within the jurisdiction, etc.—R. S. C. 1883, Ord. XI. And see *ibid.* for restriction upon the allowance of such service upon a defendant resident in Scotland or Ireland. As to service of a summons, order, or notice, see r. 8A. As to the exercise of discretion in giving leave, see *Watson & Sons* v. *Daily Record, Ltd.*, 1907, 1 K. B. 853. There can

be no service out of the jurisdiction except in the particular cases mentioned in Ord. XI., which forms a complete code on the subject.

Service, Secular, worldly service, as contrasted with spiritual or ecclesiastical.

Serviens ad legem, serjeant-at-law, *q.v.*

Servient Tenement, the land over which an easement is exercised, as the *dominant tenement* is that to which the easement is attached. See EASEMENT. Consult *Goddard on Easements.*

Servientibus, certain writs touching servants and their masters violating the statutes made against their abuses.—*Reg. Brev.* 189.

Servitiis acquietandis, a judicial writ for a man distrained for service to one, when he owes and performs them to another, for the acquittal of such services.—*Reg. Judic.* 27.

Servitium feodale et prædiale, a personal service, but due only by reason of lands which were held in fee. —*Bract.* l. 2, c. 16.

Servitium forinsecum, a service which did not belong to the chief lord, but to the king. —*Dugd. Mon.* ii. 48.

Servitium, in lege Angliæ, regulariter accipitur pro servitio quod per tenentes dominis suis debetur ratione feodi sui. *Co. Litt.* 65. —(Service, by the law of England, means the service which is due from the tenants to the lords by reason of their fee.)

Servitium intrinsecum, that service which was due to the chief lord alone from his tenants within his manor.—*Fleta*, l. 3.

Servitium liberum, a service to be done by feudatory tenants, who were called *liberi homines*, and distinguished from vassals, as was their service, for they were not bound to any of the base services of ploughing the lord's land, etc., but were to find a man and horse, or go with the lord into the army, or to attend the Court, etc. It was called also *servitium liberum armorum.*

Servitium regale, royal service, or the prerogatives that, within a royal manor, belonged to the lord of it; which were generally reckoned to be the following—viz., power of judicature in matters of property, and of life and death in felonies and murders; right to waifs and estrays; minting of money; assize of bread and beer, and weights and measures.—*Paroch. Antiq.* 60.

Servitor, a serving man: particularly applied to students of Christ Church, Oxford, upon the foundation, similarly to sizars at Cambridge.

Servitors of Bills, servants or messengers of the Marshal of the King's Bench, who were sent abroad with writs, etc., to summon persons to that Court.—2 Hen. 4, c. 23.

Servitudes, burdens affecting property in Scotland; resembling easements in England.

In the Civil Law, certain portions or fragments of the right of ownership separated from the rest, and enjoyed by persons other than the owner of the thing itself. As to their various kinds, see *Sand. Just.*

Session, Court of, in Scotland, the supreme civil Court of Scotland, instituted A.D. 1532, and formerly consisting of fifteen judges—that number being reduced in 1830, by 11 Geo. 4 & 1 Wm. 4, c. 69, s. 20, to thirteen; viz., the Lord President, the Lord Justice-Clerk, and eleven ordinary lords. This Court is required, by 48 Geo. 3, c. 151, to sit in two divisions; the Lord President, with three ordinary lords, form the first division; and the Lord Justice-Clerk and three other ordinary lords form the second division. There are five permanent Lords Ordinary, attached equally to both divisions, the last appointed of whom officiates on the bills, i.e., petitions to the Court during session, and performs the other duties of junior Lord Ordinary. The chambers of the Parliament House, in which the First and Second Divisions of the Court of Session hold their sittings, are called the Inner House; those in which the Lords Ordinary sit, as single judges, to hear motions and causes, are collectively called the Outer House. The nomination and appointment of the judges is in the Crown. No one can be appointed who has not served as an advocate or principal clerk of session for five years, or a writer to the signet for ten years. Reference may be made to *Shand's Practice of the Court of Session;* but the practice has been considerably altered by recent statutes. See now, Administration of Justice (Scotland) Act, 1933 (23 & 24 Geo. 5, c. 41). See also JUSTICIARY, HIGH COURT OF.

Session, Great, of Wales, a court which was abolished by 1 Wm. 4, c. 70; the proceedings now issue out of the Royal Courts of Justice, and two of the judges of the High Court hold the circuits in Wales and Cheshire, as in other English counties.

The jurisdiction of the Great Session of Wales, which was first established by Henry VIII., was similar to that of Judges of Assize in England. Latterly it was exercised by two barristers, who sat for eighteen days only, into which period all the litigious business has to be compressed.

Session of Parliament, the sittings of the Houses of Lords and Commons, which are

continued, day by day, by adjournment, until the parliament is prorogued or dissolved. See PARLIAMENT.

Sessional Divisions of Counties. See next title.

Sessions of the Peace, sittings of justices of the peace for the execution of those powers which are confided to them by their commission, or by charter, and by numerous statutes. They are of three descriptions :—

I. *Petty Sessions.*—Metropolitan Police magistrates can act alone (see that title), with that exception, every meeting of two or more justices in the same place, for the execution of some power vested in them by law, whether had on their own mere motion, or on the requisition of any party entitled to require their attendance in discharge of some duty, is a petty or petit session. The occasions for holding petty sessions are very numerous, amongst the most important of which is the bailing persons accused of felony, which may be done after a full hearing of evidence on both sides, where the presumption of guilt shall either be weak in itself, or weakened by the proofs adduced on behalf of the prisoner. See PETTY SESSIONS.

As to right of the public to attend petty sessions, see OPEN COURT.

As to places of petty sessions, see Petty Sessions Act, 1849 (12 & 13 Vict. c. 18).

II. *Special Sessions.*—A special session is a sitting of two or more justices, held not of their own mere motion and private agreement, but on a particular occasion for the execution of some given branch of their authority, after reasonable notice to all the other magistrates of the hundred or other division of the county, city, etc., for which it is convened, and holden, has been served personally or by post.

As to regulation of sessional divisions, see the Division of Counties Act, 1828, and other Acts ; *Chitty's Statutes,* tit. '*Justices (Sessions).*'

There are several special sessions required by law to be held at particular periods, as by s. 10 of the Licensing (Consolidation) Act, 1910, a general annual licensing meeting within the first fourteen days of February, for licensing alehouses and victualling-houses to sell excisable liquors by retail to be drunk or consumed on the premises ; and, formerly, for executing the purposes of the Highway Acts, 1835 and 1864, see HIGHWAY ; for granting licences to deal in game under 1 & 2 Wm. 4, c. 32 ; for pawnbrokers' certificates under 35 & 36 Vict. c. 93 (these two functions were transferred to district councils by 56 & 57 Vict. c. 73) ; and licences for theatres outside the Lord Chamberlain's jurisdiction, now granted by county or borough councils, see THEATRE.

III. *General or Quarter Sessions* of the peace, held before two or more justices, for execution of the general authority given to justices by the commission of the peace and certain Acts of Parliament.

The court is a court of oyer and terminer, and a court of record, and not a court of inferior jurisdiction.

The jurisdiction is criminal and civil, and arises from the commission of the peace itself, as settled under 18 Edw. 3, c. 2, and 34 Edw. 3, c. 1. The two main jurisdictions are (1) to try, with a jury, for indictable offences not excepted by the Act of 1842 as below, and (2) to hear appeals from petty or special sessions.

Time of Quarter Sessions.—The time of Quarter Sessions is now fixed by the Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86), s. 22, and instead of being held at the times prescribed by s. 35 of the Law Terms Act, 1830, shall be held at such times within the period of twenty-one days immediately preceding or immediately following 25th March, 24th June, 29th September, and 25th December. See QUARTER SESSIONS.

Extent of Criminal Jurisdiction.—The early jurisdiction under 34 Edw. 3, c. 1, was to hear and determine all manner of felonies in the county ; but by the Quarter Sessions Act, 1842 (5 & 6 Vict. c. 38), 'to define the jurisdiction of Justices in General and Quarter Sessions of the Peace,' it is enacted that neither the justices of the peace for any county, nor the Recorder of any borough, shall at any sessions of the peace try any person for any treason, murder, or capital felony, or for any felony which, when committed by a person not previously convicted of felony, is punishable by penal servitude for life, or for :

(1) Misprision of treason.

(2) Offences against the king's title, or government, etc.

(3) Offences subject to the penalties of *præmunire.*

(4) Blasphemy and offences against religion.

(5) Administering or taking unlawful oaths.

(6) Perjury and subornation of perjury.

(7) Making or suborning any other person to make a false oath, affirmation, or declaration, punishable as perjury or as a misdemeanour; (6) and (7) were repealed and

re-enacted by Perjury Act, 1911 (c. 6), s. 10.

(8) Forgery.

(9) Unlawfully or maliciously setting fire to crops of corn, etc. The exclusion of these offences was repealed and now all offences under ss. 16 and 17 of the Malicious Damage Act, 1861, are triable. See Criminal Justice Act, 1925.

(10) Bigamy, and offences against the laws relating to marriage.

(11) Abduction of women and girls.

(12) Concealment of birth.

(13) Offences of bankrupts. This restriction is abolished. See below.

(14) Libels.

(15) Bribery, except under the Public Bodies Corrupt Practices Act, 1889 (c. 69), s. 6.

(16) Unlawful combinations and conspiracies, except conspiracies and combinations to commit any offence which such justices or Recorder respectively have or has jurisdiction to try when committed by one person.

(17 Stealing or injuring records or documents belonging to any court of law.

(18) Stealing or destroying, or concealing, wills or documents containing evidence of title to real estate.

To which must be added the following offences:

(19) Offences against s. 9 of the Night Poaching Act, 1828.

(20) Misdemeanours against ss. 82, 83, 84 of the Licensing Act, 1861.

(21) Offences against the False Personation Act, 1874.

(22) Corrupt practices at elections (Corrupt and Illegal Practices Act, 1883, s. 53, and Municipal Elections Act, 1884, ss. 30, 35, 36).

(23) Indictable offences against the Criminal Law Amendment Act, 1885.

(24) Misdemeanours under the Prevention of Corruption Act, 1906.

(25) Offences under the Punishment to Incest Act, 1908.

(26) Indictable offences under the Perjury Act, 1911.

(27) Offences under the Official Secrets Act, 1911.

(28) Misdemeanours under ss. 20, 21, 22 of the Larceny Act, 1916.

(29) Child Destruction, Infant Life (Preservation) Act, 1929, s. 2.

Note.—Jurisdiction to try offences in bankruptcy was given by s. 20 of the Debtors Act, 1869, and jurisdiction to try burglary cases by the Burglary Act, 1896, now replaced by s. 38 of the Larceny Act, 1916.

Subject to the above restrictions, where an offence is created, and declared a misdemeanour by a statute passed since the institution of the office of justice of the peace, it may be tried by a court of quarter sessions, unless there is some special direction that it shall be determined by another court; and with the above exceptions, the quarter sessions have power to try all indictable offences, whether offences at the Common Law or created by statute. As to the extension of criminal jurisdiction, see Criminal Justice Act, 1925, s. 18 and Schedule. See *Stone's Justices Manual*, 68th ed. pp. 243 *et seq.*, and *Archbold, Quarter Sessions*, 6th ed. pp. 461 *et seq.*

Appellate Jurisdiction.—Quarter sessions have jurisdiction to hear an appeal from any conviction by a court of summary jurisdiction where the appellant has not pleaded guilty to or admitted the offence (Criminal Justice Administration Act, 1914, s. 37 (1)); and under the Criminal Justice Act, 1925, s. 25, a person who pleaded guilty or admitted the offence can appeal against sentence imposed. An appeal to quarter sessions lies from a court of summary jurisdiction in respect of any order (or refusal to make an order) under the enactments relating to bastardy (*ib.*, s. 37 (2)). There is also a right to appeal under the Metropolitan Police Courts Act, 1839, s. 50; as to the appeal against the making of a Probation Order, see Criminal Justice Act, 1925, s. 7 (1), as amended by the 1926 Act. Quarter sessions also hear appeals relating to licensing, rating, highways, and removal of poor persons. Appeals to quarter sessions are re-hearings. As to procedure when the appeal is from an order or conviction of a court of summary jurisdiction, see the Summary Jurisdiction (Appeals) Act, 1933, which substitutes a new s. 31 for the Summary Jurisdiction Act, 1879.

As to the *administrative* business of quarter sessions, transferred to the county councils by the Local Government Act, 1888, see COUNTY COUNCIL.

Set-off, any counter-balance or cross-claim.

The subject of a set-off under the former practice was a cross debt or claim, on which a separate action might be sustained, due to the party defendant from the party plaintiff. It was a defence created by 2 Geo. 2, c. 22, and had no existence at Common Law, and could only be pleaded in respect of mutual

debts of a definite character, and did not apply to a claim founded in damages, or in the nature of a penalty, and the debt must have been due in the same right and between the same parties, and not a mere equitable demand. The defendant could not avail himself of a set-off, unless it were specially pleaded, and particulars thereof delivered with the plea.

It is now provided by R. S. C. 1883, Ord. XIX., r. 3, that a defendant in an action may set off or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not. Consult *Odgers on Pleading*, 7th ed. pp. 236 *et seq.*

Sets of Exchange, or of Bills. It has been common, from a very early period, for the drawer to draw and deliver to the payee several parts, commonly called a set, of the same bill of exchange, any one part of which being paid, the others are void. This is done to obviate inconveniences from the mislaying or miscarriage of the bill, and to enable the holder to transmit the same by different conveyances to the drawee, so as to ensure the most speedy presentment for acceptance and payment. The general usage in England and America is for the drawer to deliver a set of three parts of a bill to the payee or holder.—*Byles on Bills.*

By the Bills of Exchange Act, 1882, s. 71, 'where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other part, the whole of the parts constitute one bill.'

Settled Land. For the purposes of the Settled Land Acts, 1882–1890, 'settled land' meant land, and any estate and interest therein, which was the subject of a settlement; and 'settlement' meant any instrument, or any number of instruments, under which any land, or any estate or interest in land, 'stands for the time being limited to or in trust for any persons by way of succession' (Settled Land Act, 1882, s. 2) (see *infra* for the statutory definitions in the Settled Land Act, 1925, which has repealed the S. L. Acts, 1882–1890). Where the settlement consists of more instruments than one it is commonly called a 'compound settlement,' though this term is not defined in the Acts themselves; as to compound settlements, see *Re Du Cane & Nettlefold*, 1898, 2 Ch. 96; *Re Munday & Roper*, 1899, 1 Ch. 275; *Re Lord Wimborne & Browne*, 1904, 1 Ch. 537; *Wolstenholme & Cherry, Conveyancing, etc., Acts.*

Prior to 1856 settled estates could not be sold or leased except under the authority of some power in the settlement by which they were settled, or of a private Act of Parliament. In 1856 the Leases and Sales of Settled Estates Act (19 & 20 Vict. c. 120) (amended and extended by 21 & 22 Vict. c. 77; 27 & 28 Vict. c. 45; and 37 & 38 Vict. c. 33), gave large powers to the Court of Chancery, with the concurrence of the parties interested, to direct sales and leases of settled estates, and also enabled tenants for life, without application to any Court, to make certain leases binding on the parties in remainder. The Settled Estates Act, 1877 (40 & 41 Vict. c. 18), consolidated these Acts, with some amendments.

The Settled Land Act, 1882 (45 & 46 Vict. c. 38), came into operation on the 1st January, 1883, was retrospective, and though not repealing the Act of 1877, rendered its provisions comparatively useless. The main objects of the Settled Land Acts, 1882 to 1890, were to liberate tenants for life from the control of their trustees, and to enable them to improve settled land out of the proceeds of the sale of part of it, or permanently to convert the whole or part of the settled land into money and receive the income derived from its investment instead of the rents of the estate. The Acts regarded the tenant for life as the person most interested in the welfare of the estate, and empowered him to do almost anything that a judicious owner would wish to do, subject to one great exception—he could not sell the estate and himself receive the purchase money; that must be paid at his option either into court or to the trustees of the settlement, as defined by s. 2 (8) of the Settled Land Act, 1882, and s. 16 of the Act of 1890, now replaced and reproduced by s. 30 of the S. L. Act, 1925, including among trustees the persons appointed for the purpose by the settlement, or trustees with a power of sale or consent thereto, and others. The number of trustees to whom the money is paid must not be less than two, or a trust corporation, but this does not apply to a personal representative selling in course of administration or to persons of full age absolutely entitled to deal with the legal estate free from the settlement. The direction of investment lies with the tenant for life and the investments may not be varied without his consent (s. 75 of the S. L. Act, 1925); capital money and the investments representing it will devolve on the death of the life tenant in the same way

as the land would have done if it had remained unsold (*Re Monckton*, 1913, 2 Ch. 636), and see s. 22 of the Act of 1882, replaced by s. 75 (5) of the S. L. Act, 1925.

The general scheme of the Settled Land Acts, 1882–1890, has not been materially altered by the Settled Land Act, 1925, which repeals, consolidates and extends the S. L. Acts, 1882 to 1890. The Act of 1925, however, contains some innovations which bring it into line with the rest of the land legislation of 1925, so that a fee-simple in possession or a term of years absolute (which are the only legal estates in existence) should be vested in an owner who could transfer either of these if settled entirely to a purchaser for value without being affected by the limitations and trusts of the settlement. To effect this, the entire legal estate comprised in the settlement is now vested in the tenant for life or in a person on whom the like powers have been conferred instead of being merely subject to the power of disposition freed from the settlement which had been given to the tenant for life by the Acts of 1882 to 1890. The difference is technical without any substantial alteration in effect, since the tenant for life's beneficial interest is still limited for his life only, but more substantial changes have been introduced.

By the S. L. Act, 1925, s. 4 (1), it is provided that ' Every settlement of a legal estate in land *inter vivos* shall, save as in this Act otherwise provided, be effected by two deeds, namely, a vesting deed and a trust instrument, and if effected in any other way shall not operate to transfer or create a legal estate.' See VESTING INSTRUMENT and TRUST INSTRUMENT.

By s. 1, *ibid.*, a settlement now includes one or more instruments whereby land stands limited in trust: (sub-s. (i.)) for any persons by way of succession, (sub-s. (ii.)) for any person in possession (*a*) in tail, (*b*) for a legal estate subject to a limitation over, (*c*) for a base or determinable fee, or corresponding interest in leasehold land, (*d*) being an infant, for a legal estate, or (sub-s. (iii.)) limited in trust for any person for a legal estate contingently on the happening of any event, or (sub-s. (iv.)) limited to or in trust for a married woman of full age in possession for a legal estate or any other interest with a restraint upon anticipation, or (sub-s. (v.)) charged voluntarily, or in consideration of marriage or by way of family arrangement with any payment of any rent-charge for life or less period or any capital or annual or periodic sum for portions, advancement, maintenance or other benefits with or without terms of years for securing the same (as to this see the liberating amendment in the L. P. Amendment Act, 1926, ss. 1 and 2), and references in the Act to the settlement shall extend to any compound settlement to which the land may be subject (see *Re Ogle's Settled Estates*, 1927, 1 Ch. 229).

Sect. 1, defining settlement, does not apply to land held on trust for sale (L. P. Amendment Act, 1926). See also *Ryder and Steadman's Contract*, 1927, 2 Ch. 62.

By s. 4 (2), the vesting deed must convey the land to the tenant for life or statutory owners for the legal estate, the subject of the settlement, or if the legal estate is already vested in the tenant for life or statutory owner, must declare that the land is vested in him for that estate. The expression ' Tenant for life ' (defined in s. 19 (1) and extended by s. 117 (1), (xxviii.)) includes persons having the powers of a tenant for life and complying with the statutory definition (see s. 20), and includes tenants for life as defined by s. 1 (5) of the Act of 1882 (if of full age), and persons having the powers of a tenant for life under ss. 58 and 59 of 1882, as extended by s. 20, 1925, such as tenants in tail, tenants in fee-simple subject to executory limitations over, and more particularly to an estate owner of land subject to family charges, and a married woman subject to restraint upon anticipation.

A vesting instrument must be executed in favour of each successive tenant for life or statutory owner upon his becoming entitled, and if the legal estate is held by statutory owners, they must also at his request execute a vesting deed in favour of the tenant for life upon his becoming entitled. The vesting deed constitutes the tenant for life's title to deal with the legal estate, and a purchaser for value from him under that title is not concerned with anything outside the vesting instrument so far as relates to equitable interests affecting the estate and subject to the provisions of the Law of Property and other land legislation of 1925, except that in some cases, notably a first vesting instrument in connection with a pre-1926 settlement, it will be incumbent on the purchaser (*inter alia*) to identify the land conveyed with the land comprised in the settlement, so as to see that the person conveying is the person in whom the land ought to be vested as tenant for life or statutory owner and that the trustees have

been properly constituted (see s. 110, S. L. Act, 1925). Under s. 21, an estate owner in fee-simple in possession or entitled to a term of years absolute subject to family charges may declare that the legal estate is vested in him on trust to give effect to those charges, etc., and thereupon subject to the appointment of trustees as provided by the section, he may exercise the powers of a tenant for life. A similar result can be attained by way of trust for sale (L. P. Act, 1925, s. 2), but the owner may also convey the legal estate simply as owner in fee or of the term subject to the charge (L. P. Amend. Act, 1926).

By s. 23, where there is no tenant for life or person having the power of a tenant for life under ss. 20 and 26 (infancy), any person of full age on whom such powers are by the settlement conferred or in any other case the trustees of the settlement are to have the powers of a tenant for life. These persons having the powers of a tenant for life, as well as the Settled Land Act trustees during an infancy (if so acting instead of a personal representative, see s. 26 (2)), are called 'statutory owners' and may come into existence (*a*) in the event of land being limited in trust contingently on a future event, or (*b*) in case of a discretionary trust, or (*c*) a trust for accumulation, or in other cases where there is no person being a tenant for life or having his powers under s. 20 in possession of the property.

Very wide powers of sale, mortgage, leasing improvements and investing capital money were conferred on tenants for life by the S. L. Acts, 1882 to 1890, subject to safeguards provided by the Acts for the protection of the estate and the other beneficiaries under the settlement, and these powers have been reproduced and extended by the Act of 1925 (see Parts II. to V. of that Act). Improvements are classed under three heads (see the Third Schedule of the Act of 1925), the cost of which the tenant for life is (*a*) not required, or (*b*) may be required by the trustees of the Court, or (*c*) is unconditionally, required to replace by instalments of income into capital money.

By s. 18 (*b*) or (*c*), capital money must be paid to not less than two trustees of the settlement, or a trust corporation if trustee.

The powers given by the Act are not assignable, and any contract not to exercise them is void (s. 104 of the S. L. Act, 1925); and any prohibition against any exercise of the powers is forbidden (s. 51; s. 106 of the S. L. Act, 1925); the tenant for life is however to be regarded as a trustee in exercising the powers of the Act (s. 107 of the S. L. Act, 1925; see *Re Hunt*, 1905, 2 Ch. 418; 1906, 2 Ch. 11). The case of property settled not by a strict settlement, i.e. as land, but through the medium of a trust for sale, was provided for by s. 63 of 1882, which gave the statutory powers to the person entitled to receive the income of the sale moneys. This was soon found to create a difficulty, the question arising whether the trustee for sale or the tenant for life was the proper person to sell; but the Act of 1884 restored the rights of the trustees under the trust for sale, unless and until an order has been made by the Court authorizing the tenant for life to sell: see Settled Land Act, 1884, ss. 6, 7; *Re Harding's Estate*, 1891, 1 Ch. 60. But now by the Law of Property (Amendment) Act, 1926, settlements by way of trust for sale have been expressly excluded from settlements which are regulated by the Settled Land Act, 1925, and trustees for the purposes of the Settled Land Act, 1925, have no general power of sale against the tenant for life. On the other hand, trustees for sale under trusts for sale have all the powers of a tenant for life (see Law of Property Act, ss. 28 *et seq.*).

The principal mansion house on any settled land, and the park and grounds occupied therewith, cannot be sold without the consent either of the trustees of the settlement or an order of the Court (see Settled Land Act, 1890, s. 10; *Gilbey* v. *Rush*, 1906, 1 Ch. 11); unless a settlement made before 1926 provides to the contrary, or a post-1925 settlement imposes the condition that it is not to be sold without such consent or order (s. 65, S. L. Act, 1925); and heirlooms cannot be sold without an order of the Court (Settled Land Act, 1882, s. 37), and see now S. L. Act, 1925, s. 67.

Settlement, the act of giving possession by legal sanction; a jointure granted to a wife; a disposition of either real or personal property or both for the benefit of one person for his life, and after his death for the benefit of another person absolutely, or with a similar ultimate devolution for the use of several persons in succession after the person first named. See last title, and SETTLEMENT ESTATE DUTY.

Settlement (in the Poor Law), the fixture of a person on becoming a poor person in a particular parish, to which is attached a right, first regulated by the Poor Relief Act, 1662 (14 Car. 2, c. 12), to be maintained by

that parish and a liability to be removed thereto. In the early part of the nineteenth century, the law of settlement, in consequence of the increased facilities for locomotion, led to very frequent litigation between parishes, which has gradually diminished by the introduction of the 'status of irremovability,' upon acquiring which a poor person is no longer liable to be removed. Now a person shall be deemed to be settled in the county or county borough in which he was born until shown to have derived or acquired a settlement elsewhere. A person may derive a settlement from a parent or husband, acquire a settlement, by (1) residence, (2) apprenticeship, (3) estate, (4) renting a tenement, (4) paying rates or taxes, or be presumed to be settled by reason of an estoppel (see Poor Law Act, 1930 (20 Geo. 5, c. 17), Part III.). See DERIVATIVE SETTLEMENT; POOR LAWS; and *Chitty's Statutes*, tit. '*Poor* (*Settlement and Removal*).'

Settlement, Act of, the title of 12 & 13 Wm. 3, c. 2, by which the Crown is limited to the heirs of the body of the Princess Sophia, Electress of Hanover (daughter of James the First's daughter, the Queen of Bohemia, and mother of George the First), 'being Protestants,' and various provisions made for securing our religion, laws, and liberties. Consult *Hall. Const. Hist.*, ch. xv.

Settlement Estate Duty. The further estate duty (see that title) levied under ss. 5 and 17 of the Finance Act, 1894 (57 & 58 Vict. c. 30) (*Chitty's Statutes*, tit. '*Death Duties*'), on settled property passing on the death of one person to another not competent to dispose of it. The rate was by the Finance (1909–10) Act, 1910, s. 54, two per cent., and the further estate duty, or 'settlement estate duty,' was levied on the principal value of the settled property, with two important qualifications, being these :—

(1) If the only life interest in the property after the death of the deceased were that of the wife or husband of the deceased, settlement estate duty was not leviable at all.

(2) During the continuance of the settlement, the settlement estate duty was not payable more than once.

The duty was abolished by the Finance Act, 1914, s. 14, in the case of persons dying after 11th May, 1914.

Settling Day. The day on which transactions for the 'account' are made up on the Stock Exchange. In consols they are monthly; in other investments, twice in the month.

Sever. Defendants are said to 'sever' in their defences when they plead independently. Trustees made defendants to an action are not justified in severing except under very special circumstances.

Several Covenant, a covenant by two or more separately.

Several Fishery is where a person has an exclusive right to fish, either on his own soil or the soil of another. See FISHERY.

Several Inheritance, an inheritance conveyed so as to descend to two persons severally, by moieties, etc.

Several Tail, where land is entailed on two separately.

Several Tenancy [*tenura separalis*, Lat.], a tenancy which is separate, and not held jointly with another person.

Severalty, Estates in. He who holds lands or tenements in severalty, or is sole tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him, in point of interest, during his estate therein.—2 *Bl. Com.* 179.

Severance, separating or severing. See SEVER.

Seward, or **Seaward,** one who guards the sea-coast; *custos maris.*

Sewer, a trench or channel through which water or sewage flows.

The Court of Commissioners of Sewers is a temporary tribunal, erected by commission under the Great Seal, which used to be granted *pro re natâ* at the pleasure of the Crown, and later at the discretion of the Lord Chancellor, Lord Treasurer, and Chief Justices, pursuant to the Statute of Sewers (23 Hen. 8, c. 5). Their jurisdiction is to overlook the repairs of the banks and walls of the sea-coast and navigable rivers; or, with consent of a certain proportion of the owners and occupiers, to make new ones, and to cleanse such rivers, and the streams communicating therewith, and is confined to such county or particular district as the commission shall name. They are a court of record, and may proceed by jury, or upon their own view, and may make orders for the removal of annoyances, or the conservation of the sewers within their commission according to the customs of Romney Marsh, or otherwise. They may also assess necessary rates upon the owners of land, and, on refusal of payment, may (see *Chitty's Statutes*, tit. '*Sewers*') levy by distress of goods and chattels.

By the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), the King may, upon the recommendation of the Inclosure Commissioners, direct commissions of sewers into all parts of

England, and give them jurisdiction over such areas as may be most expedient for the construction of new, and maintenance and improvement of old, works. The Act includes all commissions of sewers granted by the Crown for the time being in force, whether granted previously to the Act or not, but does not extend to the metropolis. It provides for the constitution of elective drainage districts, and for the appointment of boards therein, with the same powers as commissioners of sewers.

The Land Drainage Act, 1930 (20 & 21 Geo. 5, c. 44), has repealed the Statute of Sewers (23 Hen. 8, c. 5), and a large number of other statutes, including the Land Drainage Acts, 1861, 1914, 1918, 1926 and 1929, and has consolidated the enactments relating to the drainage of land. Provision is made for the creation of drainage districts and respective drainage boards. The districts are to include catchment areas constituted by or under that Act, including drainage districts or areas constituted under the Land Drainage Act, 1861, or any amendment thereof or under any other enactment, and the drainage boards or authorities of such districts or areas are to be treated for the purposes of the Act as the drainage boards of those districts or areas. The First Schedule sets out the catchment areas for which schemes for the transfer of powers and duties to catchment boards (to be constituted under the Act) and reorganization are to be prepared (s. 4). Until determined by the scheme every commission in force is to continue (s. 83 (2)) and commissioners of sewers are to exercise the powers given by the Act as well as all powers previously vested in them. The Act does not apply to the Administrative County of London except the Lee catchment area (s. 78), and by s. 79 the Drainage Board of the Thames catchment area above (Teddington Lock) is to be the conservators of the River Thames. See DRAINAGE.

The Public Health Act, 1936, Part II., imposes the duty on every local authority to provide all public sewers which may be necessary for effectually draining their district for the purposes of the Act and to make such provision by sewage works or otherwise as may be necessary. The Act makes general provisions (*inter alia*), replacing ss. 13 to 25, part of s. 26, and ss. 27–34 of the Public Health Act, 1875 (38 & 39 Vict. c. 55), and, with certain exceptions, vests all existing and future sewers within the district of a local authority in such authority, and places them under its control, giving them also powers and duties for the making, purchasing, and maintaining such sewers, and for compelling the use of them by persons within the district. See *Wood Green Urban Council* v. *Joseph*, 1908, A. C. 419, under the Act of 1875.

Any local authority is authorized for the purpose of receiving, storing, disinfecting, distributing, or otherwise disposing of sewage, to construct, purchase, or take on lease works, either within or without their district; and to agree with an adjoining authority for the communication of the sewers of their respective districts.

Sects. 14 to 52 of the Public Health Act, 1936, also deals with sewers, drains, cesspools and water-closets, replacement of earth closets by water-closets, and kindred matters. See DRAIN; PUBLIC SEWER.

As to Metropolitan Sewers, see Public Health (London) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 50), Part II., and other Acts; *Chitty's Statutes*, tit. '*Metropolis*.'

Sexagesima Sunday, the second Sunday before Lent, being about the sixtieth day before Easter.

Sexhindeni, or **Sexhindmen,** the middle thanes valued at 600*s*. See HINDENI HOMINES.

Sextery Lands, lands given to a church or religious house for maintenance of a sexton or sacristan.

Sexton (probably from *sacristan*), the keeper of things belonging to divine worship. He is chosen by the incumbent, but sometimes by the parishioners, according to custom. There is, it seems, no presumption in law that the office of sexton in an ancient parish church is a freehold for life (*Rex* v. *Dymock* (*Vicar and Churchwardens*), 1915, 1 K. B. 147). His particular duties are to cleanse the church, to open the pews, to fill up the graves, to provide candles and other necessaries, and to prevent disturbance in the church.—59 Geo. 3, c. 134, ss. 6, 10; and 19 & 20 Vict. c. 104, s. 9, and 11 & 12 Geo. 5 (No. 1), s. 6.

Shack, a liberty of winter pasturage in Norfolk.

Shack, Common of, the right of persons occupying lands lying together in the same common field to turn out their cattle after harvest to feed promiscuously in such field. See *Sir Miles Corbet's Case*, 7 *Rep.* 5; *Williams on Rights of Common*, p. 68.

Sham Plea, a vexatious or false defence, resorted to under the old system of pleading for purposes of delay and annoyance.

Shares in Public Undertakings. Where the property is vested by charter or Act of Parliament in a body corporate, the shares of the individual corporators in the concern itself are personal, not real, estate; for such shares are merely the rights which each individual possesses as a partner to a share in the surplus profit derived from the employment of the capital, which is a mixed fund, consisting in part of personal chattels, as well as lands and fixtures. Shares in all companies which are within the Companies Acts (see the Companies Act, 1929, s. 62), or the Companies Clauses Act, 1845, are personal property; and in many cases of companies incorporated by special Act the shares have been expressly declared to be personal property. Before 1926 the question whether shares in other undertakings were real or personal property turned upon the nature of the shares—that is, whether the holder could call for a specific part of the land itself or only a share of the profits. See now UNDIVIDED SHARES.

Shares are limited in number, each share being indivisible and, in a company having a share capital, must have a distinctive number. Such companies and companies limited by guarantee and having a share capital may, if authorized by the articles, alter their memorandum of association and convert their shares into stock representing the same amount of capital, but divisible at the pleasure of the holders, though some companies will not recognize the divisibility of a pound stock into fractions. And see s. 50 (Companies Act, 1929) and also s. 61 of the Companies Clauses Act, 1845.

The expression 'shares' in a will passes stock: *Morrice* v. *Aylmer*, (1875) L. R. 7 H. L. 717.

Sharping Corn, a customary gift of corn which, at every Christmas, the farmers in some parts of England give to their smith for sharpening their plough-irons, harrow-tines, etc.—*Blount.*

Shaster, the instrument of government or instruction; any book of instructions, particularly containing Divine ordinances.—*Indian.*

Shaw, a grove or wood, an underwood.

Shawatores, soldiers.

Sheading, a riding, tithing, or division in the Isle of Man, where the whole island is divided into six sheadings, in each of which there is a coroner or chief constable appointed by a delivery of a rod at the Tinewald Court or annual convention.—*King's Isle of Man*, 7.

Shebeen, any house, shop, room, premises or place in which spirits, wine, beer, etc., are trafficked in by retail without a certificate and excise licence in that behalf: Public Houses Acts Amendment (Scotland) Act, 1862 (25 & 26 Vict. c. 35), s. 37. By s. 19 of that Act any person found drinking in a shebeen may be apprehended and fined up to ten shillings.

Sheep, injury to, by dogs, action for, under the Dogs Act, 1906, and the Amendment Act of 1928. See DOG. As to cruelty by allowing them to become infested with maggots, see *Potter* v. *Challans*, (1910) 102 L. T. 324.

Sheep of a tenant are exempt from distress for rent conditionally, i.e. if there be other sufficient distress on the demised premises, by the Statute of Marlbridge (51 Hen. 3, s. 4), and this exemption extends to the sheep of an under-tenant (*Keen* v. *Priest*, (1859) 28 L. J. Ex. 157).

Sheep-heaves. 'Small plots of pasture often in the middle of a waste . . . the soil of which may or may not be in the lord, but the pasture is certainly a private property, and is leased and sold as such.'—*Cooke, Inclos. Acts*, 44.

Sheep-scab. The Ministry of Agriculture and Fisheries (see AGRICULTURE AND FISHERIES, MINISTRY OF) may, by the Diseases of Animals Act, 1903 (3 Edw. 7, c. 43), make an order 'for prescribing, regulating, and securing the periodical treatment of all sheep by effective dipping, or by the use of some other remedy for sheep scab.' For descriptions of the disease see extracts from Board of Agriculture 'Sheep-scab Order' in *Chitty's Statutes*, and *Maclean* v. *Laidlaw*, 1909, S. C. (J.) 68.

Sheep-silver, a service turned into money, which was paid in respect that anciently the tenants used to wash the lord's sheep.

Sheep-skin, a deed; from the parchment it was written on.

Sheep-stealing, or killing sheep with intent to steal, is a felony.—Larceny Act, 1916, ss. 3 and 4.

Sheffield University Act, 1914 (4 & 5 Geo. 5, c. 4), extending the privileges of graduates of the University of Sheffield.

Shelley's Case, Rule in. Intimately connected with the quantity of estate which a tenant may hold in realty, is the antique feudal doctrine generally known as the rule in *Shelley's Case*, which is reported by Lord Coke in 1 Rep. 93 *b* (23 Eliz. in C. B.), and elaborately examined by Lord Macnaghten in *Van Grutten* v. *Foxwell*, 1897, A. C. 658.

The rule has been abolished by the Law

of Property Act, 1925, s. 131, in the construction of all instruments coming into operation after 1925; but the rule governs the construction of all instruments which have come into operation before the 1st January, 1926.

The rule may be described thus: Where a life freehold, either legal or equitable in realty (whether of freehold or copyhold tenure), is limited by any assurance to a person, and by the same assurance the inheritance of the same quality, i.e., either legal or equitable, is limited by way of remainder (with or without the interposition of any other estate) to his heirs or the heirs of his body, such remainder is immediately executed in possession in the person so taking the life freehold, the word 'heirs' being treated as word of limitation and not of purchase, so that the life-tenant takes the inheritance, which is neither contingent nor in abeyance; that is to say, where the inheritance is to his heirs or right heirs he takes the fee-simple; and where it is to the heirs of his body an estate-tail general.—1 *Steph. Com.*

In Coke's Reports in verse the rule has been rhymed thus:—

> Where ancestors a freehold take,
> The words 'his heirs,' a limitation make;

which may serve to refresh the memory.

As examples of the application of the rule, take the following:—Land is limited to A. for life, remainder to his right heirs; the rule does not treat this remainder as contingent, but confers it upon A. at once, whereupon his life estate merges in the remainder, and he takes the entire interest, i.e., the fee-simple. Again: Land is limited to A. for life, remainder to B. for life, remainder in the heirs male of A.'s body, the second remainder vests in A. as a remainder in tail male general, and is not in contingency or abeyance, nevertheless waiting for, and continuing expectant on, the determination of B.'s life-estate, which is expectant on A.'s death; but after A.'s death, and the determination of the mesne remainder to B., A.'s heir in tail male general shall enjoy the land as heir, and not as purchaser.

The rule is of positive institution at variance with rules of construction; for while the latter seek for the intention of parties, and strive for its accomplishment, the former combats the intention—a conflict which frequently raises immense difficulties as to whether the rule or intention should prevail. In the operation of the rule on the limitations of the two above-stated examples, it certainly contradicts the meaning of the assurance, and the intent of the parties. Two estates are created, a particular estate in the ancestor, and a remainder in his heirs. In the absence of the rule, the heir would have taken an original and independent estate by purchase, not derived from or controllable by his ancestor; but the operation of the rule places the whole power over the inheritance in the ancestor, who can partially or totally defeat the expectation of his relation.

Sect. 131 of the Law of Property Act, 1925, enacts:—

> Where by any instrument coming into operation after the commencement of this Act an interest in any property is expressed to be given to the heir or heirs or issue or any particular heir or any class of heirs or issue of any person in words which, but for the section would under the rule of law known as *Shelley's case*, have operated to give to that person an interest in fee-simple or an entailed interest, such words shall operate in equity as words of purchase and not of limitation, and shall be construed and have effect accordingly, and in the case of an interest in any property expressed to be given to an heir or heirs or any particular heir or class of heirs, the same person or persons shall take as would in the case of freehold land have answered that description under the general law in force before the commencement of the Act.

Shepway, Court of, a court held before the Lord Warden of the Cinque Ports. A writ of error lay from the Mayor and jurats of each port to the Lord Warden in this court, and thence to the King's Bench. The civil jurisdiction of the Cinque Ports is abolished by 18 & 19 Vict. c. 48.

Sheriffe, the body of the lordship of Cardiff, in South Wales, excluding the members of it.—*Powel's Hist. Wal.* 123.

Sheriff, Shire-reeve, or Shiriff [fr. *scire*, Sax., fr. *scyran*, to divide, and *gerefa*, a guardian (*vicecomes*)], the chief officer of the Crown in every county.

The judges, together with the other great officers and privy councillors, meet in the Exchequer on the morrow (November 12th) of St. Martin, yearly; and then and there the judges propose three persons from each county, to be reported, if approved of, to the King, who afterwards appoints one of them to be sheriff, and such appointment generally takes place about the end of the following Hilary Term. If a sheriff die in office, the appointment of another is the mere act of the Crown.

The Sheriffs Act, 1887, repeals and, so far as they were not obsolete, re-enacts the very numerous enactments as to sheriffs from 3

Edw. 1, c. 9, to s. 16 of the Judicature Act, 1881, inclusive. By s. 3 of this Act a sheriff is annually appointed, having (s. 4) sufficient land within the county to answer the King and his people; by s. 23 every sheriff must, within one month after his appointment is gazetted, nominate some fit person to be his under-sheriff; and by s. 24 every sheriff is to appoint a sufficient deputy, having an office within a mile of the Inner Temple Hall, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting all rules and orders made as to the execution of any process or writ addressed to the sheriff. The two sheriffs of London are elected by the Corporation of the City. As to the protection of the sheriff selling goods under an execution without notice of claims by third parties, see Bankruptcy and Deeds of Arrangement Act, 1913, s. 15. Consult *Mather's Sheriff Law.*

Sheriff (in Scotland), the chief judge of a county, also called sheriff-substitute, the office of sheriff principal being an intermediate point of appeal between the sheriff-substitute and the Court of Session. His civil jurisdiction extends to all personal actions on contract, bond, or obligation, to the greatest extent; also, by 40 & 41 Vict. c. 50, s. 8, to actions relating to a heritable right where the value of the subject-matter does not exceed 50*l.* by the year or 1,000*l.* value, and to all possessory actions, as removings, spuilzies, etc., to all brieves issuing from Chancery in Scotland, as of inquest, terce, division, tutory, etc, and generally to all civil matters not specially committed to other courts. He has also a summary jurisdiction in regard to small debts, as well as a criminal jurisdiction.

Sheriffalty, Sheriffdom, Sheriffship, Sheriffwick, or **Shrievalty** [*vicecomitatus,* Lat.], the office or jurisdiction of a sheriff.

Sheriff Clerk, the clerk of the Sheriff Court in Scotland.

Sheriff-geld, a rent formerly paid by a sheriff, and it is prayed that the sheriff in his account may be discharged thereof.—*Rot. Parl.* 50 *Edw.* 3.

Sheriff's Court in London. See CITY OF LONDON.

Sheriff's Officers, bailiffs, who are either bailiffs of hundreds or bound-bailiffs.

Sheriff's Tourn or **Rotation,** a court of record held twice every year, within a month after Easter and Michaelmas, before the sheriff, in different parts of the county, being indeed only the *turn* of the sheriff to keep a court-leet in each respective hundred; this, therefore, was the great court-leet of the county, as the county court was the court-baron; but the 'tourn,' which had been long obsolete, was expressly abolished by s. 18, sub-s. 4, of the Sheriffs Act, 1887.

Sheriff-substitute (in Scotland), the resident judge ordinary of the county, discharging the duties of the sheriff principal, by whom his judgment is in most cases subject to review.—*Bell's Scots Law Dict.*

Sheriff-tooth, a tenure by the service of providing entertainment for the sheriff at his county courts; a common tax, formerly levied for the sheriff's diet.

Sherrerie, a word used by the authorities of the Roman Church to specify contemptuously the technical parts of the law, as administered by non-clerical lawyers. – *Bacon.*

Shew Cause, to appear (in obedience to a rule of Court calling upon the party to appear and shew cause) and argue that the rule should not be made absolute. Rules to shew cause are now, in many cases, abolished by the Supreme Court of Judicature Act. See RULES.

Shewing [*monstratio,* Lat.], being quit of attachment in a court, in plaints shewed and not avowed. Obsolete.

Shifting Use, a secondary or executory use, which, when executed, operates in derogation of a preceding estate: as land conveyed to the use of A. and his heirs, with proviso that when B. pays a certain sum of money, the estate shall go to the use of C. and his heirs. The legal estates thereby created have been converted as from the 1st January, 1925, into equitable interests (see Law of Property Act, 1925, ss. 1 and 39 and the 1st Sched., Part I.). The instrument declaring the use if it was still in contingent operation on the 31st December, 1925, is a settlement within the meaning and for the purposes of the Settled Land Act, 1925, s. 1 (ii.) (*b*). See also SPRINGING USE.

Shilling [fr. *solidus,* Lat.; *scilling,* Sax.] among the English Saxons passed for 5*d.*; afterwards it represented 16*d.*, and often 20*d.* In the reign of the Conqueror it was of the same denominative value as at this day.—*Domesday.*

Shilwit. See CHILDWITE.

Ship, in the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), by s. 742, 'includes every description of vessel used in navigation not propelled by oars.' (This definition has been adopted by the Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 34), s. 48 (1).)

'Foreign-going ship,' by the same section, includes every ship employed in trading, or going between some place or places in the United Kingdom, and some place or places situate beyond the following limits: that is to say, the coasts of the United Kingdom, the Channel Islands and the Isle of Man, and the continent of Europe, between the river Elbe and Brest inclusive'; and

'Home-trade ship' includes 'every ship employed in trading or going' within the above limits; and

'Home-trade passenger ship' means every home-trade ship employed in carrying passengers.' A ship cannot be registered as a British ship unless owned by British subjects or a British corporation (s. 1). The property in a ship is divided into sixty-four shares; not more than sixty-four persons may own a ship as part owners, and not more than five may be joint owners of a ship or shares therein, but a corporation may be registered as owner (s. 5). A part owner can sell or mortgage his share or shares provided he complies with the provisions of the Act. Joint owners cannot dispose in severalty of any interest in a ship, or in any share therein in respect of which they are registered (*ib.*). Other statutory definitions of a ship are as follows: (1) Carriage of Goods by Sea Act, 1924 (14 & 15 Geo. 5, c. 22), Sched., Art. 1, 'any vessel used for the carriage of goods by sea.' (2) Merchant Shipping (International Labour Conventions) Act, 1925 (15 & 16 Geo. 5, c. 42), s. 5, 'any sea-going ship or boat of any description which is registered in the United Kingdom as a British ship and includes any British fishing boat entered in the fishing-boat register.' (3) Petroleum (Consolidation) Act, 1928 (18 & 19 Geo. 5, c. 32), s. 24, 'every description of vessel used in navigation, whether propelled by oars or otherwise.' See also the Merchant Shipping Acts, 1928 and 1932, and the Supreme Court of Judicature Act, 1925, s. 22.

Any person born on board a British ship, whether in foreign territorial waters or not, is a natural-born British subject (4 & 5 Geo. 5, c. 17, s. 1). The criminal jurisdiction of British courts extends to British ships on the high seas, and in foreign rivers below the bridges where the tide ebbs and flows (*R.* v. *Anderson*, L. R. 1 C. C. R. 161).

The liability of shipowners (who are liable at common law, if carriers, as insurers of goods) is limited by s. 503 of the Merchant Shipping Act, where there has been no actual loss or privity, to amounts varying with the tonnage of the ship. Sect. 502 protects the owner of a British ship against liability in respect of goods lost or damaged by fire on board the ship, and in respect of certain valuables, the true nature and value of which have not been declared on shipment, if lost or damaged by reason of any robbery, embezzlement, etc. Although the Carriers Act, 1830, extends to carriage by land only, where there is a contract for the carriage of goods partly by land and partly by sea, the carrier has the benefit of the Act as to the carriage by land (*Le Conteur* v. *L. & S. W. Ry.*, (1865) L. R. 1 Q. B. 54). See also the Carriage of Goods by Sea Act, 1924. The Shipowners' Negligence (Remedies) Act, 1905, enables a person injured by, or on, or in, or about a ship in a port or harbour of England or Ireland, or within three miles of the coast thereof, to apply to a judge to order the detention of the ship, if owned by foreigners none of whom reside in the United Kingdom, until the owners have made satisfaction or given security to abide the result of an action. The order, it seems, will be made on the applicant showing that the owners are 'probably liable to pay damages' in respect of personal or fatal injuries caused in consequence of the negligence, etc., mentioned in the Act. See NAVIGATION ACTS; MERCHANT SHIPPING; LIMITED LIABILITY; *Chitty's Statutes*, tit. '*Shipping*'; and consult *Temperley* or *Maclachlan on M.S. Acts*; *Maude and Pollock on Shipping*; *Carver on Carriage by Sea*.

Ship-money, an imposition formerly levied on port-towns and other places for fitting out ships for the defence of the realm. It had become obsolete, but was revived by Charles I., who attempted to levy it in the county of Bucks. John Hampden, a gentleman of the county, was accordingly assessed at 20*s.*, which he declined to pay, and proceedings were taken against him in the Exchequer. Judgment was given for the Crown, 'which gave such offence to the nation and occasioned great heart-burnings' in Parliament. Resolutions were at once passed condemning the judgment, and it was reversed and the whole abuse abolished by 16 Car. 1, c. 14. See *The Case of Ship Money*, (1637) 3 St. Tr. 825; *Broom's Const. Law*, p. 306.

Shipper, the owner of goods who entrusts them on board a vessel for delivery abroad, by charter-party or otherwise.

Ship's Agent. The Naval Agency and Distribution Act, 1864, provides for the ap-

pointment of an agent by the commanding officer of each of His Majesty's ships to act for the ship with respect to salvage, bounty, prize, etc. (ss. 4–12). The ship's agent receives 2½ per cent. of any such money distributed among the officers and crew. He may not be a solicitor, proctor, attorney, or employed by the Crown, and is subject to the jurisdiction and authority of the High Court of Admiralty. See also Naval Prize Act, 1918 (8 & 9 Geo. 5, c. 30).

Ship's husband, a peculiar agent appointed by the owner of a ship to look after the repairs, equipment, management, and other concerns of the ship. His duties are: (1) To see to the proper outfit of the vessel, the repairs, tackle and furniture necessary for a seaworthy ship. (2) To have a proper master, mate, and crew for the ship, so that in this respect it shall be seaworthy. (3) To see to the due furnishing of provisions and stores. (4) To see to the regularity of clearance from the Custom-house of the registry. (5) To settle contracts, and provide for payment of the furnishings requisite. (6) To enter into charter-parties, or engage the vessel for general freight, under usual conditions; and to settle for freights and adjust averages with the merchant. (7) To preserve the proper certificates, surveys, and documents, in case of disputes with insurers or freighters, and to keep regular books of the ship.—*Story's Agency*, 31. See *Maclachlan on Shipping*. He must be registered under the Merchant Shipping Act, 1894, s. 59 (2).

Ship's Papers, documents required for the manifestation of the property of the ship and cargo, etc. See a list of them in Form No. 17, Appx. K, of the Rules of the Supreme Court, 1883.

They are of two sorts: (1) those required by the law of a particular country, as the certificate of registry, licence, charter-party, bills of lading and of health, required by the law of England to be on board all British ships; (2) those required by the law of nations to be on board neutral ships, to vindicate their title to that character; they are the passport, sea-brief, or sea-letter, proofs of property, the muster-roll, or *rôle d'équipage;* the charter-party, the bills of lading and invoices, the log-book or ship's journal, and the bill of health.—1 *Marshall on Insur.*, c. 9, s. 6.

Shire [fr. *scyran*, Sax., to divide], a part or portion of the kingdom; called also a county [*comitatus*, Lat.]. King Alfred first divided this country into *satrapiæ*, now called shires; shires into *centuriæ*, now called hundreds; and these again into *decennæ*, now called tithings.—*Leg. Alfred.* See *Brompton*, 956.

Shire-clerk, he that keeps the county court.

Shire-man, or **Scyre-man,** anciently judge of the county, by whom trials for land, etc., were determined before the Conquest.

Shiremote, an assembly of the county or the shire at the assizes, etc.

Shire-reeve, a sheriff, which see.

Shochet, a Jewish butcher; in effect a religious order invested by the Chief Rabbi with authority to kill and prepare meat in accordance with the Jewish ceremonial.

Shoofaa, pre-emption, or a power of possessing property which has been sold, by paying a sum equal to that paid by the purchaser.—*Macn. Mahometan Law.*

Shooting or wounding, or causing any grievous bodily harm, with intention to maim, disfigure, or disable, or to do some other grievous bodily harm, or with intent to resist or prevent the lawful apprehension or detaining of any person, is a felony; see 24 & 25 Vict. c. 100, s. 18.

Shop, a place where things are kept for sale, usually in small quantities, to the actual consumers. By Shops Act, 1912, s. 19, 'shop' includes any premises where any 'retail trade or business' is carried on; 'retail trade or business' includes the business of a barber or hairdresser, but not the sale of programmes, etc., at places of amusement.

The Shops Act, 1934, deals with the employment of persons under eighteen years, repealing s. 2 of the Shops Act, 1912; but the other provisions are unaffected. The 1934 Act, s. 1, provides that no young person (under eighteen) shall be employed for more than the normal maximum working hours, that is, forty-eight hours in any week; it makes restrictions on night employment, has special provisions as to the catering trade, the sale of accessories for aircraft, motor vehicles and cycles; provides for weekly half-holidays and intervals for meals, and provides for sanitary and other arrangements; this latter applies to assistants of all ages.

The 1912 Act provides (s. 3) that in all rooms of a shop where female assistants are employed the employer shall provide seats behind the counter, or in such other position as may be suitable for the purpose, and also that such seats shall be in the proportion of not less than one seat to every three female

assistants employed in each room, and as amended by the 1934 Act, it shall be the duty of the occupier of the shop to permit the female assistants to make use of such seats whenever such use does not interfere with their work.

Every shop must, save as otherwise provided by the Act, be closed not later than 1 P.M. on one week-day in every week, which day may be fixed by the local authority (s. 4); and a 'closing hour,' not earlier than 7 P.M., may be fixed by the local authority with the sanction of a Secretary of State (s. 5). The Act contains special provisions with reference to trading elsewhere than in shops (s. 9), to shops where more than one business is carried on (s. 10), holiday resorts (s. 11), and shops where Post Office business is carried on (s. 12). The enforcement of the Act is entrusted to the local authority as defined by s. 13, and the Act applies, with necessary modifications, to Scotland (s. 20) and Ireland (s. 21). It does not apply to fairs, bazaars, or sales of work for charitable or other purposes from which no private profit is derived (s. 19), and certain trades and businesses are exempted from the provisions as to a weekly half holiday, and from the provisions of closing orders; see Second and Third Schedules. An incorporated company is bound by the Act (*Evans* v. *L. C. C.*, 1914, 3 K. B. 315). The Act was amended, in its application to premises for the sale of refreshments, by the Shops Act, 1913. The Shops (Early Closing) Act, 1920, provided for a temporary continuance of orders made under the expired Defence of the Realm (Consolidation) Act, 1914, and set out the orders in a schedule to the Act. The Shops (Hours of Closing) Act, 1928, amends the law relating to the closing of shops. Shops are to be closed not later than 8 P.M. (this is called the general closing hour), but on one day in the week they may be closed not later than 9 P.M., called the late day, which day shall be Saturday, unless otherwise fixed by the local authority. There are provisions dealing with the sale of confectionery and tobacco, and exemptions for exhibitions, etc. Customers in the shop before closing time may be served, or when the article is required in a case of illness. The sale of meals and food is excepted in certain circumstances, as also that of intoxicating liquors, medicine, etc., newspapers, etc., motor and cycle supplies, etc.

The Hairdressers and Bakers Shops (Sunday Closing) Act, 1930, compels such establishments to close on Sunday, with exemptions as respects Jewish hairdressers, provided that they close on Saturday.

The Shops (Sunday Trading Restriction) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 53), provides for the closing of shops on Sundays, with certain exceptions, such as for sale of intoxicating liquors, refreshments, sweets, ice-cream, fruit, flowers, milk and cream, medicines, tobacco, newspapers, books, etc. (see the 1st Schedule), but the exceptions do not apply to sale of tinned goods of the above goods except tinned clotted cream. There are special provisions for holiday resorts, and for Jewish trades so long as they close on Saturday. Goods cannot be dispatched to a customer at any time when a customer could not lawfully be served in the shop.

In contravention of the provisions the occupier of the shop is liable up to 5*l.* for the first offence, and up to 20*l.* for a second or subsequent offence.

The Shops Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 28), provides for the application of the Shops Acts, 1912-34, to the premises of lending libraries when carried on for profit.

Shop-Lifting Act (10 Wm. 3, c. 12), by which stealing goods to the value of five shillings was a capital felony, repealed in 1826 by 7 & 8 Geo. 4, c. 27.

Short Cause, an action in the Chancery Division of the High Court of Justice, where there is only a simple point for discussion and which counsel has certified as fit to be heard 'short' (*Felstead* v. *Gray,* (1874) L. R. 18 Eq. 92). As to the entry in the Short Cause list of an action in the King's Bench Division, see R. S. C. Ord. XIV., r. 8.

Short Entry. It takes place when a bill or note, not due, has been sent to a bank for collection, and an entry of it is made in the customer's bank-book, stating the amount in an inner column, and carrying it into the accounts between the parties when it has been paid. See ENTERING SHORT.

Short-ford. The ancient custom of the city of Exeter is, when the lord of the fee cannot be answered rent due to him out of his tenement, and no distress can be levied for the same, he is to come to the tenement, and there take a stone, or some other dead thing of the said tenement, and bring it before the mayor and bailiffs; and this he must do seven quarter-days successively; and if, on the seventh quarter-day, the lord is not satisfied his rent and arrears, then the tenement shall be adjudged to the lord to hold the same a year and a day; and forth-

with proclamation is to be made in the Court, that if any man claim any title to the tenement, he must appear within the year and a day next following, and satisfy the lord of the said rent and arrears. But if no appearance be made, and the rent not paid, the lord comes again to the Court and prays that according to the custom the tenement be adjudged to him in his demesne as of fee, which is done, and the lord from thenceforth has it to him and his heirs. This custom is called *short-ford;* being as much as, in French, to foreclose.—*Izack's Antiq. Exet.* 48. See *Cowel.*

A like custom in London by the ancient statute of Gavelet, attributed to 10 Edw. 2, is called *forschot* or *forschoke.*

Shorthand Notes. The only statutory provision for the taking of shorthand notes is in s. 16 of the Criminal Appeal Act, 1907 (see that title).

Such notes of the evidence are usually made in important cases; but the costs of taking them will usually not be allowed, unless on an appeal they are used by the Court (see *Castner, etc., Co.* v. *Commercial Corporation,* 1899, 1 Ch. 803), and they can be so used on an appeal from a county court, even though not signed by the judge (*Barber* v. *Burt,* 1894, 2 Q. B. 437). The costs of shorthand notes of the judgment of a court below are on appeal allowed without special order (*Re De Falbe,* 1901, 1 Ch. p. 542).

Short Notice of Trial: four days, unless otherwise ordered. See R. S. C. 1883, Ord. XXXVI., r. 14.

Short Titles, of Acts of Parliament. First introduced for convenience of citation in 1845 by the Companies Clauses Consolidation Act, 1845, and since then gradually more and more used in the case of particular Acts. General Short Titles Acts were also passed in 1892 and 1896, that of 1896 giving short titles to 2,076 Acts, of which 840 had had short titles given to them by the Act of 1892, which the Act of 1896 repeals. See ACT OF PARLIAMENT.

Shrievalty, the office of sheriff; the period of that office.

Shrievo, a corruption of sheriff.

Shroff, Shrof, a banker or money-changer. —*Indian.*

Shroud-stealing. If any one, in taking up a dead body, steal the shroud or other apparel, it will be felony; for the property therein remains with the executor, or whoever was at the charge of the funeral.—3 *Inst.* 110; 1 *Hale, P. C.* 535.

Si actio, the conclusion of a plea to an action when the defendant demands judgment, if the plaintiff ought to have his action, etc. Obsolete.

Sib, related by blood.

Sica, Sicha, a ditch.—*Dugd. Mon.* ii. 130.

Sicca Rupee, originally a newly coined rupee, accepted at a higher value than those worn by use; latterly, a rupee coined under the Government of Bengal from 1793, and legally current till 1836, of a greater wieght than the (India) Company's rupee.—*Oxf. Dict.*

Sich, a little current of water, which is dry in summer; a water furrow or gutter.

Sicilus, a sort of money current among the ancient English, of the value of 2*d.*

Sickness Benefit. See NATIONAL INSURANCE.

Sicut alias, as at another time, or heretofore. This was a second writ sent out when the first was not executed.

Sic utere tuo ut alienum non lædas. 9 *Rep.* 59.—(Use your own rights so that you do not hurt those of another.) See *Broom's Legal Maxims,* citing especially *Bonomi* v. *Backhouse,* (1861) 9 H. L. C. 511; and also *Fletcher* v. *Rylands,* (1866) L. R. 1 Ex. 265; 1 *Smith's Leading Cases,* and the notes thereto.

Side-bar Rules. See RULES.

Sidelings (*sidlingi*), meers or balks betwixt or on the sides of arable ridges or lands.—*Cowel.*

Side-men, or **Sides-men (Synods-men),** two or three or more discreet persons acting as assistants to the churchwardens in collecting alms and maintaining order. They are elected by the Parochial Church meeting and the incumbent jointly under the Parochial Church Councils (Powers) Measure, 1921 (11 & 12 Geo. 5, No. 1), s. 14. See *Prideaux's Churchwarden's Guide,* 16th ed., by *Mackarness.*

Siens, scions or descendants.

Si fecerit te securum, a species of original writ, so called from the words of the writ, which directed the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff 'gave the sheriff security' effectually to prosecute his claim.

Sight, Bills payable at, are by s. 10 of the Bills of Exchange Act, 1882, replacing the repealed 34 & 35 Vict. c. 74—prior to which three days' grace was allowed—made equivalent to bills payable on demand.

Sigil [fr. *sigillum,* Lat.], seal, signature.

Sigla [fr. *segel,* Sax.], a sail.—*Leg. Ethelr.* c. 24.

Signature, a sign or mark impressed upon anything; a stamp, a mark; the name of a person written by himself either in full or by initials as regards his Christian name or names, and in full as regards his surname, or by initials only (*In the goods of Blewitt*, (1880) 5 P. D. 116), or by mark only, though he can write (*Baker* v. *Denning*, (1838) 8 Ad. & E. 94).

Signature is required to authenticate a will (see WILL), a deed after 1925 (Law of Property Act, 1925, s. 73), a guarantee and other documents mentioned in the Statute of Frauds (see FRAUDS, STATUTE OF), and a risk note within the meaning of the seventh section of the Railway and Canal Traffic Act, 1854 (see RISK NOTE). Pleadings must be signed by counsel if settled by him, and if not, by the solicitor or the party; R. S. C. 1883, Ord. XIX., r. 4. No fee to counsel is allowed on taxation unless vouched by his signature.—*Ibid.*, Ord. LXV., r. 27, reg. 52.

Signet, a seal commonly used for the sign-manual of the sovereign. See PRIVY SEAL.

In Scotland, before the Administration of Justice (Scotland) Act, 1933, was passed, the 'will,' an essential part of a summons before the Court of Session, was required to be signed by a Writer to the Signet (*q.v.*). The summons must be sealed at the Signet Office before service, or founding action.

Significavit, a writ issuing out of the Chancery upon certificate given by the ordinary of a man's standing excommunicate by the space of forty days, for the keeping him in prison till he submit himself to the authority of the Church. See 53 Geo. 3, c. 127, and *Ex parte Dale*, (1881) 6 Q. B. D. at p. 381, in which case Lord Penzance in 1880 issued a significavit against the Rev. Mr. Dale for disobedience to his inhibition.

Also, another writ, addressed to the judges, commanding them to stay any suit depending between such and such parties by reason of an excommunication alleged against the plaintiff, etc.—*Reg. Brev.* 7.

Sign-manual. 1. The royal signature. Sometimes required by statute as evidence of the authority of the sovereign, e.g., by the Jud. Act, 1925, s. 4 (2), replacing Jud. Act, 1873, s. 31, in reference to the transfer of a judge of the High Court from one division thereof to another. Towards the end of the reign of King George the Fourth, the royal signature was, in consequence of the king's illness, by 11 Geo. 4 & 1 Wm. 4, c. 23, authorized to be affixed for him by commission.

2. The signature of any one's name in his own handwriting.

Signs. See SKY SIGN.

Signum, a cross prefixed as a sign of assent and approbation to a charter or deed, used by the Saxons.

Silentiarius, one of the Privy Council: also an usher, who sees good rule and silence kept in court.

Silva cædua, wood under twenty years' growth.

Similiter [Lat.] (in like manner). Formerly when an issue of fact was tendered, the words were as follows: 'and of this the defendant puts himself upon the country'; or thus, 'and this the plaintiff prays may be inquired of by the country'; the issue and form of trial were then both accepted on the other side (unless there appeared grounds for demurrer), by the words following: 'and the plaintiff (or the defendant, as the case may be) doth the like,' which latter words were called the *Similiter*. After the passing of the C. L. P. Act, 1852, the joinder of issue under s. 79 of that Act superseded the *Similiter*. See now ISSUE.

The want of a *similiter* by the prosecutor in criminal cases is cured by the Criminal Law Act, 1826 (7 & 8 Geo. 4, c. 64), s. 20.

Simony, the corrupt presentation of, or the corrupt agreement to present any one to an ecclesiastical benefice for reward. It is derived from Simon Magus, who offered money to the Apostles for the power to work miracles (Acts viii. 18-24). It is an offence by statute 31 Eliz. c. 6, which by s. 5, 'for the avoiding of simony,' directs that the corrupt presentation shall be void, and the presentation shall go to the Crown, and the Clerical Subscription Act, 1865 (28 & 29 Vict. c. 122), required a declaration against simony to be subscribed by every person about to be instituted or collated to any benefice or to be licensed to any perpetual curacy, lectureship, or preachership. This declaration, which was only to the effect that the declarant had not been party to any contract to the best of his knowledge simoniacal, is now superseded by a far more effective and specific declaration scheduled to the Benefices Act, 1898 (61 & 62 Vict. c. 48), which declaration, however, contains a saving for Resignation Bonds (see RESIGNATION).

Simple Contract, a contract made either verbally or in writing but not under seal. See *Addison*, *Chitty*, *Leake*, or *Pollock on Contracts*.

Before 1870 simple contract debts were,

in the administration of the estate of a deceased person, postponed to debts secured by instrument under seal, called 'specialty debts,' but all such priority was abolished by the Administration of Estates Act, 1869, s. 1, replaced by A. E. Act, 1925, s. 32. See also LIMITATIONS.

Simple Deposit, a deposit made, according to the Civil Law, by one or more persons having a common interest.

Simple Larceny, stealing for which no special punishment is provided under the Larceny Act, 1916, or any other Act.—Larceny Act, 1916, s. 2. See LARCENY.

Simple Trust: where property is vested in one person upon trust for another, and the nature of the trust, not being qualified by the settlor, is left to the construction of law. In this case the *cestui que trust* has *jus habendi*, or the right to be put into actual possession of the property, and *jus disponendi*, or the right to call upon the trustee to execute conveyances of the legal estate as the *cestui que trust* directs. See BARE TRUSTEE and Law of Property Act, 1925, s. 3 (3), and Settled Land Act, 1925, s. 7 (5), enabling a person entitled to a legal estate to have it conveyed to him, and also L. P. Act, 1925, 1st Sched., Part II., par. (3), as amended by the L. P. (Amendment) Act, 1926, vesting the estate existing on 1st January, 1926, in the beneficial owner by force of the statute.

Simple Warrandice, an obligation to warrant to secure from all subsequent and future deeds of the grantor.—*Scots term.*

Simplex beneficium, a minor dignity in a cathedral or collegiate church, or any other ecclesiastical benefice, as distinguished from a cure of souls. It may therefore be held with any parochial cure, without coming under the prohibitions against pluralities.

Simplex commendatio non obligat. The mere recommendation of goods by the seller imposes no liability upon him. See REPRESENATION.

Simplex justiciarius, a style formerly used for any *puisne* judge who was not chief in any court.

Simplex obligatio. See SINGLE BOND.

Simpliciter [Lat.], without involving anything not actually named.

Simulatio latens, a species of feigned disease, in which disease is actually present, but where the symptoms are falsely aggravated, and greater sickness is pretended than really exists.—*Beck's Med. Jurisp.* 3.

Simul cum [Lat.] (together with).

Sinderesis, a natural power of the soul, set in the highest part thereof, moving and stirring it to good, and abhorring evil. And therefore *sinderesis* never sinneth nor erreth. And this *sinderesis* our Lord put in man, to the intent that the order of things should be observed. And therefore *sinderesis* is called by some men the law of reason, for it ministereth the principles of the law of reason, the which be in every man by nature, in that he is a reasonable creature.—*Doctor and Student*, 39.

Sine assensu capituli, an abolished writ where a bishop, dean, prebendary, or master of a hospital alienied the lands holden in right of his bishopric, deanery, house, etc., without the assent of the chapter or fraternity, in which case his successor should have this writ.—*Fitz. N. B.* 195.

Sinecure [fr. *sine*, Lat., without, and *cura*, care], an office which has revenue without any employment.

Sinecure Rector, a rector without cure of souls. Sinecure rectories are now abolished by 3 & 4 Vict. c. 113, s. 48, and 4 & 5 Vict. c. 39, s. 17. See 2 *Steph. Com.*

Sine die [Lat.] (without day, or indefinitely). Without a day being fixed. The consideration of a matter is said to be adjourned *sine die* when it is adjourned without a day being fixed for its resumption.

Sine prole, without issue.—See **S. P.**

Single Bond [*simplex obligatio*, Lat.], a bond merely for the payment of money, or for the performance of some particular act, without any condition in or annexed to it. See *Re Dixon*, 1900, 2 Ch. 561.

Single Combat, Trial by. See BATTEL.

Single Entry, an entry made to charge or to credit an individual or thing, as distinguished from double entry, which is an entry of both the debit and credit accounts of a transaction. See DOUBLE ENTRY.

Single Escheat, when all a person's movables fall to the Crown, as a casualty, because of his being declared rebel. See FORFEITURE.

Singular. By the Interpretation Act, 1889 (52 & 53 Vict. c. 63), re-enacting the repealed 13 & 14 Vict. c. 21, s. 4, it is enacted that words in Acts of Parliament passed after 1850 importing the singular shall include the plural, and the plural the singular, unless the contrary intention appears.

Singular Successor. A purchaser is so termed in Scots Law, in contradistinction to the heir of a landed proprietor, who succeeds to the whole heritage by regular title, of succession or univeral representation, whereas the purchaser acquires right solely by the single title acquired by the disposition of

the former proprietor.—*Bell's Scots Law Dict.*

Sinking Fund. A fund formed for the redemption of a debt by the periodical accumulation of fixed amounts by the borrower.

Si non omnes, Writ of, a writ on association of justices, by which, if all in commission cannot meet at the day assigned, it is allowed that two or more of them may finish the business.—*Fitz. N. B.* 186; *Reg. Brev.* 202. And after the writ of association, it is usual to make out a writ of *si non omnes*, addressed to the first justices, and also to those who are associated with them, which, reciting the purport of the two former commissions, commands the justices that if all of them cannot conveniently be present, such a number of them may proceed, etc.—*Fitz. N. B.* 111.

Sipessocua, a franchise, liberty, or hundred.

Si quidem in nomine, cognomine, prænomine legatarii testator erraverit, cum de personâ constat, nihilominus valet legatum. *Justinian's Institutes*, l. 2, t. 20, s. 29.—(Although a testator may have mistaken the *nomen*, *cognomen*, or *prænomen* of a legatee, yet if it be certain who is the person meant, the legacy is valid.)

Si quid universitati debetur singulis non debetur, nec quod debet universitas singuli debent. *D.* 3, 4, 7.—(If anything be owing to an entire body, it is not owing to the individual members; nor do the individuals owe that which is owing by the entire body.)

Si quis [Lat.] (if any one), in ecclesiastical law, a notification published in the parish church of the parish where a candidate for Holy Orders resides, that 'if any one' (*si quis*) knows of any just cause for which he ought not to be admitted to Holy Orders, he is to declare the same or signify the same to the Bishop.

Sircar, a Government; a man of business. —*Indian.*

Si recognoscat, a writ that, according to the old books, lay for a creditor against his debtor, who had acknowledged before the sheriff in the county court that he owed his creditor such a sum received of him.—*Old N. B.* 68.

Sise, corrupted from assize.

Sisters. Lord Coke says, *omnes sorores sunt quasi unus hæres*—all sisters are, as it were, one heir. See COPARCENERS.

Sitheundman, the high constable of a hundred.

Sittings. By the Judicature Act, 1873, s. 26, the division of the legal year into terms is abolished, and sittings are substituted for it. See now R. S. C. 1883, Ord. LXIII.

The sittings of the Court of Appeal and High Court of Justice in London and Middlesex are four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings. The Michaelmas sittings commence on the day appointed by Order in Council (Long Vacation Order, 1935, 12th October; Long Vacation Order, 1936, 12th October), and terminate on the 21st of December; the Hilary sittings commence on the 11th of January and terminate on the Wednesday before Easter; the Easter sittings commence on the Tuesday after Easter week and terminate on the Friday before Whit-Sunday; and the Trinity sittings commence on the Tuesday after Whitsun-week and terminate on the 31st of July (R. S. C. 1883, Ord. LXIII).

It is also provided by the Judicature Act, 1925, s. 52 (replacing the Judicature Act, 1873, s. 30), that, subject to rules of court, such number of judges of the High Court as may be requisite having regard to the business to be disposed of shall, so far as reasonably practicable and subject to the vacations, sit continuously at the Royal Courts of Justice for the trial of causes in the King's Bench Division. See further as to the judges who are to preside at different sittings, Judicature Act, 1925, s. 70 (3) (replacing Judicature Act, 1873, s. 37); and see also GUILDHALL SITTINGS; WESTMINSTER; and VACATION.

Sittings at the Royal Courts of Justice include sittings in chambers as well as in court (*Petty* v. *Daniel*, (1886) 34 Ch. D. 172).

Sittings in banc, sittings of the judges on the benches of their respective courts at Westminster, at which they decided matters of law and transacted other judicial business, as distinguished from *Nisi Prius sittings*, at which matters of fact were tried. See DIVISIONAL COURT.

Sittings in Camerâ. See CAMERÂ.

Situs [Lat.], situation, location.

Six Acts (60 Geo. 3 & 1 Geo. 4, cc. 1, 2, 4, 6, 8, 9), passed to put down seditious meetings, etc.; of these, c. 1, the Unlawful Drilling Act, 1819; c. 4, the Pleading in Misdemeanour Act, 1819; and c. 8, the Criminal Libel Act, 1819, are still unrepealed.

Six Articles, Law of, made in 1539 by 31 Hen. 8, c. 14. This famous Act was styled 'An Act for abolishing Diversity of Opinions,' and it enforced conformity to six

of the strongest points in the Romish religion (being the real presence, communion in one kind for the laity, celibacy of the clergy, sanctity of vows, private masses, and auricular confession), under the penalty of death in case of offence, amended by 32 Hen. 8, c. 10, which required conviction to be on the oath of twelve men, and repealed by 1 Eliz. c. 1.—4 *Reeves*, 278.

Six Clerks in Chancery, officers who received and filed all proceedings, signed office copies, attended court to read the pleadings, etc. They were abolished by 5 & 6 Vict. c. 103.

Six Day Licence, a liquor licence containing a condition that the premises in respect of which it is granted shall be closed during the whole of Sunday—granted under Licensing (Consolidation) Act, 1910, s. 58.

Sixhindi, servants of the same nature as rodknights (*q.v.*).—*Anc. Inst. Eng.*

Skeleton Bill, one drawn, indorsed, or accepted in blank.

Skilled Witnesses. See EXPERTS.

Sky Sign. This expression is defined in s. 91 (3) of the Public Health Acts Amendment Act, 1907, as follows :—

' Sky sign ' means—

Any word, letter, model, sign, device, or representation in the nature of an advertisement, announcement, or direction supported on or attached to any post, pole, standard, framework, or other support wholly or in part upon, over, or above any house, building or structure which, or any part of which, sky sign shall be visible against the sky from some point in any street or public way, and includes all and every part of any such post, pole, standard, framework, or other support.

The expression ' sky sign ' shall also include—

Any balloon, parachute, or other similar device employed wholly or in part for the purposes of any advertisement or announcement on, over, or above any house, building, structure, or erection of any kind, or on or over any street or public way ;

But shall not include—

(a) Any flagstaff, pole, vane, or weathercock unless adapted or used wholly or in part for the purpose of any advertisement or announcement :

(b) Any sign or any board, frame, or other contrivance securely fixed to or on the top of the wall or parapet of any building, or on the cornice or blocking course of any wall, or to the ridge of a roof : Provided that such board, frame, or other contrivance be of one continuous face and not open work, and do not extend in height more than three feet above any part of the wall or parapet or ridge to, against, or on which it is fixed or supported ;

(c) Any word, letter, model, sign, device, or representation as aforesaid relating exclusively to the business of a railway or canal company, and placed wholly upon or over any railway, canal, railway station, wharf, quay, yard, platform, or station or wharf or quay approach belonging to a railway or canal company, and so placed that it cannot fall into any street or public place.

Skyvinage, or **Skevinage,** the precincts of Calais.—27 *Hen.* 4, c. 2.

Slander, the malicious defamation of a person by words ; as a libel is by writing, etc. It is actionable in the following cases : (1) where the words impute a criminal offence ; (2) where they impute misconduct in a public office ; (3) where they are spoken in reference to a person's trade or profession (see *Jones* v. *Jones*, 1916, 2 A. C. 481) ; (4) where they impute a contagious disease likely to cause exclusion from society, e.g., venereal disease ; (5) where the speaking of them is productive of special damage.

The slander of a woman by imputation on her chastity was first made actionable without special damage by the Slander of Women Act, 1891 ; but under this Act no more costs than damages can be recovered unless the judge certifies there was reasonable ground for bringing the action.

Slander of Title, a false and malicious statement, either oral or in writing, tending to cut down the title to some right or property vested in the plaintiff. It is not actionable without proof of special damage See *Pater* v. *Baker*, 3 C. B. 831 ; *Steward* v. *Young*, L. R. 5 C. P. 122.

A limited company are liable for a slander uttered by their servant in the course of his employment, and for the benefit of his employers (*Finburgh* v. *Moss' Empires, Ltd.*, 1908, S. C. 928).

Consult *Odgers on Libel and Slander.*

Slaughterhouses are licensed in the Metropolis under Public Health (London) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 50), s. 144, repealing the Public Health (London) Act, 1891, s. 20, and in large towns by the Towns Improvement Clauses Act, 1847, ss. 125–131, incorporated by the Public Health Act, 1875, s. 169 ; by which Act it includes the buildings and places commonly called slaughterhouses and knacker's yards, and any building or place used for slaughtering cattle, horses or animals of any description for sale. As to the powers of the Ministry of Agriculture to regulate and restrict the slaughter of animals used for food, see the Slaughter of Animals Act, 1914.

Slavery, that civil relation in which one man has absolute power over the liberty of another. It cannot subsist in England. See *Sommersett's case*, (1771–2) 20 St. Tr. 1 ;

Lofft, 1 ; *Broom's Const. Law*, pp. 65 *et seq.*, where it was held that a person forcibly detained as a slave was entitled to be discharged on a *habeas corpus*.

The system of colonial slavery was abolished by 3 & 4 Wm. 4, c. 73. See 5 Geo. 4, c. 113 ; 7 Wm. 4 & 1 Vict. c. 91 ; 2 & 3 Vict. c. 73 ; 6 & 7 Vict. c. 98 ; 7 & 8 Vict. c. 26 ; 8 & 9 Vict. c. 122 ; 26 & 27 Vict. c. 34 ; and 32 & 33 Vict. c. 75. The various Acts for carrying into effect the treaties for the more effectual suppression of the slave trade were amended and consolidated by the 36 & 37 Vict. c. 88 (many previous Acts being thereby repealed). See, too, as to East Africa, 36 & 37 Vict. c. 59.

As to Roman slavery, see *Sand. Just.*, 7th ed. 14.

Sledge, a hurdle to draw traitors to execution.—1 *Hale, P. C.* 82.

Sliding on ice or snow. See SNOW.

Slip Order. The term commonly applied to Ord. XXVIII., r. 11, under which clerical errors arising from any accidental slip or omission may be corrected by the Court.

Slipna. a stirrup. There is a tenure of land in Cambridgeshire by holding the sovereign's stirrup.

Slough Silver, a rent paid to the castle of Wigmore, in lieu of certain days' work in harvest, heretofore reserved to the lord from his tenants.—*Cowel.*

S. L. R., Statute Law Revision Act (*q.v.*).

Small Dwellings. The Small Dwellings Acquisition Act, 1899 to 1923, as amended by the Housing Act, 1936, enables county councils, county borough councils, and, under certain restrictions, district councils, to advance money after the 31st October, 1935, to residents in houses, which do not exceed 800*l.* in value, so as to enable them to become the owners ; and see HOUSING.

Small Holdings. The Small Holdings and Allotments Act, 1908, by s. 61 gives the following definition :—

> The expression 'small holding' means an agricultural holding which exceeds one acre and either does not exceed fifty acres, or, if exceeding fifty acres, is at the date of sale or letting of an annual value for the purposes of income tax not exceeding one hundred pounds (as amended by the Small Holdings and Allotments Act, 1926 (16 & 17 Geo. 5, c. 52), s. 16).

Small Holding Colonies. By the Small Holding Colonies Act, 1916 (6 & 7 Geo. 5, c. 38) and 1918 (8 & 9 Geo. 5, c. 26), as amended by the Land Settlement (Facilities) Act, 1919 (9 & 10 Geo. 5, c. 59), the Board, now Ministry, of Agriculture and Fisheries may, after consultation with the chairman of the county council, acquire by agreement a limited amount of land up to 45,000 acres in England and Wales for the purpose of providing small holding colonies with powers conferred by the Acts.

See ALLOTMENTS, and *Aggs on Agricultural Holdings*.

Small Pox. See VACCINATION.

Small Tithes [otherwise called *privy*], all personal and mixed tithes, and also hops, flax, saffrons, potatoes, and sometimes, by custom, wood.—2 *Steph. Com.*

Smoke, Consumption of, prescribed in the Metropolis by the Public Health (London) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 50), ss. 147 *et seq.*—see LONDON ; in Scotland, by 20 & 21 Vict. c. 73 ; 24 & 25 Vict. c. 17 ; and 28 & 29 Vict. c. 102 ; for locomotives on railways by the Railways Clauses Consolidation Act, 1845, s. 114, as amended by the Regulation of Railways Act, 1868 (31 & 32 Vict. c. 119), s. 19 (see *London County Council* v. *G. E. R.*, 1906, 2 K. B. 312) ; and in towns generally by the Public Health Act, 1875, s. 91, as amended by the Public Health (Smoke Abatement) Act, 1926, replaced by the P. H. Act, 1936, ss. 101–106.

Smoke-farthings, pentecostals, which see.

Smokesilver, a nodus of 6*d.* in lieu of tithe-wood.

Smoking Carriages. By s. 20 of the Regulation of Railways Act, 1868—

> All railway companies, except the Metropolitan Railway Company, shall, . . . in every passenger train where there are more carriages than one of each class, provide smoking compartments for each class of passengers, unless exempted by the Board of Trade.

See *Hodges on Railways ; Browne and Theobald on Railways.*

Smoking, Juvenile. See TOBACCO.

Smuggling, the offence of importing prohibited articles, or of defrauding the revenue by the introduction of articles into consumption without paying the duties chargeable upon them. It may be committed indifferently either upon the excise or customs revenue.

Smuggling is restrained by the statutes relating to the Customs, and in particular by the Customs Consolidation Act, 1876.

Snottering Silver, a small duty which was paid by servile tenants in Wylegh to the abbot of Colchester.

Snow. Nuisances arising from snow may be prevented by bye-laws of local authorities under s. 81 of the Public Health Act, 1936, but, in case of conflict, a regulation under

the London Traffic Act, 1924, s. 10, is to prevail over any bye-law. If any obstruction shall arise in any highway from accumulation of snow, the surveyor is required from time to time, and within twenty-four hours after notice thereof from any justice of the peace of the county in which the parish may be situate, to cause the same to be removed, by s. 26 of the Highways Act, 1835: *Chitty's Statutes*, tit. '*Highways*.' Snow is included in the 'street refuse' which London sanitary authorities must, as far as reasonably practicable, remove from the street, by s. 86 of the Public Health (London) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 50); *Chitty's Statutes*, tit. '*Public Health (Metropolis)*'; but the fine up to 20*l.* was held to be the only liability of the authority if in default (*Saunders* v. *Holborn Board of Works*, 1895, 1 Q. B. 64). Sliding on snow in the street to the common danger is an offence under s. 28 of the Town Police Clauses Act, 1847, and s. 54 (17) of the Metropolitan Police Act, 1839 (2 & 3 Vict. c. 47): *Chitty's Statutes*, tit. '*Police*'; but by s. 28 of the Town Police Clauses Act, 1847, 'snow thrown down so as not to fall on any passenger' is excepted from the list of things which may not be thrown down from a roof.

Soap. The excise on soap was repealed by 16 & 17 Vict. c. 39.

Soc, Sok, Soka, jurisdiction; a power or privilege to administer justice and execute laws; also a shire, circuit, or territory. See *Merttens* v. *Hill*, 1901, 1 Ch. 842. See SOKE.

Soca, a seigniory or lordship, enfranchised by the king with liberty of holding a court of his *soc-men* or *socagers*, i.e., his tenants.

Socage, or Soccage. Common socage is the ordinary tenure (*q.v.*) in this country; the exceptions were, until abolished by the Law of Property Act, 1922, Borough-English, Gavelkind, etc. (*q.v.*). Socage is the same as service of the soc; and soc is the same thing as a plough. *Co. Litt.* 86. In Scotland, a type of agricultural holding of which the services were transferred into Feu or Blench Farm (annual) or Grassum (capital) payments.

Socager, a tenant by socage.

Socer [Lat.], the father of one's wife; a father-in-law.

Socida, a contract or hiring, upon condition that the bailee take upon himself the risk of the loss of the thing hired.—*Civ. Law.*

Societas leonina, that kind of society or partnership by which the entire profits belong to some of the partners in exclusion of the rest. So called in allusion to the fable of the lion, who, having entered into partnership with other animals for the purpose of hunting, appropriated all the prey to himself. It was void.—*Civ. Law.* Other *societates* were *negotionis alicujus* (partnership); *Unius rei vel certarum rerum; universorum lonorum; universorum quæ ex quæstu veniunt;* and *vectigalium* (collection of taxes). See *Hunter, Roman Law* and *Sand. Just.*

Société anonyme, analogous to a limited company (*Foreign Jurisprudence*), an association where the liability of all the partners is limited. See LIMITED LIABILITY.

Société en commandite. See COMMANDITE.

Society. Associations designated by the name of 'Society' include (1) Building Societies, regulated by the Building Societies Acts, as to which see BUILDING SOCIETIES; (2) Friendly Societies, regulated by the Friendly Societies Act, 1896, as to which see FRIENDLY SOCIETIES; (3) Industrial and Provident Societies, regulated principally by the Industrial and Provident Societies Act, 1893, as to which see INDUSTRIAL AND PROVIDENT SOCIETIES; (4) Loan Societies, regulated by 3 & 4 Vict. c. 110, as to which see LOAN SOCIETIES; (5) Literary and Scientific Societies, regulated by the Literary and Scientific Institutions Act, 1854, and exempted from rates by 6 & 7 Vict. c. 36, as to which see that title; and other benevolent or useful societies, e.g., see Companies Act, 1929, s. 18, and (6) Illegal Societies, prohibited by the Unlawful Societies Act, 1799, and the very similar Seditious Meetings Act, 1817, as to which see SEDITION, and *Chitty's Statutes*, tit. '*Societies*.'

Socii mei socius, meus socius non est. *D.* 50, 17, 47.—(The partner of my partner is not my partner.)

Socman, a socager.

Socmanry, a free tenure by socage.

Socna, a privilege, liberty, or franchise.

Socome, a custom of grinding corn at the lord's mill.

Bond-socome is where the tenants are bound to it.—*Blount.*

Sodomy, the crime against nature, punishable until 1891 by a minimum term of ten years' penal servitude; prescribed by s. 61 of the Offences against the Person Act, 1861, but the effect of the Penal Servitude Act, 1891, s. 1, sub-s. 2, appears to be that imprisonment may be substituted, though this particular crime is not expressly mentioned in that Act.

Sodor and Man, Bishopric of, annexed

to the province of York by Henry VIII.—33 Hen. 8, c. 31. See 1 & 2 Vict. c. 30, repealing partially 6 & 7 Wm. 4, c. 77. The bishop is not a lord spiritual, the lands with which the see was endowed being held, not of the king directly, but of a subject, who nominated the bishop, till 1829. when the lordship of the Isle of Man was purchased by the Crown (*Lord Selborne's Defence of the Church of England*, 5th ed. p. 45).

Soit droit fait al partie [Nor.-Fr.] (let right be done to the party).

Soke, a manor or lordship.—*Spelm.* And see per Lord Chelmsford in *Earl Beauchamp* v. *Winn*, (1873) L. R. 6 H. L. at p. 243.

Sokemanries, lands and tenements which were not held by knight service, nor by grand serjeanty, nor by petit, but by simple services; being, as it were, lands enfranchised by the king or his predecessors from their ancient demesne. Their tenants were *sokemans*.

Sokemans, tenants of socage-lands.—3 *Bl. Com.* 100.

Soke-reeve, the lord's rent-gatherer in the soca.

Solarium, a *sollar*, upper room or garret.—*Jac. Law Dict.*

Soldiers. See ARMY.

Soldiers' Wills. See NUNCUPATIVE WILL.

Sold Note. See BOUGHT AND SOLD NOTES.

Sole, not married, single, alone; also separate, and apart.

Sole Agent, an expression of which the meaning is to be ascertained by construction of the contract (*Snelgrove* v. *Ellringham Coll. Co.*, (1881) 45 J. P. 408; and *Lamb* v. *Goring Brick Co.*, 1932, 1 K. B. 710). The appointment does not preclude the principal from selling on his own behalf (*Bentall and anor.* v. *Vicary*, 1931, 1 K. B. 253).

Sole, Corporation, one person and his successors, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had; as the sovereign, a bishop, parson, etc.—*Steph. Com.*, 7th ed., i. 358; iii. 4.

The word 'successors' was essential in order to pass the fee simple in a grant to a corporation sole; without it, a life estate only passes: *Co. Litt.* 94 *b*. Words of limitation are not now necessary to convey land to a corporation sole (Law of Property Act, 1925, s. 60), and by s. 180 (*ibid.*) any property which vested at any time in a corporation sole, including the Crown, passes and always has passed to his successors unless disposed of by him, and on his death it does not pass to his personal representatives but to his successor (Administration of Estates Act, 1925, s. 3 (5)). In the event of a vacancy in office, see s. 180, L. P. Act, 1925. As to the property on a dissolution, see s. 181, and *Hastings Corporation* v. *Letton*, 1908, 1 K. B. 378. In a conveyance to a corporation aggregate, on the other hand, words of limitation are unnecessary, and indeed meaningless (*Re Woking U. C. (Basingstoke Canal) Act*, 1911, [1914] 1 Ch. p. 307; *Co. Litt.* 9 *b*, 94 *b*).

Sole Tenant [*solus tenens*, Lat.], he that holds lands by his own right only, without any other person being joined with him.

Solicitation. It is an indictable offence to solicit and incite another to commit a felony, although no felony be in fact committed (*R.* v. *Higgins*, (1801) 2 East, 5).

As to arrest by a constable, on view, of a prostitute 'loitering in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers,' see Metropolitan Police Act, 1839, s. 54, and s. 28 of the Town Police Clauses Act, 1847, where this street offence is described as 'loitering and importuning passengers for the purpose of prostitution.'

Solicitor, an officer of the Supreme Court of Judicature, who, and who only, is entitled to 'sue out any writ or process, or commence, carry on, solicit, or defend any action, suit or other proceeding' in any court whatever (see Solicitors Act, 1932, s. 45). 'Solicitor of the Supreme Court' was the title given by the Judicature Act, 1843, s. 87, to all attorneys, solicitors, and proctors, and continued by Solicitors Act, 1932, s. 81. Prior to that Act, 'attorneys' conducted business in the Common Law Courts, 'solicitors' business in the Court of Chancery and 'proctors' ecclesiastical and Admiralty business; but it was the general practice, although any person might be admitted to practise as an attorney *or* solicitor only, to be admitted to practise as an attorney *and* solicitor also.

Solicitors practise as advocates before magistrates at petty sessions and quarter sessions where there is no bar, in County Courts, at Arbitrations, at Judges' Chambers, Coroners' Inquests, Under Sheriffs' and Secondaries' Courts, and in the Court of Bankruptcy. The Law Society is Registrar of Solicitors, and regulates the examinations.

The Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37), has now consolidated the Solicitors

Acts, 1839 to 1928, and other enactments relating to solicitors of the Supreme Court. See *Chit. Stat.*, tit. '*Solicitors.*'

No person may act as a solicitor unless admitted and enrolled (see ss. 3, 43 and 45). Before admission he must have been bound by a contract in writing ('articles') to serve as a clerk ('articled clerk') to a solicitor, and have passed certain examinations (see s. 14). The period of service as an articled clerk is five years, unless the articled clerk has been a barrister or a Scotch solicitor, or has passed certain examinations or taken certain degrees at certain universities, when the period may be reduced to three or four years (see Schedule I.). A practising solicitor must take out an annual certificate (see ss. 36 to 43). The Law Society may refuse to renew the certificate of a solicitor who is an undischarged bankrupt (see s. 38).

No solicitor may have more than two articled clerks at one time (s. 17), nor any after discontinuing business (s. 18), although solicitors being in partnership may have two each (*Ex parte Bayley*, (1829) 9 B. & C. 691), and there may be a binding to a firm, which operates as a binding to each member of it (*Re Holland*, (1872) L. R. 7 Q. B. 297). If the solicitor become bankrupt, etc., the articles may be discharged or assigned to another person by the High Court (s. 24), and if the solicitor die or leave off practice, or the articles be cancelled by mutual consent, fresh articles may be entered into with another solicitor (s. 13). The clerk may not engage in any other employment without the consent in writing of the solicitor, *and* the sanction of a judge of the High Court (s. 21). The articles must be produced to the Registrar after execution. This should be done within six months (s. 16).

Examinations of persons intending to become solicitors are held as fixed by ss. 26 to 33, as amended by the 1936 Act, ss. 6, 7, and the regulations of the Law Society under s. 26. They are three in number—the preliminary, the intermediate, and the final examination. The preliminary is held in each of the months of February, July, and October; the intermediate and final in each of the months of March, June, and November. As to conditions of exemption from the preliminary examination, see s. 28. Barristers of not less than five years' standing *having been disbarred*, and having obtained certificates of fitness from two benchers, are exempted from the intermediate examination (s. 34).

A solicitor is exempted from various offices requiring personal service, and cannot be compelled to serve on juries (Juries Act, 1870 (33 & 34 Vict. c. 77), s. 9).

A solicitor is liable to his client for negligence, and may be struck off the Roll for misconduct. Sect. 45 makes provision for penalties for wrongfully acting as a solicitor and s. 46 for prosecuting in a summary way any person not having in force a practising certificate who wilfully pretends to be a solicitor (see 1934 Act, *infra*). A solicitor cannot sue for (although he may set off) (see *Brown* v. *Tibbetts*, 11 C. B. N. S. 855) his bill of costs until one month after its delivery in the manner prescribed by s. 65. He has a general lien for his costs on the papers of his clients (*Re Rapid Road Transit Co.*, 1909, 1 Ch. 96). As to charging order for costs, see s. 69. Communications made to him in his professional character by a client are privileged; but the privilege is that of the client, not of the solicitor. Transactions between a solicitor and his client are subject to special scrutiny by the Courts: see *Demerara Bauxite Co.* v. *Hubbard*, 1923, A. C. 673.

Sect. 59 enacts that the remuneration of solicitors in contentious business may be fixed by agreement, and a client who so agrees cannot recover (s. 60 (1) (*i*)) from another party any *more* costs than what he has agreed to pay his own solicitor. See, however, *Gundry* v. *Sainsbury*, 1910, 1 K. B. 99. The taking by a solicitor from his client of security for payment of his remuneration in contentious and non-contentious business is provided for by s. 63 (2) and s. 56 (6), respectively. The taxing officer may, in determining the remuneration to be allowed to the solicitor for his services, allow additional remuneration for diligence in non-contentious business (Remuneration Order, 1882, Ord. VII.) and costs on the higher scale for particular items in non-contentious work (R. S. C. Ord. LXV., r. 10). The cost to be allowed to solicitors in *contentious business* in the Supreme Court are regulated by R. S. C., Ord. LXV. rr. 8-27; in County Courts, by the County Court Rules, Ord. LIII., and Schedule thereto of court fees and costs (see *Annual County Courts Practice*, 1934, Part II.). The remuneration of solicitors in conveyancing and *non-contentious business* is in general governed by 'the Solicitors Remuneration Order,' 1882, with reference to (*inter alia*) the amount of money to which the business relates, and the skill, labour, and responsibility involved therein

on the part of the solicitor. The Order of 1882 has been amended by the Remuneration Orders of 1919, 1920, 1925, 1926, 1932 and 1934. Part V. of the Act deals with the remuneration of solicitors. See also the *Annual Practice*, Part IV., Division III. Sects. 1 and 2 place the custody of the 'Roll of Solicitors' in the Law Society as Registrar of Solicitors, and provide that such Roll is to be open to public inspection without any fee. Sect. 16 provides for the registration of articles of clerkship, and s. 3 for the admission of solicitors by the Master of the Rolls. A Committee of the Law Society investigates charges made against solicitors and may strike offenders off the Roll (ss. 4 to 8).

The Justices of the Peace Act, 1906, provides by s. 3 (amendment by the Act of 1932) that a solicitor, if otherwise qualified, may be appointed a justice of the peace for any county. But a solicitor who is a justice of the peace for any county may not practise before any justices for that county (see s. 54 of that Act).

As to solicitors ('Law Agents') in Scotland, see the Solicitors (Scotland) Act, 1933 (23 & 24 Geo. 5, c. 21).

As to the admission to the Supreme Court of solicitors of colonial courts, see s. 35.

The Solicitors Act, 1933 (23 & 24 Geo. 5, c. 24), provides for the opening and keeping by solicitors of accounts at banks for clients' money, and the Solicitors Act, 1934 (24 & 25 Geo. 5, c. 45), prohibits bodies corporate from purporting to act as solicitors.

The Solicitors Act, 1934 (24 & 25 Geo. 5, c. 45), passed as a result of the decision in *Law Society* v. *United Services Bureau*, 1934, 1 K. B. 343, which decided that 'person' in the 1932 Act meant natural person, so a corporate body could not commit the offence of pretending to be a solicitor under the 1932 Act, s. 46. Now, by the 1934 Act, bodies corporate are prohibited from purporting to act as solicitors on penalty on summary conviction of a fine not exceeding one hundred pounds.

The Solicitors Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 35), makes certain amendments to the 1932 Act. By s. 1 a solicitor is to practise five years before taking an articled clerk; (s. 2) evidence of character and suitability to be furnished by persons entering into articles; (s. 4) fee payable on registration of articles is increased to twenty shillings; (s. 5) the Law Society has power to discharge articles in certain cases. Sects. 6 and 7 make amendments as regards examinations. Sects. 9 *et seq.* deal with registrars' grant of practising certificate and also proceedings before disciplinary committee, etc.

And see, further, INCORPORATED LAW SOCIETY; OFFICIAL SOLICITOR; CHARGING ORDER; COSTS; and *Cordery on Solicitors*; and *The Annual Practice*; Part IV., Division III.—*Solicitors*.

Solicitor-General, the second law officer of the Crown, appointed by patent, and holding office during the continuance of the Ministry of which he is a subordinate member. He is usually knighted. He ranks after the Attorney-General, and receives an annual salary and fees; he may not now carry on a private practice. As to the Solicitor-General for Scotland, see LORD ADVOCATE. Attached to the household of a queen-consort there is an officer with this title. Consult *Norton-Kyshe's Attorney-General and Solicitor-General of England*.

Solidatum, absolute right of property.

Solidum. To be bound *in solido* is to be bound for the whole debt jointly and severally with others; but where each is bound for his share, they are said to be bound *pro ratâ parte*.

Solidus legalis, a coin equal to 13*s.* 4*d.* of the present standard.—4 *Steph. Com.*

Solinus terræ, 'in Domesday booke containeth two plow-lands and somewhat lesse than an halfe.'—*Co. Litt.* 5 *a*. But it seems doubtful what amount of land the term really represented—perhaps 160 acres; see *Jac. Law Dict.*

Solitary Confinement. The Criminal Law Consolidation Acts of 1861 each frequently provide for sentences of imprisonment 'with or without solitary confinement' in the discretion of the Court, and also that no offender shall be kept in solitary confinement for a longer period than one month at a time, nor three months in the space of a year; but the Prison Act, 1865, has since, by s. 17, enjoined the prevention of criminal prisoners from holding any communication with each other, and these provisions of the Criminal Law Consolidation Acts have been consequently repealed by Statute Law Revision Acts.

Sollar. See SOLARIUM.

Solutio, a discharge; the performance of that to which a person is bound.—*Civ. Law.*

Solutione feodi militis parliamenti, or **Feodi burgensis parliamenti,** old writs whereby knights of the shire and burgesses might have recovered their wages if refused.—35 Hen. 8, c. 11.

Solvendo esse, to be in a state of solvency, i.e., able to pay.

Solvere pœnas, to pay the penalty.

Solvit ad diem, was a plea in an action of debt, on bond, etc., that the money was paid at the day appointed.—1 *Selw. N. P.*, 13th ed. 512.

Solvit ante diem, a plea that the money was paid before the day appointed.

Solvit post diem, a plea that the money was paid after the day appointed.—1 *Selw. N. P.* 13th ed. 513.

Son assault demesne, a justification in an action of assault and battery, on the ground that the plaintiff made the first assault, and what the defendant did was in his own defence. It was a plea by confession and avoidance.—1 *Selw. N. P.*, 13th ed. 2. See now PLEADING ; STATEMENT OF DEFENCE.

Sontage, a tax of 40*s.* heretofore laid upon every knight's fee.

Sorcery. Prosecution for witchcraft, sorcery, etc., or for charging another with any such offences, is abolished by the Witchcraft Act, 1735 (9 Geo. 2, c. 5) ; but the same Act enacts that persons *pretending* to use witchcraft, sorcery, etc., shall suffer one year's imprisonment on conviction. Persons using any subtle craft, means, or device, by palmistry or otherwise, to deceive the people, are rogues and vagabonds, and to be punished with imprisonment and hard labour.—Vagrancy Act, 1824 (5 Geo. 4, c. 83), s. 4.

Sorehon, or **Sorn,** an arbitrary exaction, formerly existing in Scotland and Ireland. Whenever a chieftain had a mind to revel, he came down among the tenants with his followers by way of contempt called *Gilliwitfitts*, and lived on free quarters. See *Bell's Scots Law Dict.*

Sorites, a form of argument which consists in consolidating several syllogisms (see SYLLOGISM), in which the subject of the minor premiss is the same, so as to suppress the *conclusion* in every syllogism but the last, and the *minor premiss* in every syllogism but the first.

Sorner, an unwelcome guest in Scotland whose visits were restricted by Scots Act of Parliament. Compare COSHERING, and see Statute Law Revision (Scotland) Act, 1906.

Sors, principal ; to distinguish it from interest.

Sothsaga, or **Sothsage** [fr. *soth*, true, and *saga*, Sax., testimony], history.

Soul-scot, a mortuary fee.

Sounding in Damages. An action is said to sound in damages when it is brought for the recovery of unascertained damages.

Soup. The name applied to briefs for the prosecution handed to members of the barmess of certain courts where prisoners are to be tried on indictment in cases other than private prosecutions.

Sourcar, a merchant or banker ; a moneylender.—*Indian.*

South Africa, Union of. The Colonies of Cape of Good Hope, Natal, Transvaal, and Orange Free State were incorporated into the Union of South Africa by the South Africa Act, 1909 (9 Edw. 7, c. 9), and see DOMINION.

South Sea Fund, the produce of the taxes appropriated to pay the interest of such part of the National Debt as was advanced by the South Sea Company and its annuitants. The holders of South Sea Annuities have been paid off, or have received other stock in lieu thereof.—2 *Steph. Com.*, 7th ed. 578.

Sovereign, a chief or supreme person. See *Chit. Stat.*, tit. '*Crown*,' and KING. Also, a gold coin of the value of twenty shillings ; see Coinage Act, 1870.

Sovereign Power, or **Sovereignty,** that power in a state to which none other is superior.

Sowlegrove, February, so called in South Wales.

Sowming and Rowming, the apportioning or placing of cattle on a common, according to the respective rights of various parties interested. See *Bell's Scots Law Dict.*

Sowne [fr. *souvenu*, Fr., remembered], such as is leviable.

Spadarius, a sword bearer.—*Blount.*

Spado, a eunuch ; an impotent man.—*Civ. Law.*

Sparsim [Lat.], dispersedly.

Spatæ Placitum, a court for the speedy execution of justice upon military delinquents.—*Cowel.*

Speaker of the House of Commons. This great officer is the organ or spokesman of the Commons ; in modern times he is more occupied in presiding over the deliberations of the House than in delivering speeches on their behalf. The principal duties of the Speaker are the following :—To preside, as Chairman of the House, at its debates when not in committee ; to give a casting vote, when the votes are equal, which according to practice he gives in favour of a motion or bill (he has no original vote) ; to read to the sovereign petitions or addresses from the Commons, and to deliver in the royal presence, whether at the palace or in the House of Lords, such speeches as are usually made

on behalf of the Commons; to reprimand persons who have incurred the displeasure of the House; to issue warrants of committal or release for breaches of privilege; and to communicate in writing with any parties, when so instructed by the House. In the case of Bills introduced under the provisions of the Parliament Act, 1911, he must certify that a Money Bill is such, and in the case of Bills other than Money Bills he must certify that the provisions of s. 2 of the Act have been duly complied with, and must also give a certificate as to amendments introduced by the House of Lords. Any certificate given by him under the Act is conclusive for all purposes (s. 3). He is chosen by the House of Commons, from amongst its members, subject to the approval of the Crown, and holds office till the dissolution of the Parliament in which he was elected, and is expected to preserve a strictly impartial attitude. A substantial salary is provided with a furnished residence. At the end of his official labours he is usually rewarded by a peerage. As to the powers and duties of a Deputy Speaker, see 18 & 19 Vict. c. 25 and 31 & 32 Vict. c. 125, and *May's Parl. Pr.*

Speaker of the House of Lords. The Lord Chancellor, by virtue of his office, becomes, on the delivery of the seal to him by the sovereign, Speaker of the House of Lords. He is usually, but not necessarily, a peer, and unlike the Speaker of the House of Commons is under no obligation to preserve an impartial attitude, since he is a member of the Government for the time being. There has always been a Deputy Speaker, and formerly there were two or more, but since the year 1815 there has been only one. The chairman in committees generally fills the office. In the absence of the Lord Chancellor and of the Deputy Speaker, it is competent to the House to appoint any noble lord to take the woolsack. The Speaker is the organ or mouthpiece of the House, and it therefore is his duty to represent their lordships in their collective capacity, when holding intercourse with other public bodies or with individuals. He has not a casting vote upon divisions, for should the numbers prove equal, the non-contents prevail. The Deputy Speaker of the Lords is appointed by the Crown.—See *Dod's* or *May's Parl. Pr.*

Speaking Demurrer, one in which new facts, which did not appear upon the face of a bill in equity, were introduced to support a demurrer. See 1 *Dan. Ch. Pr.*, 5th ed. 538. See now DEMURRER.

Special Act of Parliament. Commonly called Local, Personal or Private Acts. See LOCAL AND PERSONAL ACTS. That which applies only to a particular kind of persons or things, as a particular railway to be constructed, or otherwise dealing with a particular area or person only, and therefore not overruled by the general terms of a general Act. See *Taylor* v. *Oldham Corporation*, (1876) 4 Ch. D. 410. But the term has received various statutory definitions; see Public Health Act, 1875, s. 316, and Railways Clauses Consolidation Act, 1845 (8 Vict. c. 20), s. 2. See also *May's Parl. Pr., etc.*; PRIVATE BILLS.

Special Administration, one limited to a particular extent of time, or to a specified subject-matter, as distinguished from a general grant, e.g., administration with the will annexed and *administratio de bonis non.* See ADMINISTRATION. Consult *Trist. and Coote, Prob. Prac.*

Special Agent, one authorized to transact only a particular business for his principal, as distinguished from a general agent.

Special Bail. See BAIL.

Special Bailiff, one chosen by a party himself to execute process in the sheriff's hands; the appointment of such a bailiff relieves the sheriff of all responsibility.—2 *Steph. Com.*

Special Bastard, one born of parents before marriage, the parents afterwards intermarrying. By the Civil and Scots Law he would be then legitimated.

Special Case. By R. S. C. 1883, Ord. XXXIV., the parties may, after writ issued, concur in stating the questions of law arising in the action in the form of a special case for the opinion of the Court, and 'if it appear to the Court or a judge that there is in any action a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case, or in such other manner as the Court or judge may deem expedient.' Similar power is given to referees to state a case by Ord. XXXVI., r. 52, and see the Administration of Justice Act, 1932 (22 & 23 Geo. 5, c. 55). As to special case before the Judicature Acts, see C. L. P. Act, 1852, ss. 42–48, and 13 & 14 Vict. c. 35 (Turner's Act). Where at a trial in a court of oyer and terminer, gaol delivery, or quarter

sessions, any question of law arises on motion in arrest of judgment (or even independently of such motion), which such court finds too difficult for its determination, it was empowered by the Crown Cases Act, 1848 (11 & 12 Vict. c. 78) (see now CROWN CASES RESERVED), to reserve the question and to state it in the form of a special case for the judges of the superior courts as a court of criminal appeal; and in the meantime to postpone the judgment, or respite the execution of it.

As to cases stated by justices, see the Summary Jurisdiction Act, 1857, and Summary Jurisdiction Act, 1879, s. 33, by which any person aggrieved by a conviction, order, determination, or other proceeding of a court of summary jurisdiction, and desirous of questioning the same on the ground of its being erroneous *in point of law*, may appeal from the same to the High Court by special case stated by the justices. The Summary Jurisdiction (Appeals) Act, 1933 (23 & 24 Geo. 5, c. 38), does not affect an appeal by way of special case under s. 33 of the 1879 Act. Justices at quarter sessions also, to whom there is an appeal from courts of summary jurisdiction both on points of law and fact, may state a special case on any point of law for the opinion of the High Court (Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86), s. 20); and see Arbitration Act, 1934 (24 & 25 Geo. 5, c. 14), s. 9, as to special cases on points of law by arbitrators.

Special Commission, an extraordinary commission of oyer and terminer and gaol delivery, issued by the Crown to the judges when it is necessary that offences should be immediately tried and punished.

Special Constables, persons appointed by justices of the peace to assist in keeping the peace 'on the oath of a credible witness that any tumult, riot, or felony has taken place or may be reasonably apprehended in any parish, township, or place,' if the justices are of opinion that the ordinary constables are insufficient for that purpose. See Special Constables Act, 1831, s. 8 of which imposes a penalty for each refusal to serve when duly called upon, while s. 2 allows a Secretary of State to order persons to be sworn in though exempt by law, and s. 196 of the Municipal Corporations Act, 1882, by which borough justices 'shall appoint in October in every year so many as they may think fit of the inhabitants of the borough, not legally exempt from serving the office of constable, to act as special constables in the borough.' There are also Acts of 1835 and 1838 dealing with the subject.

By the Special Constables Act, 1914, as amended by the Special Constables Act, 1923, power is given to His Majesty by Order in Council to make regulations with respect to special constables. See Special Constables Order, 1923. As to Scotland, see s. 1 (3) of the Act, and the Special Constables (Scotland) Act, 1914.

Special Damage, such a loss as the law will not *presume* to be the consequence of the defendant's act, but which depends in part at least on the special circumstances of the case. It must therefore be explicitly claimed on the pleadings, and at the trial it must be proved by evidence both that the loss was incurred and that it was the direct result of the defendant's conduct. A mere expectation or apprehension of loss is not sufficient (*Odgers on Pleading*).

Special Defence, in a county court. A defendant must give notice to the plaintiff when he intends to rely on a defence of set-off or counterclaim, infancy, coverture, statute of limitations, bankruptcy, or equitable defence. For example, he must specially plead the Statute of Frauds, and if he fails to do so in one action he may be estopped from doing so in a subsequent action (*Humphries* v. *Humphries*, 1910, 2 K. B. 531).

Special Demurrer, a demurrer for some defect in the form of the opposite party's pleading. Abolished by C. L. P. Act, 1852, s. 51.

Special Examiner, one appointed to take examinations in suits in Chancery, etc., appointed, by agreement of the parties, instead of the officer of the Court, for the greater despatch of the suit. He was generally a professional lawyer.—*Smith's Chan. Prac.* 27; and 15 & 16 Vict. c. 86, ss. 31 *et seq.* See R. S. C. Ord. XXXVII., and *A. P. notes* thereto.

Special Finding, of a jury, and amendment of variance. See R. S. C. 1883, Ord. XXVIII., r. 1, and Ord. XXXVI., r. 41.

Special Indorsement, an indorsement in full on a bill of exchange or promissory note, which, besides the signature of the indorser, expresses in whose favour the indorsement is made. Thus: 'Pay Mr. C. D. or order, A. B.'; the signature of the indorser being subscribed to the direction. Its effect is to make the instrument payable to C. D. or his order only. See Bills of Exchange Act, 1882, sub-s. 2.

Special Indorsement on Summons. See SUMMONS.

Special Injunctions, prohibitory orders or interdicts against acts of parties, such as waste, nuisance, piracy, etc. See INJUNCTION.

Special Jury, a jury consisting of persons who, in addition to the ordinary qualifications, are of a certain station in society, as esquires, bankers, merchants, etc. The Jurors Act, 1870, s. 6, provides that every man whose name shall be on the jurors' book for any county in England or Wales, or for the county of the City of London, and who shall be legally entitled to be called an esquire, or shall be a person of higher degree, or shall be a banker or merchant, or who shall occupy a private dwelling-house rated or assessed to the poor rate, or to the inhabited house duty, on a value of not less than 100*l.* in a town containing, according to the census then next preceding the preparation of the jury list, 20,000 inhabitants and upwards, or rated or assessed to the poor rate, or to the inhabited house duty, on a value of not less than 50*l.* elsewhere, or who shall occupy premises other than a farm, rated or assessed as aforesaid on a value of not less than 100*l.*, or a farm rated or assessed as aforesaid on a value of not less than 300*l.*, shall be qualified and liable to serve on special juries in every such county in England and Wales, and in London respectively.

Summons of Special Jurors.—The 108th section of the Common Law Procedure Act, 1852, and the Special Jurors Act, 1898, provide for the summoning a sufficient number of special jurors to the assizes; and see the Juries Act, 1922 (12 & 13 Geo. 5, c. 11), dispensing with the practice of 'striking' except for compensation under the Lands Clauses Consolidation Act, 1845.

Right to Special Jury.—Either party, if entitled to a jury, may have a special jury upon application (R. S. C. Ord. XXXVI., r. 9).

Fees of Jurors.—Each special juror is entitled to receive one guinea only for each cause he tries, but in very long cases the parties have occasionally agreed to pay more. The provisions as to payment of jurors, introduced by the Jurors Act, 1870, s. 22—by which each special juror was entitled to one guinea each day of attendance—were repealed by 34 & 35 Vict c. 2. See GOOD JURY.

Cost of Special Jury.—The party upon whose application the special jury is struck bears all the expenses occasioned at the trial of the cause by the special jury, and is not allowed any more costs than for a common jury, unless the judge, immediately after the verdict, certifies upon the back of the record that it was a proper cause to be tried by a special jury. See also JURY and TRIAL, and *Chitty's Statutes*, tit. '*Juries.*'

Special Licence, one granted by the Archbishop of Canterbury to authorize a marriage at any time or place whatever. See MARRIAGE.

Special Occupancy. Where an estate was before 1926 granted to a man and his heirs during the life of *cestui que vie*, and the grantee dies before 1926 without alienation, and while the life for which he held continued, the heir would succeed, and he was called a special occupant. See Wills Act, 1837 (7 Wm. 4 & 1 Vict. c. 26), ss. 3, 6; but in case of death of the tenant *pur autre vie*, after 1925, the equitable interest apparently devolves on the special personal representatives of the deceased, and if he dies intestate, upon trust for sale for the benefit of persons entitled under the Administration of Estates Act, 1925 (see s. 45), the old rules of descent having been abolished (see DESCENT; HEIR), and see also in the case of a limitation or trust under an instrument coming into operation after 1925 for a man and his heirs during the life of another, SHELLEY'S CASE; AUTRE VIE.

Special Paper, a list kept in the Courts of Common Law, and afterwards in the Queen's Bench Division of the High Court, in which list special cases, etc., to be argued, were set down.

Special Personal Representatives. The name given to the personal representatives of a tenant for life in connection with settled land which has been settled otherwise than by his will or by way of trust for sale. They should be the trustees of the settlement and their duties are to convey the land to the tenant for life or statutory owner entitled upon the death of the testator subject to provision by them for death duties (see Law of Property Act, 1925, s. 16). If there is no appointment to that effect the testator will be deemed to have appointed the trustees of the settlement as the special representatives. Upon an intestacy, probate may and should be granted to them for the purposes (see Settled Land Act, 1925, s. 7 (1), and Administration of Estates Act, 1925, ss. 22 to 24). If the settlement has come to an end with the testator's death, these provisions do not apply (*Bridgett and Hayes' Contract*, 1928, Ch. 163).

Special Pleaders, members of an inn of court who devote themselves mainly to the

drawing of pleadings, and to attending at judge's chambers. If not called to the Bar, as was in former times (when many special pleaders practised as such prior to being called to the Bar) frequently the case, they take out annual certificates on which a duty of 9*l.* is payable, under s. 44 and Schedule of the Stamp Act, 1891, re-enacting similar provisions of the repealed Stamp Act, 1870. They are exempt while in practice from jury service, by the Juries Act, 1870, and see Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37), ss. 47 to 49.

Special Pleading, the science of pleading. It is a forensic invention, due to the dialectic genius of the Middle Ages, but nearly destroyed by modern innovation. See *Steph. on Plead.*; *Bullen and Leake's Prec. of Pleadings*; and *Chitty's Precedents*. See PLEADING.

Special Pleas, pleas not in the form of what were called general issues, but which allege affirmative matter, as infancy, coverture, statute of limitations, etc. See DEFENCE.

Special pleas in bar in criminal matters go to the merits of the indictment, and give a reason why the prisoner ought to be discharged from the prosecution: they are of four kinds, viz., a former acquittal, a former conviction, a former attainder, or a pardon.

Special Property, qualified property, which see.

Special Referee. See REFERENCE.

Special Reserve. See MILITIA.

Special Sessions. See SESSIONS.

Special Tail, where an estate-tail is limited to the children of two given parents, as to A. and the heirs of his body by B., his wife.—1 *Steph. Com.*

Special Traverse, a form of pleading, abolished by C. L. P. Act, 1852, s. 65.

Special Trust, where the machinery of a trust is introduced for the execution of some purpose particularly pointed out, and the trustee is not a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as where a conveyance is made to trustees upon trust to sell for payment of debts. See USES.

Special Verdict, a special finding of the facts of the case, leaving to the Court the application of the law to the facts thus found. See R. S. C. 1883, Ord. XXVIII., r. 1, and Ord. XXXVI., r. 41. For instance of special verdict in a criminal case (which is very rare), see *Reg.* v. *Dudley*, (1884) 14 Q. B. D. 273, and NECESSITY (HOMICIDE BY).

Specialty, a contract by deed.

Specialty Debts, bonds, mortgages, debts, secured by writing under seal, and recoverable at any time within twenty years, by virtue of s. 3 of the Civil Procedure Act, 1883 (3 & 4 Wm. 4, c. 42); they formerly ranked in the administration of the estate of a deceased person in priority to simple contract debts; but this distinction was abolished by the Administration of Estates Act, 1869, 'Hinde Palmer's Act,' replaced by the Administration of Estates Act, 1925, ss. 32 and 34.

Specie, metallic money. Anything *in specie* is anything in its own form, not any equivalent, substitute, or reparation.

Specific Legacy. See LEGACY.

Specific Performance. Equity, in obedience to the cardinal rule of natural justice that a person should perform his agreement, enforces, pursuant to a regulated and judicial discretion, the actual accomplishment of a thing stipulated for, on the ground that what is lawfully agreed to be done ought to be done, and that damages at law for breach of the contract are not a sufficient compensation. The Common Law has not recognized this principle; it has only given damages to a suffering party for the non-performance of an executory agreement. The C. L. P. Act, 1854, however, imparted to the Common Law writ of *mandamus* a little more efficacy by provisions since superseded by s. 24 of the Judicature Act, 1873, now by Judicature Act, 1925, s. 36, and the Mercantile Law Amendment Act, 1856, introduced a procedure for enforcing the specific delivery of goods sold, specially superseded by s. 52 of the Sale of Goods Act, 1893.

An award of damages may be combined with a decree for specific performance by s. 24 of the Judicature Act, 1873 (see now Judicature Act, 1925, s. 36).

By s. 49, Law of Property Act, 1925, where the Court refuses to grant specific performance of a contract, the Court has power to order the repayment of any deposit.

The broad general rule is that contracts relating to the sale or lease of land will be specifically enforced, but not contracts relating to personal property except under very special circumstances, as where damages do not afford an adequate remedy. The Court will not decree specific performance of a contract of personal service, but it will enforce a negative covenant by injunction if damages are not an appropriate remedy

(*Warner Brothers' Pictures (Inc.)* v. *Nelson*, 1937, 1 K. B. 209).

The several requisites of a contract, which will be directed to be specifically executed, are these :—

(*a*) The contract must be entered into by competent parties, or their lawfully authorized agents. The general rule is, that all parties who can bind themselves at law are competent to enter into agreements, which equity will enforce.

(*b*) The parties must contract willingly, without undue bias, and not under any improper influence.

(*c*) The terms of the contract must be understood by the parties without mistake or misapprehension, and must be certain and defined, importing a concluded agreement. See *Douglas* v. *Baynes*, 1908, A. C. 477.

(*d*) The contract must be entered into for a valuable executory consideration, such as marriage or money; and not for a merely good consideration, how meritorious soever it may be.

(*e*) While a valuable consideration exists on the one side, there must be a promise or sale on the other, together with a mutuality of remedy between the parties. In other words, there must be some inducement passing from one party in order to render binding the promise of the other.

(*f*) The contract must be in writing if so required by the Statute of Frauds. See Law of Property Act, 1925, s. 40, replacing s. 4 of the Statute of Frauds.

Equity, however, will entertain actions for the specific performance of contracts which, though within the statute, have not been reduced into writing, where there does not appear any danger of fraud or perjury. The following contracts will be specially enforced :—

(1) A sale ordered by a decree of a Court, for the judgment of the Court in confirming such a purchase takes the transaction out of the statute. It is, however, now usual for the purchaser to subscribe a written or printed contract.

(2) Where a parol agreement has been so substantially performed in part as to render it inequitable not to enforce the whole of it. See *Maddison* v. *Alderson*, (1883) 8 App. Cas. p. 473; and see now L. P. Act, 1925, s. 40.

(3) Where the agreement has not been reduced into writing through the fraud of one of the parties.

(4) When the land is partnership property. Where a partnership, or an agreement in the nature of one, exists between two persons, and land is acquired by the partnership as a substratum of it, the land is in the nature of stock-in-trade of the partnership; and this being proved as an independent fact, the Court, without regarding the Statute of Frauds, will inquire of what the partnership stock consisted, whether that stock be land or any other kind of property.

(5) Where a suit is brought for the execution of a verbal agreement fully set forth in the plaintiff's claim, and the defendant puts in his answer or defence thereto, and confesses the agreement.

By the Judicature Act, 1873, s. 34 (see now Judicature Act, 1925, s. 56 (1)), all causes and matters for the specific performance of contracts between vendors and purchasers of real estates, including contracts for leases, are assigned to the Chancery Division of the High Court of Justice. Specific performance may be obtained up to 500*l.* in the county courts under s. 52 (1) (*d*) of the County Courts Act, 1934. See *Fry on Specific Performance*.

Specification, a particular and detailed account of a thing; also, a description of a patent with the object of putting the public in full possession of the inventor's secret, so that any person may be in a condition to avail himself of it when the period of exclusive privilege has expired. See LETTERS-PATENT.

As to indexes of specifications for the public use, see s. 46 of the Patents and Designs Act, 1907 (as amended by the Patents and Designs Act of 1932); and s. 7 for official investigation of old specifications of less than fifty years' date on application for a patent.

Speedy Execution. A plaintiff having obtained a verdict in a cause was not entitled to issue execution until fourteen days, unless a judge should order execution to issue at an earlier period, which was called 'speedy execution.'—C. L. P. Act, 1852, s. 120, and *H. T.* 1853, r. 57. Under the Jud. Acts, immediate execution is the rule. See EXECUTION.

Spes recuperandi [Lat.], the hope of recovery.

Spigurnel [fr. *spicurran*, Sax., to shut up or inclose], the sealer of the royal writs.

Spinning-house, a place of confinement in Cambridge to which the University authorities might, by virtue of the University Charter (confirmed by 13 Eliz. c. 29), commit public women and others suspected of evil. See *Kemp* v. *Neville*,

(1861) 10 C. B. N. S. 523; *Broom's Const. Law*, p. 734, in which the Vice-Chancellor was unsuccessfully sued by a Cambridge milliner committed by him after apprehension by a proctor, and *Ex parte Hopkins*, (1891) 61 L. J. Q. B. 240, where the conviction of a woman upon a charge of walking with a member of the University was held bad. This jurisdiction was taken away from the University in 1894 by 57 & 58 Vict. c. lx.

Spinster, an unmarried woman, so called because she was supposed to be occupied in spinning.

In Scotland the wife's or cognate side of the family is termed the 'spindle-side,' in contradistinction to the agnate or husband's side, which is denominated the 'spear' or 'sword-side.' The armorial bearings of the families of widows and spinsters are painted on this spindle, which is popularly termed a lozenge.

Spirits. By 23 & 24 Vict. c. 114, and the Spirits Act, 1880, and later Acts, the excise regulations relating to the distilling, rectifying, and dealing in spirits have been successively amended and consolidated. As to the supply and sale of immature spirits, see Immature Spirits Act (Restriction) Act, 1915; as to strength and weight, 5 & 6 Geo. 5, c. 89, s. 19; in medicine, 8 & 9 Geo. 5, c. 15, s. 41; as to methylated spirits, 11 & 12 Geo. 5, c. 32, and 14 & 15 Geo. 5, c. 21, ss. 13 and 41; as to misdescription, 22 & 23 Geo. 5, c. 25, s. 11, and Finance Acts.

As to licences for the sale of spirits by retail, see INTOXICATING LIQUORS; and as to barring of action for price of spirits sold in small quantities, see TIPPLING ACT.

Spiritual Corporations, corporations the members of which are entirely spiritual persons, and incorporated as such, for the furtherance of religion and perpetuating the rights of the Church.

They are of two sorts:

(1) *Sole*, as bishops, certain deans, parsons and vicars; or

(2) *Aggregate*, as dean and chapter, prior and convent, abbot and monks.

Spiritual Courts, ecclesiastical courts, which see.

Spiritual Lords, the archbishops and bishops of the House of Peers.

Spiritualism, the pretending to hold communication with spirits. The pretender may be convicted as a rogue and a vagabond and imprisoned for three months; and upon a second conviction he may be whipped.—*Monck* v. *Hilton*, (1877) 2 Ex. D. 268. See Vagrancy Act, 1824, s. 4, and VAGRANT. Large gifts by an aged widow to a so-called 'Spiritual Medium' were set aside on the ground of undue influence in *Lyon* v. *Home*, (1868) L. R. 6 Eq. 655.

Spirituality, that which belongs to one as an ecclesiastic.

Spirituality of Benefices, the tithes of land, etc.

Spital, or **Spittle,** a charitable foundation; a hospital.

Splitting a Cause of Action, suing for only a part of a claim or demand, with a view to suing for the rest in another action. This is not permitted in the county courts. See *Grimbly* v. *Ackroyd*, (1847) 1 Ex. 479, and s. 67 of the County Courts Act, 1934, replacing s. 81 of the County Courts Act, 1888.

Spoliation, a writ or suit for the fruits of a church or the church itself, to be sued in the spiritual and not in the temporal court. It lies for one incumbent against another, where they both claim by one patron, and the right of patronage does not come in question.—3 *Steph. Com.*

Sponsalia, or **Stipulatio sponsalitia,** espousals; mutual promises to marry.—*Civ. Law.*

Sponsio judicialis, the feigned issue of the Roman Law. See FEIGNED ISSUE.

Sponsions, agreements or engagements made by certain public officers, as generals or admirals in time of war, either without authority, or in excess of the authority under which they purport to be made.—*Inter. Law.*

Sponsor, a surety; one who makes a promise or gives security for another, particularly a godfather in baptism.

Sponte oblata, a free gift or present to the Crown.

Sportula, or **Sportella,** a dole or largess either of meat or money given in the time of the Roman Empire by princes or great men to the poor. It was properly the pannier or basket in which the meat was brought, or with which the poor went to beg it, thence the word was transferred to the meat itself, and thence to money sometimes given in lieu of it.

Spousal, marriage nuptials.

Spouse-breach, adultery, as opposed to simple fornication.

Spreading False News concerning any great man of the realm, punishable at Common Law, and by the repealed 2 Ric. 2, st. 1, c. 5. And see SCANDALUM MAGNATUM.

Spring Guns. The setting of spring guns,

etc., calculated to destroy life or inflict grievous bodily harm on a trespasser, is a misdemeanour.—Offences against the Person Act, 1861, s. 31. Damages are recoverable by a person injured by a spring gun, set without notice, from the person setting it (*Bird* v. *Holbrook*, (1828) 4 Bing. 628).

Springing Use, a form of use in the nature of an executory interest directing property in land to vest at a future period which does not coincide with the termination of a legal estate at common law, for instance. In conveyances before 1926, upon a grant by X. to B. to the use of A. (an infant) in fee attaining twenty-one years of age, the use results to the settlor until, if ever, the period arrives and a good legal estate was conferred upon A. attaining that age by virtue of the statute. The use may be contingent as in that case, or vested, as grant to B. to the use of A. in fee upon the death of C., a stranger. If the grant defeats a previous legal estate and is not capable of being construed as a vested or contingent remainder, it may operate as a shifting use. Springing and shifting uses were resorted to in order to facilitate freedom of grant or conveyance of the legal estate in land by virtue of the Statute of Uses. Grants which would have created springing or shifting uses if they had been made *inter vivos* are good, apart from the Statute of Uses if made by will at Common Law as executory devises, but apart from statute (see CONTINGENT REMAINDERS), executory devises like springing or shifting uses are not so construed if they are capable of taking effect by vesting as a remainder *before or eo instanti* with the determination of a particular freehold estate. The Statute of Uses has been repealed by the Law of Property Act, 1925, which also converted executory as well as all other future interests in land into equitable interests, and even before 1926, where the executory devise, shifting or springing use, or contingent remainder did not operate to create a legal estate but only an equitable interest, the rule as to failure of a preceding particular estate before the remainder could vest did not invalidate the equitable estate in remainder (see *Re Freme*, 1891, 3 Ch. 167).

Spuilzie [fr. *spoliatio*, Lat.], the taking away or meddling with movables in another's possession, without the consent of the owner or authority of law.—*Bell's Scots Law Dict.*

Spurii [either fr. σποράδην, Gk., at hazard; or fr. *sine patre*, Lat., without a father], children conceived in prostitution.—*Sand. Just.*

Squatter. If a squatter wrongfully encloses a bit of waste land, and builds a hut on it, and lives there, he acquires an estate in fee-simple by his own wrong in the land which he has enclosed. He may, of course, be turned out by legal process until his title is confirmed by the Statute of Limitations; but as long as he remains he has an estate in fee-simple: *Williams on Seisin*, p. 7. It has even been held that he will be bound by the restrictive covenant of a former owner even after he has acquired a statutory title (*Re Nisbet and Pott's Contract*, 1906, 1 Ch. 386).

Squibs. Casting squibs in any thoroughfare or public place is an offence punishable by fine. See FIREWORKS.

In the leading case of *Scott* v. *Shepherd*, (1773) 2 Wm. Bl. 892, 1 *Sm. L. C.*, it was held that an action of trespass and assault lay against the original thrower of a squib, which after having been thrown about in self-defence by two other persons successively, 'at last put out the plaintiff's eye.'

Squire, contraction of 'esquire.' See ESQUIRE.

S. S., Collar of. Collars bearing these letters, or consisting of many of them linked together, have been much worn by persons holding great offices in the state, e.g., by the Lord Chief Justice of England. The signification is obscure.

Stabilia, a writ called by that name, founded on a custom in Normandy that where a man in power claimed lands in the possession of an inferior, he petitioned the prince that it might be put into his hands till the right was decided, whereupon he had this writ.

Stabilitio venationis, the driving deer to a stand.

Stabit præsumptio donec probetur in contrarium. *Hob.* 297.—(A presumption will stand good till the contrary is proved.) See PRESUMPTION.

Stable-stand, one of the four evidences or presumptions whereby a man is convicted to intend the stealing of the royal deer in the forest; and this is when a man is found at his standing in the forest, ready to shoot with a cross-bow bent at any deer, or with a long bow, or else standing close by a tree with greyhounds in a leash ready to slip.—*Manwood*, pac. 2, cap. 18.

Stade, Stadium, a furlong.

Staff-herding, the following of cattle within a forest.

Stage Coaches. As to the duty thereon, see 32 & 33 Vict. c. 14, repealing various previous enactments; ROAD TRAFFIC ACTS and MOTOR CAR.

Stage-play. It is enacted by the Theatres Act, 1843 (see THEATRE), s. 23, that:—

In this Act the word 'stage-play' shall be taken to include every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage, or any part thereof: provided always, that nothing herein contained shall be construed to apply to any theatrical representation in any booth or show which by the justices of the peace, or other persons having authority in that behalf, shall be allowed in any lawful fair, feast, or customary meeting of the like kind.

See *Wigan* v. *Strange*, (1865) L. R. 1 C. P. 175.

Stagiarius, a resident.

Stagnum, a pool. By this name the land and water pass.—*Co. Litt.* 5*a*.

Stake, a deposit made to answer an event.

Stakeholder, one with whom a stake is deposited (see, generally, Betting and Lotteries Act, 1934 (24 & 25 Geo. 5, c. 58)). As to when money deposited in the hands of a stakeholder, to abide the event of a wager, may be recovered, see Gaming Act, 1845, s. 18, and the title WAGER. A stakeholder of a sealed packet containing a document can be called upon to produce it upon a *subpœna duces tecum* (*R.* v. *Daye*, 1908, 2 K. B. 333). Upon a sale of land a stakeholder appears to hold the deposit for the party entitled thereto. He may interplead under R. S. C. Ord. LVII., and is entitled to retain the interest on the deposit for his pains: see *Mr. Cyprian Williams* in 71 L. J. (articles), pp. 162 and 180—*Wolst. & Ch. Conveyancing Statutes*, 12th Ed., p. 724. Apart from a special stipulation, it is not clear that a stakeholder converting the deposit into the property of either party before determination of the event is not acting in contradiction of his mandate. See INTERPLEADER.

Stale, larceny.—*Ang.-Sax.*

Stallage, the liberty or right of pitching, or erecting stalls in fairs or markets, or the money paid for the same.—1 *Steph. Com.* 'The right of *stallage* is a right for a payment to be made, to the owner of the market, in respect of the exclusive occupation of a portion of the soil, for the purpose of selling goods in the market': *Williams on Rights of Common*, p. 295. See *Mayor, etc., of Great Yarmouth* v. *Groom*, (1862) 1 H. & C. 102.

Stallarius, a master of the horse; also the owner of a stall in the market.—*Spelm.*

Stamp Act, of 1765, for imposing stamp duties on American colonies, 5 Geo. 3, c. 12, repealed by 6 Geo. 3, c. 11.

Stamp Duties, a branch of the revenue. They are a tax imposed on all parchment and paper whereon certain legal proceedings and certain private instruments are written; and on licences for various purposes.

The consolidating Stamp Act, 1870, superseded the very numerous older enactments (in great part repealed by the Inland Revenue Repeal Act, 1870 (33 & 34 Vict. c. 90)) in regard to the duty on the various classes of instruments, but by s. 17 of the Stamp Act, 1870 (re-enacted by s. 14 of the Stamp Act, 1891), reversing the former law (see *Buckworth* v. *Simpson*, (1835) 1 C. M. & R. 384), the stamp to be affixed to an unstamped document to render it admissible in evidence was not the stamp in accordance with the law at the time of affixing it, but the stamp in accordance with the law in force at the time when the document was first executed.

Very important alterations in the law of stamps were effected by the Customs and Inland Revenue Act, 1888. Prior to that Act it was no offence not to stamp any instruments except receipts, the provision that unstamped instruments should be inadmissible in evidence being considered sufficient for the protection of the revenue. With respect to very large classes of instruments, being either (1) Bonds, (2) Conveyances of Transfers, (3) Leases or Agreements for Leases, (4) Mortgages whether legal or equitable, or (5) Settlements, the Act of 1888 created the new offence of not stamping, imposing the special penalty of ten pounds, which falls upon the obligee, vendee or transferee, lessee or intended lessee, mortgagee, or settlor, as the case may be, for not stamping the instrument within thirty days after execution in ordinary cases. The same Act barred any right to sue for moneys assured by an unstamped assignment of a life policy, made void every condition of sale framed with a view of precluding objection or requisition upon the ground of absence or insufficiency of stamp upon any instrument executed after 16th May, 1888, and abridged, from twelve months to three, the period after execution of an instrument within which the Commissioners of Inland Revenue might remit the penalties payable on stamping, after execution, unstamped or insufficiently stamped instruments generally.

Consolidating Act of 1891.—Many altera-

tions in the law of stamps having been effected since the passing of the Act of 1870, the enactments relating to stamps were again consolidated, with a few immaterial amendments, by the Stamp Act, 1891 (54 & 55 Vict. c. 91), the 14th section of which regulates the terms on which instruments not duly stamped may be received in evidence, while the 15th imposes penalties on the stamping of conveyances, leases, etc., after execution. In the same year the Stamp Duties Management Act, 1891, repealing and re-enacting the Stamp Duties Management Act, 1870, regulated the sale of stamps, the allowance for spoiled stamps, and made the forgery of stamps and dies a felony, as to which see now the Forgery Act, 1913.

Since 1891 the duties on various documents (see especially CONTRACT NOTE, and, generally, *Chitty's Statutes*, tit. '*Stamps*,' and *Statutes of Practical Utility* (Annual), tit. '*Stamps*') have been altered by various Finance Acts, of which the most important are the Finance (1909–10) Act, 1910 (10 Edw. 7, c. 8), and Finance, 1920 (10 & 11 Geo. 5, c. 18). By the Finance (1909–10) Act, 1910, the duties on conveyances and transfer on sale of any property except on certain stocks were doubled by s. 73 (*ibid.*), unless the consideration does not exceed 500*l.*, and the following certificate must in that case be inserted on every conveyance on which the reduction is applicable :—

> It is hereby certified that the transaction hereby effected does not form part of a larger transaction or series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration (*or if voluntary*) of the land and property conveyed or transferred exceeds the sum of 500*l.*

Consult *Alpe on Stamp Duties*.

As to exemption from certain stamp duties, see Building Societies Act, 1874, s. 41 ; Friendly Societies Act, 1896, s. 33 ; Revenue Act, 1911, s. 15 ; Finance Act, 1911, s. 17. See also National Health Insurance Act, 1924, and NATIONAL INSURANCE, and Law of Property Acts, 1922 and 1925 ; Administration of Estates Act, 1925.

Standard, that which is of undoubted authority, and the test of other things of the same kind ; a settled rate. See the Weights and Measures Act, 1878, and the Amendment Act of 1926. The 1936 Act (25 Geo. 5 & 1 Edw. 8, c. 38) deals mostly with the measuring of sand and sand ballast.

Standing by, sanctioning by silence and inaction. See LYING BY.

Standing Mute. See MUTUS.

Standing Orders, general regulations to be observed in passing private Acts through Parliament. An edition of the Standing Orders of both Houses of Parliament is published each year. See *May's Parl. Pr.*

Stannary [*stannaria*, fr. *stannum*, Lat. ; *stéan*, Cornish, tin], a tin mine.

From very ancient times there were Stannary Courts in Cornwall for the administration of justice among the tinners therein, such courts being mentioned in charters of the reign of King John. In 1855 their jurisdiction was extended to Devonshire mines. The Stannaries Court Abolition Act, 1896, transferred this jurisdiction (which was exercised by a Vice-Warden with an appeal to the Lord Warden and a further appeal to the Court of Appeal by virtue of s. 18 of the Judicature Act, 1873 (see now Judicature Act, 1925, s. 26)), to county courts ; see Companies Act, 1929, ss. 163 (jurisdiction in winding up), 297 to 299 (attachment of debts, preferential payments, and mine club funds), 339 (1) (contributories), 357 (prohibition of unregistered companies having more than twenty members not to apply), 375 (jurisdiction of the Court exercising Stannaries jurisdiction) ; *Dunbar* v. *Harvey*, 1913, 2 Ch. 530.

The 'Stannaries' covers mines in the Stannaries of Devon and Cornwall ; companies and ordinary partnerships working these mines may do so under the cost-book system (see that title), or as companies registered under the Companies Act, 1929, except companies so registered, cost-book companies and ordinary partnerships are governed by the Stannaries Act, 1869 (32 & 33 Vict. c. 19), and the sections of the Companies Act, 1929, *supra*.

Staple, a public mart which anciently was appointed by law to be held in Westminster, Newcastle, Bristol, and other places. A court was held before the mayor of the staple, which court was governed by the law merchant. It appears from Statute 14 Ric. 2, that the staple goods of England then were wool, woolfells, leather, lead, tin, cloth, butter, cheese, etc.

Staple, Statute of the, 27 Edw. 3, st. 2, repealed by the Statute Law Revision Act, 1863. See STATUTE STAPLE.

Staple Inn, an Inn of Chancery. See INNS OF CHANCERY.

Star [fr. *starrum*, contr. fr. *shetar*, Heb., a deed or contract], the deeds, obligations, etc., of the Jews ; also a schedule or inventory.—4 *Steph. Com.*

Star Chamber [*chambre des estoylles*, Fr.], *camera stellata*, which see.

Stare decisis, to abide by authorities or cases already adjudicated upon.

Stare in judicio [Lat.], to sue; to litigate in a court.

Starrum. See STAR.

State Trials, a work in thirty-three volumes octavo (from which 'selections' were brought out by Mr. J. Willis-Bund in 1880), containing all trials for offences against the State, and others partaking in some degree of that character, from 1163 to 1820. Eight continuation volumes, for the period from 1820 to 1858, have been brought out under the auspices of a Government committee; the eighth and last volume contains the index, and appeared in 1898.

Statement of Claim. The mode in which, under the Judicature Acts, a plaintiff begins his pleading, substituted for the former Bill in Chancery or Declaration at Common Law. The delivery of the statement of claim is regulated by R. S. C. 1883, Ord. XX., which provides that none *shall* be delivered if the writ be specially indorsed, or without an order on summons for directions (see Ord. XXX.), unless the defendant has not appeared.

Statement of Defence. This form of pleading is substituted, under the Judicature Acts, for the former pleas at Common Law, and answers in Chancery, and its delivery is now regulated by R. S. C. Ord. XXI., which provides in ordinary cases for the delivery of the statement of defence within ten days from the delivery of the statement of claim, or appearance if no statement of claim be delivered.

Statesman, a freeholder and farmer in Cumberland.

Statham. The learning of the law was thrown into a more methodical form than it had ever yet received by this author, who was a Baron of the Exchequer in the time of Edward IV. This was in his *Abridgment of the Laws*, being a kind of digest containing most titles of the law, arranged in alphabetical order, and comprising under each head adjudged cases, concisely abridged from the Year-books.—4 *Reeves*, c. XXV. 117.

Stationers' Hall. The (repealed) Copyright Act, 1842, authorized, in every case of copyright, the registration of the title of the proprietor at Stationers' Hall, and provided that, without previous registration, no action should be commenced, though an omission to register did not otherwise affect the copyright itself. It was founded A.D. 1553.—2 *Hall. Hist. Lit.*, pt. 2, c. 8, p. 366. This registration is now unnecessary; see Copyright Act, 1911.

Stationery Office. A Government office established to supply Government offices with stationery and books, and to print and publish Government papers. By the Documentary Evidence Act, 1882, documents printed under the superintendence of the office are receivable in evidence.

Statu liber, a slave made free or enfranchised by testament conditionally.—*Civ. Law.*

Statues. See ART, WORKS OF; MONUMENTS; and PUBLIC STATUES.

Status. The legal position or condition of a person. In Roman law this term indicated the position of a *persona*. A full Roman citizen must have possessed the *status libertatis, familiæ*, and *civitatis*, which are sometimes called *tria capita*. See *Sandars' Justinian; Mackenzie's Roman Law*, 4th ed. p. 81. The law of status thus classified men as slaves and free, citizens and aliens—as equals and unequals, so that it may be called the law of inequality. Much in the same way the term 'status' is used at the present time in connection with the law of persons, in which connection it signifies some disability or special right or treatment by the law.

In Scotland, with few exceptions, actions affecting status must be brought in the Court of Session.

Status de manerio, the assembly of the tenants in the court of the lord of a manor, in order to do their customary suit.

Status of Irremovability, the right formerly acquired by a poor person under the Union Chargeability Act, 1865, s. 8, after *one* year's residence (altered from the *three* years of an Act of 1861 by the Act of 1865, having been first fixed at *five* years by an Act of 1846) in any parish, not to be removed therefrom; for the present law see Poor Law Act, 1930 (20 Geo. 5, c. 17), s. 93.

Status quo, the existing state of things at any given date; e.g., *Status quo ante bellum*, the state of things before the war.

Statutable, according to statute.

Statute, a law, an edict of the legislature, an Act of Parliament. See ACT OF PARLIAMENT.

Statute Fair, a fair at which labourers of both sexes stood and offered themselves for hire; sometimes called also Mop.

Statute Law Revision Acts. A number of general Acts were passed from the year 1861 to 1927 inclusive, for the purpose of expressly and specifically repealing Acts or

parts of Acts which had been either impliedly repealed by subsequent statutes on the ground that *leges posteriores priores contrarias abrogant*, or which (see the preambles to the various Acts) 'might be regarded as spent, or had by lapse of time or otherwise become unnecessary' from various causes, or had become obsolete, and also partly with the view of clearing the way for two editions of 'Statutes Revised,' that is, statutes in force only, as distinguished from the 'Statutes at Large,' or statutes just as they are passed. In 1890, as explained in an Introductory Note to vol. 4 of the 2nd edition of the Revised Statutes, a Select Committee of the House of Commons considered the subject of statute law revision, and recommended the omission from the Revised Statutes of 'any preambles' [but see that title] 'to an act, or introductory words to a section, which though not dead were practically inoperative'; and the two Statute Law Revision Acts of that year, which repeal such matter for the first time, authorize the insertion in the Revised Statutes of such brief statements as such omission may render necessary. See ACT OF PARLIAMENT.

Statute-merchant, a bond of record (see 13 Edw. 1 (*Stat. Merc.*), repealed by Stat. Law Rev. Act, 1863) under the hand and seal of the debtor, authenticated by the sovereign's seal, with the effect that, on failure of payment on the day assigned, execution might be awarded, without any mesne process to summon the debtor, or bringing in proofs to convict him, and thus, it is presumed, it obtained the name of a '*pocket judgment*.' Obsolete.

Statute of Frauds: of Distributions. 29 Car. 2, c. 3; 22 & 23 Car. 2, c. 10. See FRAUDS; DISTRIBUTION.

Statute Staple, a bond of record acknowledged before the mayor of the staple, in the presence of the constables of the staple, or one of them; the only seal required for its validity was the seal of the staple, and therefore if the statute were void for any cause, it could not, as in the case of a statute-merchant (*q.v.*), be proceeded on as a common obligation; and, wanting the sanction of the seal of the king, the sheriff, after the extent, could not deliver the lands to the conusee, but had to seize them into the king's hands; and in order to obtain possession of them, the conusee had to sue out a writ of *Liberate*, which was a writ out of Chancery, reciting the former writ, and commanding the sheriff to deliver to the conusee all the lands, tenements, and chattels by him taken into the king's hands, if the conusee would have them, until he should be satisfied his debt. Obsolete. See STAPLE.

Statuti, advocates, members of the college, —*Civ. Law.*

Statuto mercatorio, an ancient writ for imprisoning him who had forfeited a statute-merchant bond, until the debt was satisfied. —*Reg. Brev.* 146.

Statutory Declarations Act, 1835 (5 & 6 Wm. 4, c. 62), which substitutes declarations for oaths in a large number of cases.

The expression 'statutory declaration' in a statute means a declaration under the above Act.—Interpretation Act, 1889, s. 21.

As to the punishment if a person 'knowingly and wilfully makes a statement false in a material particular' in a statutory declaration, see Perjury Act, 1911, s. 5.

Statutory Exposition. When the language of a statute is ambiguous, and any subsequent enactment involves a particular interpretation of the former Act, it is said to contain a *statutory* exposition of the former Act.

Statutory Order. See STATUTORY RULES.

Statutory Owner. Defined by the Settled Land Act, 1925, s. 117 (1) (xxvi.), as the trustees of the settlement or other persons who, during the minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under that Act, but does not include the trustees of the settlement, where, by virtue of an order of the Court or otherwise, the trustees have the power to convey the settled land in the name of the tenant for life. Where land has been devised to an infant, the personal representatives, in other cases, the trustees of the settlement, may be statutory owners: ss. 23 and 26; see also s. 110 (*ibid.*).

Statutory Release, a conveyance which superseded the old compound assurance by lease and release. It was created by 4 & 5 Vict. c. 21 (repealed, as being superseded by subsequent legislation, by the Stat. Law Rev. Act, 1874, No. 2), which abolished the lease for a year. See RELEASE.

Statutory Rules and Orders. Very numerous Acts of Parliament, especially those passed in recent years, empower the Sovereign in Council, some Government Department, or Courts of Justice, to make rules, having the same effect as the statute under which they are made, to regulate details left unprovided for by such statute. Thus, there are the Bankruptcy Rules, regulating the practice under the Bankruptcy Acts; the

Rules of the Supreme Court, regulating the practice of the High Court and the Court of Appeal; Orders of the Ministries of Health, Labour, etc., and Orders of the Ministry of Agriculture and Fisheries, under the Diseases of Animals Act, 1894, and other Acts; and hundreds of other rules, orders, and regulations, in some cases requiring to be laid before Parliament, and in other cases not, and in some cases required to be published in the *London*, *Edinburgh*, or *Dublin Gazette*, and in others not.

The Rules Publication Act, 1893 (56 & 57 Vict. c. 66), directs that all rules made in 1894 and afterwards under an Act of Parliament which relate to any court, or are made by the Sovereign in Council, or the Treasury, or any other Government Department, are to be printed by the King's Printer and sold by him; and with regard to rules which have to be laid before Parliament, but come into operation at once (with certain exceptions), this Act also makes provision for consideration of them in draft by any 'public body' interested, and for the consideration by the authority making the rules of any representations or suggestions made in writing by such public body to such authority. The exceptions are: Certain rules made by the Ministries of Health and Labour, and rules made by the Revenue Departments, or by the Post Office, or by the Ministry of Agriculture and Fisheries, under the Diseases of Animals Acts.

See *Pulling's Annual Indexes of Statutory Rules and Orders*, first published by Government in 1891, and *Collection of Statutory Rules and Orders in Force*, published by Government.

Statutory Trusts. For the purposes of the Law of Property Act, 1925, land held upon 'statutory trusts' shall be held upon trust for sale and to stand possessed of the net proceeds of sale after payment of costs and net rents and profits until sale subject to rates, taxes, and cost of insurance, repairs, and other outgoings, upon trust for the persons entitled under the settlement, including incumbrancers of former undivided shares, or not secured by a legal mortgage, and where an undivided share was subject to a settlement and the settlement remains subsisting in respect of other property and the trustees of the settlement are not the same persons as the trustees for sale, the settled portion of the proceeds of sale is to be handed over to the settlement trustees as capital money under the Settled Land Act, 1925 (s. 35 of the Law of Property Act, 1925). By s. 25, L. P. Act, 1925, the trustees have power to postpone the sale unless a contrary direction appears in the trust instrument. By the Law of Property (Entailed Interests) Act, entailed interests in undivided shares of land are to be treated and held as entailed interests in the proceeds of sale. As to the meaning of statutory trusts upon distribution in intestacy, in favour of the issue and other classes of relatives of the intestate *per capita* and *per stirpes* (as provided) and other matters, see s. 47 of the Administration of Estates Act, 1925, and WIDOW.

Statuto stapulæ, the ancient writ that lay to take the body to prison, and seize upon the lands and goods of one who had forfeited the bond called statute-staple.—*Reg. Brev.* 151.

Statutum affirmativum non derogat communi legi. *Jenk. Cent.* 24.—(An affirmative statute does not derogate from the Common Law.) See ACT OF PARLIAMENT.

Statutum Hiberniæ de cohæredibus (14 Hen. 3). It has been pronounced not to be a statute. In form it appears to be an instruction given by the King to his justices in Ireland, directing them how to proceed in a certain point where they entertained a doubt. It seems the justices itinerant in that country had a doubt, when land descended to sisters, whether the younger sisters ought to hold of the eldest, and do homage to her for their several portions, or of the chief lord, and do homage to him; and certain knights had been sent over to know what the practice was in England in such a case.—1 *Reeves*, 259.

Statutum de mercatoribus, the statute of Acton-Burnel, which see.

Statutum sessionum (the statute-sessions), a meeting in every hundred of constables and householders, by custom, for the ordering of servants, and debating of differences between masters and servants, rating of wages, etc.—5 Eliz. c. 4.

Staunforde, the author of the *Pleas of the Crown*, in the reign of Philip and Mary. This book is written in French; the method of it is perspicacious, and the matter disposed with learning and accuracy. The author is uncommonly full in his quotations, the statutes are generally given at length, and whole pages are frequently transcribed from Bracton. This is in general done with success and propriety, though sometimes his author has failed him; as, among other instances, may be observed Bracton's definition of larceny, which was not law at the time Staunforde wrote.

As Staunforde has the praise of being our earliest writer on pleas of the Crown, so has his merit been acknowledged by those who have followed him in the same walk, they having, in general, adhered to the arrangement and divisions of his work. He treats of his subject under three heads: first, of crimes; next, of the method of bringing delinquents to justice; and lastly, of trials and punishment. The several titles into which these are subdivided have furnished the heads of nearly every book which has been written since his time on the same subject.—4 *Reeves*, 564.

Staying Proceedings. By the Judicature Act, 1875, s. 24 (5), the courts had power to stay proceedings in cases where an injunction or prohibition could formerly have been obtained, but in which such course, by the consolidation of the superior courts, is now put an end to. Every court has an undoubted inherent jurisdiction to stay proceedings on the ground that they are an abuse of the process of the court; see per Vaughan Williams, L.J., in *Re Norton's Settlement*, 1908, 1 Ch. at p. 479, approving *Egbert* v. *Short*, 1907, 2 Ch. 205. As to staying proceedings upon an appeal, see R. S. C. Ord. LVIII., r. 16, and for other cases illustrating this jurisdiction, see *Annual Practice*. See also the Vexatious Actions Act, 1896, and R. S. C. Ord. XXV., r. 4.

Stealing. See LARCENY.

Stealing Children. See KIDNAPPING.

Steam Engines. As to the negligent use of the furnaces of these, see the Steam Engine Furnaces Act, 1831; and as to damaging or obstructing them, see Malicious Damage Act, 1861, ss. 29, 35, 36. See also ss. 114–116 of the Railways Clauses Consolidation Act, 1845, and the Railway Fires Act, 1905, as amended by 13 & 14 Geo. 5, c. 27; *Martin* v. *G. E. Ry. Co.*, 1912, 2 K. B. 406. See ENGINE; ROAD TRAFFIC.

Steam Launch includes, on the Thames, 'any vessel propelled by steam, electricity, or other mechanical power, not being used solely as a tug or for the carriage of goods and not being certified by the Board of Trade as a passenger steamer to carry 200 or more passengers,' and must be registered, display lights after sunset and before sunrise, etc.—Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.), ss. 3, 138, 147, 148; see now the consolidating Thames Conservancy Act, 1932 (22 & 23 Geo. 5, c. xxxvii.); *Chitty's Statutes*, tit. '*Thames*.'

Steam Whistles. The use of steam whistles in certain manufactories is regulated by the Steam Whistles Act, 1872 (35 & 36 Vict. c. 61).

Steel-bow Goods, corn, cattle, straw, and implements of husbandry, let or delivered by a landlord to a tenant, by which the tenant is enabled to stock and work a farm; in consideration of which he becomes bound to return articles, equal in quantity and quality, at the expiration of the lease.—*Bell's Scots Law Dict.*

Stellionate [*stellionatus*], a kind of crime which is committed by a deceitful selling of a thing; as if a man should sell as his own estate that which is another's.

In the Roman law, the making a second mortgage without giving notice of the first; but the crime was not committed if the land were equal in value to all the charges upon it.—*Dig.* 13. See the Clandestine Mortgage Act (4 & 5 W. & M. c. 16).

Sterbreche, Strebrich, the breaking, obstructing, or straitening of a way.—*Termes de la Ley.*

Sterling, genuine; money; standard-rate, Derived from the Easterlings who came to England from Germany in the thirteenth century, and coined good money. See *Skeat's Etymological Dictionary*, where it is said that the term 'sterling was first applied to the English penny, and then to standard current coin in general, and that Wedgewood cites from Ducange a Statute of Edward I., in which we meet with "denarius Angliæ, qui vocatur sterlingus."' And see *Co. Litt.* 207 *b*, *Harg.* note (1).

Stet processus, an order of the court to stay proceedings. Strictly, it can only be made with the consent of the parties; but where the ends of justice will be better answered by this course, it is authoritatively recommended by the court. Each party pays his own costs. See DISCONTINUANCE.

Stethe, or **Stede,** betokeneth properly a bank of a river, and many times a place.—*Co. Litt.* 4 *b*.

Stevedore [fr. *estivar*, Sp., to stow], a person employed to stow a cargo on board a ship. See the Merchant Shipping (Stevedores and Trimmers) Act, 1911.

Steward [*seneschallus*, Lat.], a ward or keeper; one appointed in the stead of another. See HIGH STEWARD.

Steward of Household. See MARSHALSEA.

Steward of Manor, the lord's deputy, who transacts all the legal and other business connected with the estate, and takes care of the Court-rolls. The office is usually held by the lord's solicitor. The office has been

deprived of much of its importance in consequence of the abolition of copyhold tenure by the Law of Property Act, 1922 (see COPYHOLDS). The scale of compensation to the steward of the manor if he was appointed before the 29th June, 1922, is provided for by the 14th Sched. of the Law of Property Act, 1922, and see the L. P. (Amendment) Act, 1924. See also the L. P. Act, 1922, and the Enfranchised Land (Stewards' Fees) Regulations, S. R. & O., 1926, No. 3, as to fees payable to stewards upon extinguishment of manorial incidents and upon the compulsory production of assurance of former copyholds to him. Upon a vacancy for three months in the office and on other occasions the Lord Chancellor may upon default of the lord of the manor transfer the duties of the office to H.M. Land Registry (s. 129, *ibid.*). The following notes have been retained, as they are material to the devolution of titles to formerly copyhold land and the extinguishment of manorial incidents.

Should there be joint stewards, one may act without the other (1 *Scriv.* 130). In other manors the chief steward is usually appointed by deed, though he may be appointed by parol; but corporations must always appoint by deed under their corporate seal.

The appointment of a steward is generally during the lord's pleasure; it may, however, be for years or for life, forfeitable by abuser, misuser, nonuser, or refuser. The steward's remedy for a disturbance of his office is an action on the case for consequential damages. The King's Bench Division of the High Court will, upon a proper case made out, grant a writ of *mandamus* to restore a steward to his office. A steward may depute or authorize another to hold a court; and the acts done in a court so holden will be as legal as if the court had been holden by the chief steward in person. So an under-steward or deputy may authorize another as sub-deputy, *pro hac vice*, to hold a court for him, such limited authority not being inconsistent with the rule '*delegatus non potest delegare*.'

This deputy, or under-steward, may be appointed either in writing, or by parol, although the appointment of the chief steward do not contain an express authority for that purpose. See COPYHOLD.

Stews. 1. Certain brothels anciently permitted in England, suppressed by Henry VIII. 2. Breeding place for tame pheasants.

Stickler. 1. An inferior officer who cuts woods within the royal parks of Clarendon; an arbitrator. 2. An obstinate contender about anything.

Stillicidium, the water that falls from the roof of a house in scattered drops.—*Civ. Law.*

Stint, Common without; common *sans nombre*, i.e., without number. See COMMON.

Stipend, a salary; settled pay; a provision made for the support of the clergy.

Stipendiary Estates, i.e., feuds, estates granted in return for services, generally of a military kind.—1 *Steph. Com.*

Stipendiary Magistrates, paid magistrates appointed in the Metropolis under the Metropolitan Police Courts Act, 1839; in municipal boroughs, on petition by the council to the Secretary of State, under the Municipal Corporations Act, 1882, s. 161, reproducing s. 99 of the repealed Municipal Corporations Act, 1835; in places of 25,000 inhabitants or more, on like representation by the local board, etc.; under the Stipendiary Magistrates Act, 1863; and in some other places, e.g., Manchester, by special Act of Parliament. They must be barristers of at least seven years' standing in the metropolis and municipal boroughs; under the Stipendiary Magistrates Act, 1863, they may be of five years' standing. By the Stipendiary Magistrates Act, 1858, they may do alone all acts authorized to be done by two justices of the peace. A stipendiary magistrate cannot sit at general or quarter sessions. As to deputies, see 32 & 33 Vict. c. 34 and 6 Edw. 7, c. 46. See JUSTICES; METROPOLITAN POLICE.

Stipendium [fr. *stips*, a piece of money, and *pendo*, to weigh, Lat.], wages; pay. Before silver was coined at Rome, the copper money in use was paid by weight, and not by scale.

Stipulated Damage, liquidated damage, which see.

Stipulation, bargain; also, a recognizance of certain fidejussors in the nature of bail, taken in the Admiralty Courts.

It is the highest and most authentic contract known to the Civil Law, entered into before the magistrate or public officer, through the medium of interrogatories and answers calculated to explain the nature and extent of the undertaking, to put the parties entering into it on their guard, and to show it to be their mature and deliberate act. It could not be impeached except for fraud or deceit, and could not be released or discharged except by an equally solemn proceeding, conducted by question and answer before the public functionary, called an acceptilation.—*Vinnius*, 677; *Sand. Just.*, 7th ed. 332.

Stiremannus, a pilot or steersman.—*Domesday.*

Stirpes. See PER STIRPES.

Stock, a race, lineage, or family; also, the public funds (for definition, see National Debt Act, 1870, Part VII., and 20 & 21 Geo. 5, c. 28, s. 49 (1)), considered merely as perpetual annuities redeemable at the pleasure of the Government; also, the capital of a public company, as to which see SHARES.

Stockbroker, one who buys and sells stock as the agent of others. 7 Geo. 2, c. 8 (known as Sir John Barnard's Act), required a stockbroker to keep a book called the broker's book, to enter all contracts for stock made by him on the same day, with the names of the parties and the day, and to produce such book when lawfully required; but this Act has been repealed by 23 Vict. c. 28. See BROKER.

Stock Certificates. By the National Debt Act, 1870, it is provided that a holder of British Government Stock may obtain a stock certificate; that is to say, a certificate of title to his stock or any part thereof, with coupons annexed, entitling the bearer of the coupons to the dividends on the stock (s. 26); that a certificate shall not be issued in respect of any sum of stock not being 50*l.*, or a multiple of 50*l.*, or exceeding 1000*l.* (s. 28); that a trustee of stock shall not apply for or hold a stock certificate, unless authorized to do so by the terms of his trust (s. 29); that no notice of any trust in respect of any certificate or coupon shall be receivable (s. 30); that where a stock certificate is outstanding the stock represented thereby shall cease to be transferable in the Bank books (s. 31); that a stock certificate, unless a name is inscribed thereon, shall entitle the bearer to the stock therein described, and shall be transferable by delivery (s. 32). The Act also contains many other provisions in regard to stock certificates (see ss. 33–42).

Stock Exchange, a society of stockbrokers and dealers (or stockjobbers) for the conduct of the sale or purchase, on behalf of non-members, of Government securities and stocks or shares in public companies. See COMPANY. The members of the 'House' (as it is called) must be re-elected annually and pay a substantial annual subscription. In the transaction of business they are governed by certain usages, and by rules framed by the Committee of the Stock Exchange which bind their outside employers, if reasonable, but not otherwise.—See *Neilson* v. *James,* (1882) 9 Q. B. D. 546 (C. A.), in which a custom to disregard Leeman's Act (see LEEMAN'S ACTS) was held unreasonable; *Chitty on Contracts;* and the works of *Melsheimer* and *Laurence, Brodhurst,* and *Stutfield.* Also, the place where they meet to transact business. See BROKER.

Perhaps the most important of the London Stock Exchange Rules are Rules 66 and 75. by which:—

66. The Stock Exchange does not recognize in its dealings any other parties than its own members; every bargain, therefore, whether for account of the member effecting it, or for account of a principal, must be fulfilled according to the rules, regulations and usages of the Stock Exchange.

75. No member or authorized clerk shall carry on business in the double capacity of broker and dealer.

Stockjobber, a dealer in stock; one who buys and sells stock on his own account on speculation. See STOCK EXCHANGE.

Stockjobbing Act (7 Geo. 2, c. 8) (made perpetual by 10 Geo. 2, c. 8), which was repealed by 23 & 24 Vict. c. 28. Gambling transactions in stockjobbing are now subject only to the same law as is applicable to wagers.

Stocks. Two boards each with semi-circular holes, fitting together within posts, and padlocked together so as to confine the legs of a person just above the feet, anciently maintained at a public spot in every parish as a mode of ignominious confinement for petty offences. For drunkenness it was prescribed in default of distress for a fine, by 21 Jac. 1, c. 7, s. 4 (not repealed until 1872 by the Licensing Act of that year), and similarly for Sunday trading by the Sunday Observance Act, 1677 (still unrepealed). See SUNDAY.

The punishment of the stocks began to be disused about the beginning of the nineteenth century, but has not been expressly abolished; and stocks have been preserved in some country villages and towns; e.g., at Woodeaton in Oxfordshire and in the Town Hall of Much Wenlock in Shropshire.

Stolen Goods. As to restitution, see Larceny Act, 1916 (6 & 7 Geo. 5, c. 50), s. 45, and *Arch Cr. Pr.,* 1934, pp. 293 *et seq.*

Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen revests in the person who was the owner of the goods or his personal representative, notwithstanding any intermediate dealing with them, whether by selling in market overt (see that title) or otherwise; but if obtained by fraud, etc., not amounting to larceny, *aliter.*—Sale of Goods Act, 1893, s. 24.

Sect. 102, Larceny Act, 1861, prohibits advertising a reward for the return of any property either lost or stolen and intimating that no questions will be asked, without apprehension of the person returning the property, under a penalty of 50*l.*

As to the crime of 'receiving' goods knowing them to have been stolen, see RECEIVER OF STOLEN PROPERTY.

Stop Order. If any person entitled, in expectancy or otherwise, to any share of any stocks or funds, standing in the name of the Paymaster-General (formerly the Accountant-General of the Court of Chancery: see Chancery Funds Act, 1872) to the general credit of any cause, or to the account of any class or classes of persons, assign his interest in such stock or funds, the assignee (although not a party to the cause in which the fund is standing) may apply by summons for a stop order to prevent the transfer or payment of such stock or funds, or any part thereof, without notice to him. And a person having a lien on a fund in court may obtain a stop order. See R. S. C. 1883, Ord. XLVI.; and consult *Dan. Ch. Pr.*: *Seton on Judgments*.

Stoppage in transitu. 'When the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu; that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.'—Sale of Goods Act, 1893 (see that title), s. 44, embodying the law of *Lickbarrow* v. *Mason*, (1787) 6 East, 21; 1 Sm. L. C.

Stouthrieff, forcible depredation within or near a house.—*Bell's Scots Law Dict.*

Stowage, money paid for a room where goods are laid; housage; the mode of lading a ship. See *Stevens on Stowage*.

Stowe [Sax.], properly, a bank of a river; a place.—*Co. Litt.* 4 *b*. Also a village.—*Domesday*.

Stradling v. Stiles. A burlesque report of an argument *in banco*, published in Martinus Scribelrus's works. It is, in part, the work of Fortescue, an eminent lawyer who subsequently became a baron of the Exchequer.

Stramineus homo, a man of straw, one of no substance, put forward as bail or surety.

Stranding, the running of a ship on shore or on a beach. By reason of the memorandum always inserted in policies of insurance (see INSURANCE), it is of the greatest importance to define what is a stranding. On this much diversity of opinion has been entertained. It would appear that merely striking against a rock, bank, or shore is not a stranding; the ship must be upon the rock, etc., for some time.

Stranger in Blood, a person in no degree of relationship to another. See schedule to the Stamp Act, 1815 (*Chitty's Statutes*, tit. '*Death Duties*'), by which 10 per cent. duty is payable on a legacy 'to or for the benefit of any stranger in blood to the deceased' testator. An illegitimate child is treated by the Inland Revenue authorities as a 'stranger in blood' within the Act; but see May and August numbers of the *Law Magazine and Review* of 1905. *Aliter* as to legitimated children, see Legitimacy Act, 1926, s. 7.

Stratocracy [fr. στρατός, Gk., an army; and κράτος, power], a military government.

Strator, or **Stretward,** a surveyor of the highways.—*Dugd. Mon.*, tom. 2, p. 187.

Straw, Man of, a man of no substance. A transfer of shares, in a company, to such a man is good, subject to its regulations, so as to relieve the transferor from liability to pay calls upon the shares, if the transferee be *sui juris*, and there be no resulting trust for the transferor (see *De Pass's case*, (1859) 4 De G. & J. 544), and unless the Stannaries Act, 1869, s. 35, applies; and see CONTRIBUTORY. Likewise the assignee of a lease may escape liability on the covenants after assignment by 'assigning over' to a man of straw.

Street, in the Public Health Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 49), by s. 343, includes any highway, including a highway over any bridge, and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not; and see *A.-G.* v. *Laird*, 1925, Ch. 318.

Street Betting. The suppression of this is provided for by the Street Betting Act, 1906. See BETTING.

Street Musician (London). See MUSICIAN.

Street Offences. For list of these, see Town Police Clauses Act, 1847 (*Chit. Stat.*, tit. '*Police*'), s. 28 (applied among ss. 21–29 to urban districts by s. 171 of the Public Health Act, 1875 (38 & 39 Vict. c. 55 (*Chit. Stat.*, tit. '*Public Health*')), and s. 54 of the Metropolitan Police Acts of 1839 and 1867 (*Chit. Stat.*, tit. '*Police* (*Metropolis*)'). Thirty kinds of offences are specified in the Act of 1847, and seventeen in the Act of 1839. The offences specified in each Act comprise riding or driving furiously, loitering by common prostitute for prostitution, sliding on ice or snow, disturbance by ringing doorbell, dis-

charging firearms, making bonfires, or setting fire to fireworks, and allowing ferocious dogs to be at large. The Act of 1847 also includes keeping swine, and obstructing footways. The Act of 1839 also includes bill posting on buildings without consent of owner, ' blowing horns or any other noisy instrument for the purpose of calling persons together, or of announcing any show, or for the purpose of hawking, selling, distributing, or collecting any article whatsoever, or of obtaining money, or alms,' and wilfully disregarding police regulations, ' after having been made acquainted with them,' for regulating routes during divine service, and for preventing obstructions during public processions.

The penalties under each Act are up to 40*s.*, with liability to apprehension by a constable without warrant, the Act of 1847 authorizing imprisonment without the option of a fine.

See also COLLECTIONS, STREET; Children and Young Persons Act, 1933 (23 & 24 Geo. 5, c. 12); and *Vann* v. *Eastough*, 52 T. L. R. 14.

Strict Settlement, a settlement of land, the object of which was, usually, to keep the estates as far as possible in the male line, the eldest son taking in fee or in tail with successive limitations in tail to the exclusion of the younger children, who are provided for by means of portions charged on the property. The limitations vary according to the circumstances of each particular case, but the following may be taken as usual limitations in the case of an ordinary settlement on marriage before 1926: To the use of the husband for life, remainder, subject to a jointure rent-charge to the wife and a term for raising portions for younger children, to the first and other sons in tail-male, remainder to the first and other sons in tail general, remainder to the daughters as tenants in common in tail with cross remainders between them, remainder to the husband in fee. Where the estate also comprised copyholds and leaseholds, these were conveyed to trustees upon trusts to correspond with the uses declared concerning the freeholds. Trustees were appointed for the purposes of the Settled Land Acts, and provision was made for the application of rents during minorities by reference to the Conveyancing Act, 1881; and such other powers and provisions are inserted as the case might have required. For the modern method of strict settlement, see SETTLED LAND. Consult *Key and Elphinstone* or *Prideaux Conveyancing Precedents*.

Strictissimi juris [Lat.] (of the most strict law).

Strictum jus [Lat.] (mere law in contradiction to equity).

Strike. The Trade Disputes and Trade Unions Act, 1927 (17 & 18 Geo. 5, c. 22), by s. 8 provides:—

> The expression ' strike ' means the cessation of work by a body of persons employed in any trade or industry acting in combination, or a concerted refusal under a common understanding of any number of persons who are or have been so employed, to continue to work or to accept employment;
>
> The expression ' lock-out ' means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling persons employed by him to accept terms or conditions or of or affecting employment; a strike or lock-out shall not be deemed to be calculated to coerce the Government unless such coercion ought reasonably be expected as a consequence thereof.

As to the legality of strikes generally, see *Jose* v. *Metallic Roofing Co. of Canada*, 1903, A. C. 514; *Russell* v. *Amalgamated Society of Carpenters and Joiners*, 1912, A. C. 421. See TRADE DISPUTE.

Sect. 1 provides:—

> (1) (*a*) that any strike is illegal if it—
> (i.) has any object otherwise or in addition to the furtherance of a trade dispute within the trade or industry in which the strikers are engaged; and
> (ii.) is a strike designed or calculated to coerce the Government either directly or by inflicting hardship upon the community; and
> (*b*) that any lock-out is illegal if it—
> (i.) has any object other than or in addition to the furtherance of a trade dispute within the trade or industry in which the employers locking out are engaged; and
> (ii.) is a lock-out designed or calculated to coerce the Government either directly or by inflicting hardship upon the community.
>
> (4) The provisions of the Trades Disputes Act, 1906, shall not, nor shall the several provisos to sub-section (1) of section two of the Emergency Powers Act, 1920, apply to any act done in contemplation or furtherance of a strike or lock-out which is by the Act declared to be illegal, and any such act shall not be deemed for the purposes of any enactment to be done in contemplation or furtherance of a trade dispute. See TRADE DISPUTE.

Striking, e.g., special jury, a method of selection, see Juries Act, 1870 (33 & 34 Vict. c. 77), s. 17. For practice, see *Arch. Cr. Pl.* and *Short and Mellor Cr. Pr.*

Striking Off the Roll. Removing the name of a solicitor from the rolls of the Court, and

thereby disentitling him to practise. See SOLICITORS.

Striking-out Defence. This may now be done as a punishment for default in making discovery or allowing inspection after an order to do so. See R. S. C. 1883, Ord. XXXI., r. 21.

Strokehaul, a device for catching fish, the use of which is prohibited for taking or killing salmon, trout, or freshwater fish (Salmon and Freshwater Fisheries Act, 1923, s. 1).

Stupration [fr. *stupro*, Lat.], rape, violation.

Stuprum, every union of the sexes forbidden by morality.—*Civ. Law.*

Sturgeon, a royal fish, which, when either thrown ashore or caught near the coast, is the property of the sovereign.—1 *Bl. Com.* 290.

Sturges Bourne's Acts. (1) 58 Geo. 3, c. 69, the Vestries Act, 1818 (*Chitty's Statutes*, tit. '*Vestries*'), as to notice of vestries, qualification for vestry meetings, etc. (repealed as to rural parishes by the Local Government Act, 1894), preservation of parish books and other matters; and (2) 59 Geo. 3, c. 12, the Poor Relief Act, 1819 (*Chitty's Statutes*, tit. '*Poor*'), by which the inhabitants of any parish, in vestry assembled, were enabled to commit the management of its poor to a committee of the parishioners appointed for that purpose and called a 'select vestry,' to whose orders the overseers were bound to conform (this portion of the Act, being superseded by the Poor Law Amendment Act, 1834, is repealed by the Statute Law Revision Act, 1873). See now Poor Law Act, 1930, and POOR LAW.

Style, to call, name, or entitle one; the title or appellation of a person. See also CALENDAR, and NEW YEAR'S DAY.

Suable, that may be sued.

Subah, a province such as Bengal. A ground division of a country, which is again divided into *circars*, *chucklas*, *pergunnahs*, and *villages*.—*Indian.*

Subahdar, the holder of the subah, the governor, or viceroy.—*Ibid.*

Subahdary, the office or jurisdiction of a subahdar.—*Ibid.*

Sub-bois. Coppice-wood.—2 *Inst.* 642. See SYLVA CÆDUA.

Subinfeudation, where the inferior lords, in imitation of their superiors, began to carve out and grant to others minuter estates than their own, to be held of themselves, and were so proceeding downward *in infinitum* till they were stopped by legislative provisions. See TENURE, and *Addenda.*

Subject (logic), that concerning which the affirmation in a proposition is made; the first word in a proposition.—*Mill's Logic.* See PREDICATE.

Subject to Contract. See as to the meaning of these words in contracts for sale of land, *Hussey* v. *Horne Payne*, (1878) 4 A. C. 311, as explained in *Curtis Moffatt Ltd.* v. *Wheeler*, 1929, 2 Ch. 244.

Subjects, the members of a community under a sovereign.

Submission. See ARBITRATION.

Submit, to propound, as an advocate, a proposition for the approval of the Court.

Sub modo, under condition or restriction.

Subnervare, to ham-string by cutting the sinews of the legs and thighs. It is said to have been a custom of semi-civilized savages, *meretrices et impudicas mulieres subnervare.*

Subnotation, a rescript, which see.

Subordinate Clause. See CO-ORDINATE.

Subordinate Integer. In Patent Law, any part of a whole patentable machine or thing which is itself independently patentable.

Suborn. See next title.

Subornation, the crime of procuring another to do a bad action. See PERJURY.

Subpœna [from *sub*, Lat., under, and *pœna*, penalty], a writ commanding attendance in court under a penalty. It bears a close analogy to the citation, or *vocatio in jus* of the Civil and Canon Laws. There are several kinds of subpœna.

At Common Law there are two to compel the attendance of witnesses:—

(1) *Subpœna ad testificandum*, the common subpœna, which is personally served upon a witness, in order to compel him to attend the trial or inquiry, to give evidence.

(2) *Subpœna duces tecum:* this is personally served upon a person, who has in his possession any written instrument, etc., the production of which in evidence is desired. Such a person need not be sworn, and in that case he cannot be cross-examined. See DUCES TECUM.

These subpœnas are also used in *criminal* proceedings; four witnesses can be included in one subpœna, whether in civil or criminal cases.

For rules as to service, etc., of subpœna, see R. S. C. 1883, Ord. XXXVII., rr. 26-34, and for the different forms of subpœna, see Appendix J. of R. S. C. 1883. The Court can set aside the subpœna in criminal as well as civil proceedings if it is not required *bonâ fide* and is an abuse of process (*R.* v. *Baines*, 1909, 1 K. B. 258).

Subpœna Office in Chancery. Abolished, and its duties transferred to Clerks of Records and Writs.—15 & 16 Vict. c. 87, s. 28.

Sub pede sigilli [Lat.] (under the foot of the seal).

Subreption, the obtaining a gift from the Crown by concealing what is true.

Subrogation. The doctrine in the law of insurance whereby, as between insurer and insured, the insurer is entitled to the advantage of every right of the insured, connected with the insurance which was effected between them. See *Assicurazioni Generali de Trieste* v. *Empress Assurance Corporation*, 1907, 2 K. B. 814. The doctrine is not confined to insurance, but extends in equity to many other cases, e.g., where money has been borrowed without authority but applied in payment of existing debts; in such cases the quasi-lender is entitled to stand in the shoes of the creditors thus paid. See *Re Wrexham, etc., Railway*, 1899, 1 Ch. 440; see INDEMNITY; GUARANTY.

Subsequens matrimonium tollit peccatum præcedens. *Reg. Jur. Civ.*—(A subsequent marriage removes a previous offence.) See LEGITIMATION.

Subsequent Condition. See CONDITION SUBSEQUENT.

Subsidy, an aid, tax, or tribute granted to the Crown for the urgent occasions of the kingdom, to be levied on every subject of ability, according to the value of his lands or goods.

Sub silentio, in silence.

Substituted Executor, one appointed to act in the place of another executor, upon the happening of a certain event, e.g., if the latter should refuse the office.

Substituted Service, of a writ of summons, service on some person representing the defendant, instead of on the defendant personally. See R. S. C. 1883, Ord. X. Leave is given sometimes to effect the substituted service by means of advertisement.

Substitution. In the Civil Law a conditional appointment of a *hæres*. See *Cum. C. L.* 143; *Sand Just.*

In Scots law the enumeration or designation of the heirs in a settlement of property. Substitutes in an entail are those heirs who are appointed in succession on failure of others.

Subtraction, neglecting or refusing to perform any suit, service, custom, or duty, or to pay rent, service, tolls, etc.—3 *Bl. Com.* 230.

Suburbani, husbandmen.

Succession, the power or right of coming to the inheritance of ancestors. See CANONS OF INHERITANCE; DISTRIBUTION.

Succession Duties. The Succession Duty Act, 1853, amended by 22 & 23 Vict. c. 21, ss. 12–15, and by the Customs and Inland Revenue Acts, 1881, 1888, and 1889, imposed a new set of duties, varying in amount from 1 per cent. in the case of a child succeeding a parent to 10 per cent. in the case of succession to a stranger in blood, upon real or personal property to which any person succeeds on the death of another. The duty is calculated on the capitalized value for the life of the successor of the property succeeded to, in accordance with a table schedule to the Act of 1853; e.g., if a person aged fifty succeed to property worth 100*l.* a year, he pays succession duty upon 1242*l.* 19*s.* 6*d.*

Succession duties are payable as a rule at the same rate as legacy duty in respect of all property liable to be administered by any Court in Great Britain and Northern Ireland—unlike legacy duty, it falls on property passing by death (succession), under disposition by deed or other instrument (*inter vivos*) as well as by will or on an intestacy. The liability to duty arises on creation of the succession—it becomes leviable if and when the property falls in possession. As to liability on land charged, see Law of Property Act, 1925, ss. 16 and 17, and Land Charges Act, 1925, s. 10, Class D (1).

The Act of 1881, by s. 41, abolished the duty of 1 per cent. payable by lineal ancestors or descendants, in cases where the duty on affidavit for probate had been paid; and the Finance Act, 1894, by s. 1 directed that this duty should not be levied in respect of property chargeable with estate duty (see that title).

The Act of 1888 imposed an additional duty of 10*s.* per cent. where the successor is the lineal issue or ancestor of the predecessor, and of 1*l.* 10*s.* per cent. in other cases; merged in estate duty by the Finance Act, 1894.

The Act of 1889 (s. 12) exempts purchasers and mortgagees from liability to succession duties, after the expiration of six years from certain notices to the Commissioners of Inland Revenue, and imposed an additional 1 per cent. duty on estates exceeding 10,000*l.* in value; also merged in estate duty by the Finance Act, 1894.

By the Finance (1909–10) Act, 1910, succession duty, in the case of successions arising as mentioned in s. 58 (4) of the Act,

is payable at the amended rates mentioned in that section, and, subject to the provisions of sub-s. 2 thereof, is payable on the death of a tenant for life, notwithstanding that the successors are husband or wife or lineal descendants and that estate duty is payable.

The Acts apply to both personal and real property, but one of the principal changes effected by the Act of 1853 was that real property became for the first time dutiable upon a succession after death, as no probate duty was then payable in respect of it. Consult *Hanson ; Rouse's Practical Man.*, 19th ed. ; and see *Chitty's Statutes*, tit. '*Death Duties.*' See DEATH DUTIES and LEGACY DUTY.

Successor, one that follows in the place of another. The correlative of predecessor in the succession.—Succession Duty Act, 1883. See PREDECESSOR.

Succurritur minori : facilis est lapsus juventutis. *Jenk. Cent.* 47.—(A minor is assisted : a mistake of youth is easy.) See INFANT.

Sucken, the whole lands astricted to a mill, the tenants of which are bound to grind there.—*Bell's Scots Law Dict.*

Sudbury Borough, disfranchised by 7 & 8 Vict. c. 53.

Sudder, the best ; the fore-court of a house ; the chief seat of government, contra-distinguished from *mofussil*, or interior of the country ; the presidency.—*Indian.*

Sudder Dewanny Adawlut, the chief civil court of justice held at the presidency.—*Ibid.*

Sudder Miaamut Adawlut, the chief criminal court of justice.—*Ibid.*

Sue, to prosecute by law, to claim a civil right by means of legal procedure.

Sue and Labour Clause. The name given to a clause in a policy of marine insurance which was introduced to make it clear that the assured and his agents or servants, e.g., master and crew, can take every step to recover insured property in peril without loss of the rights under the insurance and to be repaid any expenditure which may be incurred by the assured or his agents to avert the loss. The clause does not cover general average losses and contributions and salvage charges.—Marine Insurance Act, 1906, s. 78 (2), and see *Aitchison* v. *Lohre*, (1879) 4 A. C. 755. The clause is usually in the following form :—

'And in case of any loss or misfortune, it shall be lawful to the Assured, their Factors, Servants and Assigns, to sue, labour, and travel for, in, or about the Defence, Safeguard and Recovery of the said Goods and Merchandises and Ship, etc., or any part thereof, without prejudice to this insurance : To the charges whereof, we, the assurers, will contribute, each one according to the Rate and Quality of his sum herein insured.'

It is the duty of the assured so to act. See s. 78 (4), Marine Insurance Act, 1906. Consult *Arnould on Marine Insurance.*

Suez Canal. By agreement ratified by the Suez Canal Shares Act, 1876, 176,602 shares in the Suez Canal Company were acquired by the Crown by purchase from the Khedive of Egypt for about 4,000,000*l.* sterling.

Sufferance, Tenancy at. This is the least and lowest estate which can subsist in realty. It is in strictness not an estate, but a mere possession only. It arises when a person after his right to the occupation, under a lawful title, is at an end, continues (having no title at all) in possession of the land, without the agreement or disagreement of the person in whom the right of possession resides. Thus if A. is a tenant for years, and his term expires, or is a tenant at will, and his lessor dies, and he continues in possession without the disagreement of the person who is entitled to the same, in the one and the other of these cases he is said to have the possession by sufferance—that is, merely by permission or indulgence, without any right : the law esteeming it just and reasonable, and for the interest of the tenant, and also of the person entitled to the possession, to deem the occupation to be continued by the permission of the person who has the right, till it is proved that the tenant withholds the possession wrongfully, which the law will not presume. As the party came to the possession by right, the law will esteem that right to continue either in point of estate or by the permission of the owner of the land till it is proved that the possession is held in opposition to the will of that person.

An under-tenant, who is in possession at the determination of the original lease, and is permitted by the reversioner to hold over, is a quasi-tenant at sufferance.

Lord Coke tells us (in 2 *Inst.* 134) this diversity is to be observed, that where a man cometh to a particular estate *by the act of the party*, there, if he hold over, he is a tenant at sufferance ; but where he cometh to the particular estate *by act of law*, as a guardian, for instance, there, if he hold over, he is no tenant at sufferance, but an abator. The same doctrine is laid down in 1 *Inst.* 271.

This tenancy is created only by construction of law, and cannot originate in the agreement of the parties. For the agreement of the parties would pass either an estate at will, or for a term, or from year to year, according to their intention. There exists no privity between the tenant at sufferance (who has but a mere possession, without privity) and the person entitled to the possession; yet such occupancy is not adverse to the title of the person who possesses the right of entry, unless he choose to consider it so; but an adverse possession will take place on an entry and perception of the profits of the land by a person, without the reversioner's consent, after the death of a tenant at sufferance. This estate cannot be the subject of conveyance or transfer.

Since *laches* or neglect can never be imputed to the sovereign, a lessee of Crown lands, holding them over after the determination of his interest in them, is never considered a tenant by sufferance, but he is deemed a bailiff of his own wrong, and so accountable to the Crown, but after office found he becomes absolute intruder.

This estate is put an end to whenever the true owner actually enters upon the lands, by which he declares the continuance of the tenant tortious and wrongful, or demands possession, or brings his action of ejectment to recover possession, which he may do without any previous demand.—*Woodfall, L. and T.*

Sufferance Wharves are wharves on which goods may be landed before any duty is paid. They are appointed for the purpose by the Commissioners of the Customs. See s. 288 of the Customs Consolidation Act, 1876 (39 & 40 Vict. c. 36).

Sufferentia pacis, a grant or sufferance of peace or truce.—*Rot. Claus.*, 16 Edw. 3.

Suffragan. Bishops are styled *suffragan*, a word signifying deputy, in respect of their relation to the archbishop of their province. But formerly each archbishop and bishop had also his suffragan to assist him in conferring orders, and in other spiritual parts of his office within his diocese. These are called suffragan bishops, and resemble the *chorepiscopi*, or *bishops of the country*, in the early times of the Christian Church. How this inferior order of bishops may be appointed and consecrated for twenty-five towns therein specified (including Thetford, Grantham, and Gloucester) is regulated by 26 Hen. 8, c. 14, which enacts that every archbishop and bishop disposed to have a suffragan should name to the king 'two honest and discreet spiritual persons, being learned and of good conversation,' and that each of them should request the king to appoint one of them. Notwithstanding this statute, it was not until very recent years, when the suffragans were appointed for a few of the specified towns, usual to appoint them. The Suffragans Nomination Act, 1888, however, empowers the King by Order in Council to add towns to those specified in the Act of Henry VIII., and to change the sees of suffragans appointed before the passing of the Act, and the Suffragan Bishops Act, 1898, allows existing bishops to be made suffragans. Many bishops suffragan, as of Stepney, Kensington, etc., have been appointed. The Act of Henry VIII., by s. 7, allows a suffragan, 'for the better maintenance of his dignity,' to have two benefices with cure.

Suffragans should not be confounded with the *coadjutors* of a bishop, the latter being appointed, in case of a bishop's infirmity, to superintend his jurisdiction and temporalities, neither of which was within the interference of the former.—*Co. Litt.* 94 *a*, *Harg.* note (3).

Suffrage [fr. *suffragium*; etymology uncertain], vote; elective franchise; voice given in a controverted point; aid; assistance. See ELECTORAL FRANCHISE.

Suffragette. A woman who agitated for woman-suffrage in the later years preceding the European War. See now Representation of the People Acts, 1918 and 1928.

Sugar Subsidy. The British Sugar (Subsidy) Act, 1925 (15 Geo. 5, c. 12), provided for a subsidy on sugar and molasses manufactured in Great Britain in the 10 years, 1st October, 1924–34 (extended to 31st August, 1936, by amending Acts), from beet grown in Great Britain, and for excise duties on the products manufactured in Great Britain and Northern Ireland from beet grown there.

Suggestio falsi [Lat., a representation of untruth], one of the branches of fraud, sometimes '*suppressio veri, suggestio falsi.*' Consult *Addison on Torts.*

Suggestion, a surmise or representing of a thing; an entry of a fact on the record.

Suicide. (1) Self-slaughter; (2) a self-slaughterer. See FELO DE SE.

Sui juris [Lat.] (of his own right). A person who is neither a minor nor insane, nor subject to any other disability, is said to be *sui juris.*

Suit, a following. It is used in divers senses:—

(1) An action in the Supreme Court, or a proceeding by petition in the Divorce branch of that Court; a prosecution; a petition to a Court, etc. See Jud. Act, 1873, s. 100. By Jud. Act, 1925, s. 225, suit includes action.

(2) *Suit of Court*, an attendance which a tenant owes to his lord's court.

(3) *Suit Covenant*, where one has covenanted to do suit and service in his lord's court.

(4) *Suit Custom*, where service is owed time out of mind.

(5) *Suithold*, a tenure in consideration of certain services to the superior lord.

(6) The following one in chase, as fresh suit.—*Cowel.*

Suiter, or **Suitor,** one that sues; a petitioner; a suppliant; a wooer.

Suitors' Fee Fund, a fund in the Court of Chancery into which the fees of suitors were paid, and out of which were defrayed the salaries of various officers of that Court.

Suit-silver, or **Suter-silver,** a small rent or sum of money paid in some manors to excuse the freeholders' appearance at the courts of their lord.

Sulh Ælmyssan, plough arms.—*Anc. Inst. Eng.*

Sullery, a plough-land.—*Co. Litt.* 5 *a.*

Sumage, toll for carriage on horseback.—*Cowel.*

Summary, an abridgment, brief compendium; summary application, one made to a court or judge without the formality of a full proceeding. See PLENARY.

Summary Judgment, under R. S. C Ord. III., Rule 6, and Order XIV., extended to recovery of land for non-payment of rent by R. S. C. of January, 1902. This procedure has been very largely followed in recent years. See LEAVE TO DEFEND.

Summary Jurisdiction. The jurisdiction of a court to give a judgment or make an order itself forthwith, e.g., to commit to prison for contempt, to punish malpractice in a solicitor, or, in the case of justices of the peace, a jurisdiction to convict an offender themselves instead of committing him for trial by a jury. The mode of exercising this latter jurisdiction, which is given in *particular* instances by very numerous *particular* statutes, is *generally* regulated by the Summary Jurisdiction Acts, 1848 and 1879. Several amendments have been made in the law by the Criminal Justice Administration Act, 1914, and Criminal Justice Act, 1925; see also HUSBAND AND WIFE. See *Chitty's Statutes*, tit. '*Justices*' and *Stone's Justices Manual*; and also SESSIONS OF THE PEACE.

Summary Jurisdiction, Court of, 'means' in an Act of Parliament 'any justice or justices of the peace, or other magistrate by whatever name called, to whom jurisdiction is given by, or who is authorized to act under, the Summary Jurisdiction Acts' (Interpretation Act, 1889, s. 13, sub-s. 11); but does not include justices at a licensing meeting: see *Boulter* v. *Kent Justices*, 1897, A. C. 556, reversing and overruling decisions of the Court of Appeal.

Summer-hus Silver, a payment to the lords of the wood on the Wealds of Kent, who used to visit those places in summer, when their under-tenants were bound to prepare little summer-houses for their reception, or else pay a composition in money.—*Custumale de Newington jurta Sittingburn, M.S.*

Summer Time. See TIME.

Summing up. The recapitulation of evidence or parts of it by a judge to a jury, with directions as to what form of verdict they are to give upon it.

Summoneas, a writ-judicial of great diversity, according to the divers cases wherein it was used. Obsolete.

Summoners, petty officers, who cite and warn persons to appear in any court.—*Fleta*, l. 9.

Summonitiones aut citationes nullæ liceant fieri intra palatium regis. 3 *Inst.* 141.—(Let no summonses or citations be served within the king's palace). See *Att.-Gen.* v. *Dakin*, (1869–70) L. R. 4 H. L. 338; *Combe* v. *De la Bere*, (1881–82) 22 Ch. D. 316.

Summonitores Scaccarii, officers who assisted in collecting the revenues by citing the defaulters therein into the Court of Exchequer.

Summons [fr. the writ called *summoneas*—*Pegge's Anecd. of the Eng. Lang.*, 2nd ed. 173], a call of authority, admonition to appear in court, a citation.

1. *To commence Action in High Court.*—By R. S. C. Ord. II., r. 1 (see *Annual Practice*):—

> Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

See also SUMMARY JUDGMENT.

2. *To Judges' or Masters' Chambers.*—The means by which one party brings the other before a judge (or a master) to settle matters of detail in the procedure of a suit; as, for directions; to modify pleadings when

inconvenient, to require security for costs, to change the venue, etc. There is an appeal from the decision of a master to the judge, and from the judge's decision to the Court of Appeal.

3. *To Court of Summary Jurisdiction.*—See s. 1 of Summary Jurisdiction Act, 1848 (*Chitty's Statutes*, tit. '*Justices*'), for summons to answer charge which justices may themselves deal with, and s. 9 of Indictable Offences Act, 1848, for summons on charge which justices cannot deal with; and see Criminal Justice Act, 1925 (15 & 16 Geo. 5, c. 86), ss. 31 and 32.

4. *To a County Court.*—After the issue of a plaint, a summons is issued requiring the defendant to attend on a given date to answer the plaintiff's claim. See County Court Rules, 1936, Ord. VIII., and DEFAULT SUMMONS. The attendance of witnesses is enforced by summons (Ord. XX., r. 8).

Summum jus, summa injuria. Summa lex, summa crux. *Hob.* 125.—(Extreme law is extreme injury. Strict law is strict punishment).

Sumner, or **Sumpnour,** one who cites or summonses.

Sumptuary Laws, those in restraint of luxury, excess in apparel, etc., as the Statute of Nottingham (10 Edw. 3, stat. 3), *de cibariis utendis*, repealed by 19 & 20 Vict. c. 64. They were mostly repealed by 1 Jac. 1, c. 25.—2 *Hall. Mid. Ages*, c. 9, pt. 2, p. 493.

Sunday [fr. *sunnan daeg*, Sax., the day of the sun], the first day of the week, the Lord's Day, termed in the Sunday Observance Act, 1677 (29 Car. 2, c. 7, *infra*), 'the Lord's Day, commonly called Sunday.' It is a *dies non juridicus*, but an arrest for crime can be effected on this day; and bail can arrest their principal, and a sergeant-at-arms can apprehend; but no other law proceedings can be taken. By the Sunday Observance Act, 1677, it is enacted that:—

No tradesmen, artificers, workmen, labourers, or other person whatsoever shall do or exercise any worldly labour, business, or work of their ordinary callings [barbers are not within the enactment: *Palmer* v. *Snow*, 1900, 1 Q. B. 725] upon the Lord's Day, or any part thereof (works of necessity and charity only excepted).

The Hairdressers and Barbers Shops (Sunday Closing) Act, 1930 (20 & 21 Geo. 5, c. 35), prohibits opening on Sundays (Jewish hairdressers may open on Sunday but must close on Saturday).

The Shops (Sunday Trading Restrictions) Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 53), restricts the opening of shops and trading on Sunday, with certain exceptions, amongst which are: sale of intoxicating liquors, meals or refreshments, flowers, fruit and vegetables, milk and cream, medicines, tobacco, newspapers, etc. (see the First Schedule). There are special provisions for holiday resorts and for persons observing the Jewish Sabbath; such Jewish shops to be closed on Saturday. Also provisions respecting shop assistants serving in those shops which are exempted from closing on Sunday. See title SHOPS.

By the Bills of Exchange Act, 1882 (s. 13 (2)), a bill of exchange, and therefore both a cheque (s. 73), and a promissory note (s. 89), may be dated on Sunday; but Sunday is a 'non-business' day (s. 92 (*a*)). By the Sunday Observation Prosecution Act, 1871 (34 & 35 Vict. c. 87)—a temporary Act, continued from time to time by successive 'Expiring Laws Continuance Acts'—prosecutions for offences under the Act of Charles II. may only be commenced with the consent in writing of the chief officer of police, or of two justices of the peace, or a stipendiary magistrate; the consent must be given before information laid (*Thorpe* v. *Priestnall*, 1897, 1 Q. B. 159). Rent is payable on a Sunday (*Child* v. *Edwards*, 1909, 2 K. B. 753, where it was held that at Common Law Sunday is not a *dies non*).

Sunday entertainments open to the public for money are forbidden under heavy penalties by the Sunday Observance Act, 1871 (as to which see *Warner* v. *Brighton Aquarium Co.*, (1875) L. R. 10 Ex. 291); amended by the Remission of Penalties Act, 1875, which allows the Crown to remit the penalties under the Act of 1871 only. *Tarling* v. *Rome*, 52 T. L. R. 220 (All-in wrestling and advertisement).

As to Sunday cinemas, see *R.* v. *L. C. C., Ex parte Entertainments Protection Assoc.*, 1931, 2 K. B. 215, after which the Sunday Entertainments Act, 1932 (22 & 23 Geo. 5, c. 51), was passed, which allows Sunday opening upon certain conditions having been complied with.

The Sunday Observance Acts, 1625, 1677, 1780, 1833, as amended, *inter alia* prohibit extra-parochial sports and exercise of a carrier's trade on Sunday.

The sale of liquors on Sundays is much restricted: see Licensing (Consolidation) Act, 1910, s. 3, and Sched. VI. As to a 'six-day licence,' which requires entire Sunday closing, see ss. 58 and 60.

The Factory and Workshop Act, 1901, by ss. 34, 47 and 48, prohibits Sunday employ-

ment of women, young persons and children, with exemption for Jews.

By R. S. C. 1883, Ord. LXIV., where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday are not to be reckoned in the computation of such limited time (r. 2). See also *Milch* v. *Frankau*, 1909, 2 K. B. 100.

Sunday Schools are exempted from poor and other rates by 32 & 33 Vict. c. 40, s. 1.

Sunnud, a prop or support, a patent, charter or written authority, for holding either land or office.—*Indian.*

Sunrise. In *Tutton* v. *Darke*, (1860) 5 H. & N. 647, the question will be found raised whether the time of sunrise is to be reckoned from the first appearance of the beams of the sun above the horizon, or from the time when the entire sun has emerged.

Super altum mare [Lat.] (upon the high sea).

Superannuation Acts, 1834–1935, for pensioning the civil servants of the Crown or public authorities.

The principal Act is the Superannuation Act, 1859 (4 & 5 Will. 4, c. 42), which as amended by the Superannuation Acts, 1909 (9 Edw. 7, c. 10), and 1935 (25 & 26 Geo. 5, c. 44), fixes the scale of pension at $\frac{1}{60}$ths and $\frac{1}{80}$ths for entrants after 30th September, 1909, of the average annual salary of the three years before retirement, and see (in the specified cases) s. 4 of the 1935 Act, on retirement after ten years' service, and gives an additional $\frac{1}{80}$th or $\frac{1}{120}$th for every additional year of service up to the fortieth year.

As to local authorities, see Local Government and other Officers Superannuation Act, 1922 (12 & 13 Geo. 5, c. 59), an adoptive Act; schools (elementary), School Teachers (Superannuation) Acts, 1918–1924; others, Teachers (Superannuation) Acts, 1918–1935. See *Chitty's Statutes*, tit. '*Pensions*,' and PENSIONS.

Supercargo, an officer in a ship whose business is to manage the trade. A person employed by commercial owners to take charge of the cargoes exported, to sell them abroad to the best advantage, and to purchase commodities for importation. He goes out and returns home with the ship, thus differing from factors, who have a fixed residence.

Superficiarius, a builder upon another's land under a contract.—*Civ. Law.*

Superficies, the alienation by the owner of the surface of the soil of all rights necessary for building on the surface, a yearly rent being generally reserved; also a building or erection.—*Sand. Just.*

Superfluous Lands, lands acquired by a public company under the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), but not required for the purposes of the undertaking of the company. Such lands must, by ss. 127 and 128 of the Act, be sold within ten years after the time limited for the completion of the undertaking, the person entitled to the lands from which they were originally severed, or, if he refuse, the adjoining owners, having a right of pre-emption; and if the lands are not so sold, they vest in the adjoining owners.

The Town and Country Planning Act, 1932, 3rd Sched., excepts the operation of ss. 127 to 132 of the L. C. C. Act, 1845, from purchases under the Act of 1932, and see Housing Act, 1936. The law of this subject has given rise to much litigation, the leading case being *Great Western Railway Company* v. *May*, (1874) L. R. 7 H. L. 283. See also *Dunhill* v. *N. E. Ry Co.*, 1896, 1 Ch. 121; and *A.-G.* v. *Sunderland Corporation*, 1930, 1 Ch. 168.

Super-institution, the institution of one in an office to which another has been previously instituted; as where A. is admitted and instituted to a benefice upon one title, and B. is admitted and instituted on the title or presentment of another.—2 *Cro.* 463.

A church being full by institution, if a second institution is granted to the same church this is a super-institution; concerning which two things have been resolved:—

(1) That the super-institution, as such, is properly triable in the spiritual court; (2) that it is not triable there, in case induction has been given upon the first institution.

The advantage of a super-institution is, that it enables the party who obtains it to try his title by ejectment, without putting him to his *quare impedit;* but many inconveniences thence following (e.g., the uncertainty to whom tithes shall be paid, and the like), this method has been discouraged. —*Mirehouse on Advowsons*, 189.

Superintendent Registrar, an officer who superintends the registers of births, deaths, and marriages. There was one in every poor law union in England and Wales. The office was filled as of right by the clerk to the guardians of the union, if he was duly qualified and accepted it. He is now a

salaried officer in every registration district, with a registrar in every approved sub-district appointed by the local authority (replacing the guardians); the authorities are county and county boroughs, and, in London, common council, and metropolitan borough councils (Loc. Gov. Act, 1929 (19 & 20 Geo. 5, c. 17)). They were under the supervision of the Registrar-General and (now) of the Ministry of Health. See Births and Deaths Registration Acts, 1836 to 1929.

Superior, the grantor of a feudal right to be held of himself. See *Bell's Scots Law Dict.*

Superior Courts, the Courts of Chancery, King's (or Queen's) Bench, Common Pleas, and Exchequer, at Westminster, were so called. See these Courts treated of under the proper titles; and see titles HIGH COURT OF JUSTICE; SUPREME COURT OF JUDICATURE.

Super-jurare, a term anciently used when a criminal endeavoured to excuse himself by his own oath, or the oath of one or two witnesses, and the crime objected against him was so plain and notorious that he was convicted on the oaths of many more witnesses; this was called *super-jurare.*—*Jac. Law. Dict.*

Superoneratione pasturæ, a judicial writ that lay against him who was impleaded in the county court for the surcharge of a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the superior courts.—*Ibid.* Obsolete.

Super prærogativâ regis, a writ which formerly lay against the king's tenant's widow for marrying without the royal licence.—*Fitz. N. B.* 174.

Supersedeas, a writ that lay in a great many cases; and signified in general a command, on good cause shown, to stay some ordinary proceedings which ought otherwise to proceed.—*Fitz. N. B.* 236. As to traverse and supersedeas of an inquisition in lunacy, see Lunacy Act, 1890, ss. 101–107; and Patients Estates Rules, 1934, S. R. & O., 1934, No. 269/L2, r. 16.; *Mills and Poyser, Lunacy Practice.*

Super statuto (1 Edw. 3, c. 12), a writ that lay against the king's tenant holding in chief, who aliened the king's land without his licence.

Super statuto de articulis cleri, a writ which lay against a sheriff or other officer who distrained in the king's highway, or on lands anciently belonging to the church.

Super statuto facto pour seneschal et marshal de roy, etc., a writ which lay against a steward or marshal for holding plea in his court, or for trespass or contracts not made or arising within the king's household.

Super statuto versus servantes et laboratores, a writ which lay against him who kept any servants who had left the service of another contrary to law.

Superstitious Uses. See CHARITIES.

Super-tax. This term was first employed in the Income Tax Act, 1918 (8 & 9 Geo. 5, c. 40), s. 4, to denote an additional duty of income tax which was then levied upon incomes of over 2,500*l.*, altered to 2,000*l.* by 10 & 11 Geo. 5, c. 18, per annum. The duty was at the rate prescribed by Parliament in any year.

By the Finance Act, 1927 (17 & 18 Geo. 5, c. 10), s. 38, super tax has ceased to become chargeable; instead, income tax is charged at a standard rate and persons whose income exceeds a stated amount pay at a higher rate in respect of the excess. The higher tax on the excess is treated as a deferred instalment of income tax and is called SUR-TAX. See ss. 38 and 40 (*ibid.*).

Superviser, a surveyor or overseer.

Super visum corporis [Lat.] (upon view of the body). A coroner's inquest must generally be so held; but the Coroners Act, 1887, allows a view to be dispensed with on a second inquest.

Supplemental Answer, one which was filed in Chancery for the purpose of correcting, adding to, and explaining an answer already filed.—*Sm. Ch. Pr.* 334.

Supplemental Bill, an addition to an original bill in equity, in order to supply some defect in its frame and structure. See BILL IN CHANCERY and STATEMENT OF CLAIM.

Supplemental Bill, Bill in the Nature of a. This bill and the above-named bill were usually confounded together; but a prominent distinction between them seems to have been that a supplemental bill was properly applicable to those cases only where the same parties and the same interest remained before the court; whereas an original bill, in the nature of a supplemental bill, was properly applicable when new parties with new interests, arising from events which have happened since the institution of the suit, were brought before the court.—2 *Dan. Chan. Pr.*, 5th ed. 1396–1401.

Supplemental Claim, a further claim which was filed when further relief was sought after the bringing of a claim.—*Sm. Ch. Pr.* 655.

Suppletory Oath, the oath of a litigant party in the spiritual and civil law courts.

Suppliant, the actor in, or party preferring, a petition of right. See PETITION DE DROIT.

Supplicavit, a writ which issued out of Chancery for taking surety of the peace, upon articles filed on oath, when one was in danger of being hurt in his body by another; it was addressed to the justices of the peace and sheriff of the county, and was grounded upon 1 Edw. 3, st. 2, c. 16, which ordained that certain persons should be appointed by the chancellor to take care of the peace, etc.—*Fitz. N. B.* 80.

This writ has been of late years seldom used, for when application has been made to the superior courts, they have usually taken the recognizances there, under the 21 Jac. 1, c. 8.

Supplicium, any corporal punishment; it included death.—*Civ. Law.*

Supply, Commissioners of, persons appointed to levy the land tax in Scotland, and to cause a valuation roll to be annually made up, and to perform other duties in their respective counties. See 19 & 20 Vict. c. 93; and *Bell's Scots Law Dict.*

Supply, Committee of. All bills which relate to the public income or expenditure must originate with the House of Commons, and all bills authorizing expenditure of the public money are based upon resolutions moved in a Committee of Supply, which is always a committee of the whole House. See MONEY-BILL.

Support, to support a rule or order is to argue in answer to the arguments of the party who has shown cause against a rule or order nisi.

Support, the help which every landowner receives at the boundary of his land from his neighbour's land, which lies close to his and prevents its falling in and crumbling away, as it would do if his neighbour dug away the surface of his land to the very edge. —*Goddard on Easements.* The right of an owner to the support of surface in its natural position is a presumption of Common Law and not part of a grant of mines or power to work the same, and a power to let down the surface must be expressly granted in a lease (*Warwickshire Coal Company* v. *Coventry Corporation,* 1934, Ch. 488). As to the right of support for buildings, see, further, the leading case of *Dalton* v. *Angus,* (1881) 6 App. Cas. 740, in which it was held by the House of Lords that there is no natural right to lateral support for buildings. This is an easement which may be acquired by twenty years' uninterrupted, peaceable, and open enjoyment of that building. In the case of the removal of support to the surface by mining, the cause of action appears to be the damage as and when it occurs, and the Statute of Limitations is no bar however long since the cause of damage may have occurred, but depreciation in selling value caused by apprehension of future mischief gives no cause of action and the risk of future subsidence must not be taken into account (*West Leigh Colliery* v. *Tunnicliffe & Hampson,* 1908, A. C. 27).

The right to support does not extend to support by underground percolating waters; abstracting these so as to let down the surface is *damnum absque injuria:* see *Acton* v. *Burnell,* (1843) 12 M. & W. 324.

Suppressio veri: SUGGESTIO FALSI [Lat.] (a suppression of the truth), one of the classes of fraud.

Supra, above. This word occurring by itself in a book refers the reader to a previous part of the book, like *ante.*

Supra Protest, after 'protest' (see PROTEST). There may be either acceptance or payment of a bill of exchange by a person other than the drawee or acceptor or other person liable, after it has been protested for non-acceptance or non-payment. The full term is 'acceptance (*or* payment) supra protest for honour,' i.e., for the honour or in relief of the person liable. The rights and liabilities of the parties are regulated by the Bills of Exchange Act, 1882, ss. 65-68; and see *Byles on Bills,* chs. 20, 21.

Suprema potestas seipsam dissolvere potest. *Bacon.*—(Supreme power can dissolve itself.)

Supremacy, sovereign dominion, authority, and pre-eminence.

Supremacy, Act of (1 Eliz. c. 1), by which supreme ecclesiastical jurisdiction was 'for ever' united to the imperial Crown. See CROWN.

Supremacy, Oath of, the abolished oath prescribed for nearly 200 years, together with the oath of allegiance, was to be taken by various high officers and persons by 1 W. & M. c. 8, and also by the Bill of Rights, 1 W. & M. sess. 2, c. 2, and is to this effect:—

I, A. B., do swear that I do from my heart abhor, detest, and abjure as impious and heretical this damnable doctrine and position, that Princes excommunicated or deprived by the Pope, or any authority of the see of Rome, may be deposed or murdered by their subjects or any other whatsoever. And I do declare that no foreign prince, person, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence

or authority, ecclesiastical or spiritual, within this realm. So help me God.

This oath had to be taken by all clergy on their ordination until the passing of the Clerical Subscription Act, 1865, when a single oath, as prescribed by 21 & 22 Vict. c. 48, was substituted for the oaths of allegiance and supremacy, to the effect *inter alia* to maintain the Protestant succession to the Crown and declaring that 'no foreign prince, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm.'

The oath of supremacy was abolished generally by the Promissory Oaths Act, 1868, s. 9, and 21 & 22 Vict. c. 48 was expressly repealed by the revising Promissory Oaths Act, 1871. See, further, OATH.

Supreme Court of Judicature. By Judicature Act, 1925, s. 1, there shall be a Supreme Court of Judicature in England consisting of His Majesty's High Court of Justice (referred to as the High Court), and His Majesty's Court of Appeal (referred to as the Court of Appeal).

Formerly, by the Supreme Court of Judicature Act, 1873, ss. 3 and 4 (amended by Jud. Act, 1875, s. 9), it was enacted that from the commencement of that Act (November 1, 1875: see Judicature Act, 1875, s. 2) the Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, and the Court for Divorce and Matrimonial Causes, should be united and consolidated together, and should constitute one Supreme Court of Judicature in England; the said Supreme Court to consist of two permanent Divisions, being 'Her [now His] Majesty's High Court of Justice' and 'Her [now His] Majesty's Court of Appeal.'

See, further, HIGH COURT OF JUSTICE and APPEAL, COURT OF.

The Supreme Court of Judicature Acts, 1873 and 1875 (36 & 37 Vict. c. 66), and (38 & 39 Vict. c. 77), are commonly referred to as 'The Judicature Acts,' and are herein cited as 'Jud. Act, 1873,' and 'Jud. Act, 1875.' The Consolidating Judicature Act, 1925 (15 & 16 Geo. 5, c. 49), has repealed both these Acts (except ss. 25 (2), 46, 64, 66 of the Judicature Act, 1873), re-enacting them with amendments.

The following were the more important provisions of those Acts, in addition to those constituting the High Court and Court of Appeal:—The High Court was divided into five divisions, representing the courts whose jurisdiction was transferred thereto (see DIVISIONS); the Court of Appeal received jurisdiction to hear, with a few specified exceptions, appeals from any judgment or order of the High Court; power was given to each division to administer law and equity concurrently, with preference for the rules of equity, where they should be found to be in conflict with the rules of law; district registries were established in various parts of the country for the transaction of litigious business up to actual trial; counter-claims, and the power of a defendant to bring in 'third parties,' were introduced; new rules of pleading, intending to combine the brevity of the Common Law system with the specific character of equity drafting, were substituted for those previously existing; special power was given under 'Order XIV.' to a plaintiff to sign judgment for a liquidated demand unless the defendant could obtain leave to defend; four 'official referees,' with power to report to the Court upon questions of fact, were appointed; and the Chancery practice of leaving costs (which at Common Law 'followed the event' of an action) largely in the discretion of the judge was adopted for all the branches of the High Court.

The Act of 1875 contained a very lengthy schedule of Rules of Practice, taken, with many alterations and additions, from the Common Law and Equity Procedure Acts, the spirit of the two Acts being to adopt for the one new practice what was best in the two old ones. These rules, which had been much amended from time to time, were consolidated, with further amendments in 1883, by the 'Rules of the Supreme Court, 1883,' abbreviated 'R. S. C. 1883.' See RULES.

The Judicature Act of 1925, in the preamble states is an Act to consolidate the Judicature Acts, 1873 to 1910, and other enactments relating to the Supreme Court of Judicature in England and the administration of justice therein. See the *Yearly Practice* (or the *Red Book*, where there is a comparative table, showing how the various enactments repealed have been dealt with).

Surcharge, an overcharge of what is just and right; exceeding one's powers or privileges; a declaration by an auditor that a person is personally liable to refund a particular part of public money illegally expended by him (see, e.g., the Public

Health Act, 1875, s. 247 (7)); a second or further mortgage. See AUDIT.

Surcharge and Falsify, a mode of taking accounts in Chancery, where the court treats the account as a stated account, but gives liberty to challenge any particular items. 'I am not now upon a question arising on an open general account, but barely upon a liberty given to the plaintiff to surcharge and falsify. The *onus probandi* is always on the party having that liberty; for the court takes it as a stated account, and establishes it; but if any of the parties can shew an omission, for which credit ought to be [given], that is a surcharge; or if anything is inserted, that is a wrong charge, he is at liberty to show it, and that is falsification': *Pit* v. *Cholmondeley*, (1754) 2 Ves. Sen. p. 565, per Lord Hardwicke, L.C. See R. S. C. Ord. XXXIII., r. 5.

Sur cui in vitâ. See CUI IN VITÂ.

Sur Disclaimer, Writ of Right of, abolished by 3 & 4 Wm. 4, c. 27.

Surety, hostage, bondsman; one that gives security for another; one that is bound for another. A surety who discharges the liability of the principal debtor is entitled to an assignment of all the securities held by the creditor, and is entitled to contribution from his co-sureties (see *Steel* v. *Dixon*, (1881) 17 C. D. 825).

In the case of fidelity guarantees the security is discharged if a material alteration takes place in the risk, e.g., change of duties (*Pybus* v. *Gibb*, (1856) 6 E. & B. 902), or upon non-disclosure by the person to whom the guarantee is given of a matter affecting the contract, such as dishonesty of the employee (see *Phillips* v. *Foxall*, (1872) L. R. 7 Q. B. 666), and see Partnership Act, 1890, s. 18; also MERCANTILE LAW AMENDMENT ACT, 1856; GUARANTY.

Surgeon [corrupted fr. *chirurgeon*], is properly one who cures diseases or injuries by manual operation. See MEDICAL PRACTITIONER and PHYSICIAN.

The Royal College of Surgeons in England was incorporated by charter of the 14th September in the seventh year of Queen Victoria. It had, however, been previously incorporated.

As to the power of the college to make bye-laws, see 38 & 39 Vict. c. 43.

Surname [fr. *surnom*, Fr.] It is a great dispute whether we should write *surname* or *sirname*; on the one hand, there are a thousand instances in court rolls and other ancient muniments where the description of the person is written *over* the Christian name, this only being inserted in the line; and the French always write *surnom*. There is, however, no impropriety to say *sirname*, since these additions are so apparently taken from our *sires*, [or fathers], the family name; the name over and above the Christian name.—*Encyc. Londin.* The part of a name which is not given in baptism; the last name; the name common to all members of a family. Surnames were originally acquired by accident and retained by custom. They may be changed at will, provided notice be given by advertisement or otherwise so as to prevent fraud or mistake, or by royal licence from the Heralds' Office. See NAME.

Surplice Fees, fees payable on ministerial offices of the Church, such as baptisms, funerals (see MORTUARY), marriages, etc.

Surplus, Surplusage, a supernumerary part, an overplus, what remains when everything is satisfied.

Surprise. When the evidence produced by the one side is such as from the nature of the circumstances could not have been reasonably expected by the other side, and there is reason to believe that this evidence, if foreseen, might have been rebutted, contradicted, or explained, the Court grants a new trial, on such conditions as to costs as seems fit. See also NONSUIT and TRIAL.

Surrebutter. This was the last pleading bearing a name at Common Law; a plaintiff's answer to a defendant's rebutter. See now PLEADING and REJOINDER.

Surrejoinder, an answer to a rejoinder; a pleading by the defendant. See now PLEADING and REJOINDER.

Surrender [fr. *sursum redditio*], an assurance restoring or yielding up an estate, the operative verbs being 'surrender and yield up.' The term is usually applied to the giving up of a lease before the expiration of it: it generally means the giving up of a lesser estate to a greater; a release is the giving up of a greater to a less interest, enlarging the latter.

The effect of a surrender is to pass and merge the estate of the surrenderor to, and into, that of the surrenderee.

By the combined operation of s. 3 of the Statute of Frauds, and the Real Property Act, 1845, s. 3, now replaced by ss. 51 to 55 of the Law of Property Act, 1925, every express surrender must be in writing, and every express surrender of a more than three years' term must be by deed. As to surrenders of leases by mortgagors or mortgagees, in possession, see s. 100, L. P. Act,

1925. But there may be an implied surrender or, as it is called in the Statute of Frauds, a surrender 'by act and operation of law'—that is, as defined by *Phene* v. *Popplewell*, (1862) 12 C. B., N. S. 334, by anything which amounts to an agreement by the tenant to abandon and by the landlord to resume possession of the demised premises, e.g., by the delivery and acceptance of keys, by the entering of the parties into a new contract of tenancy, or by the landlord accepting a new tenant. See *Woodfall's Landlord and Tenant.*

Surrender of Copyholds. The following note affects the title to copyholds, as it existed before their abolition by the Law of Property Act, 1922. Copyholds were not, as a general rule, alienable by any of the Common Law assurances. A surrender (which is *vocabulum artis*) is the yielding up of a legal tenancy in a copyhold estate, either by express words or operation of law, by the tenant after admittance, or by his lawful appointed attorney, either in or out of court, to the lord of the manor in person, his chief steward, or under-steward; or, by special custom, to the bailiff, beadle, or reeve, or to certain tenants of the manor, either as a relinquishment or resignation of such estate, or as the medium of conveying or transferring it to another. Surrenders were made in various forms—in some manors by a rod, in others by a straw, in others by a glove, or some other symbol, which is delivered by the surrenderor to the steward or other person taking the surrender in the name of seisin. When a copyholder surrendered for a valuable consideration, the land was bound both at law and in equity, and he was prevented from surrendering to any other person; but the whole legal estate remained in him, and he had a right to retain the possession, subject to his accounting for the mesne profits should the surrenderee be afterwards admitted; and if the surrenderor died, the estate devolved upon his customary heir, but he was a trustee for the surrenderee. A surrender is not affected by the death of the parties, and the transfer may notwithstanding be completed.

Surrenders of copyholds were governed by the same rules as Common Law conveyances.

An equitable interest in copyholds was not the subject of surrender, except in the instance of a surrender for the purpose of barring an entail, but it was assignable. The assignee of an equitable estate, on taking a surrender from the person in whom the legal copyhold interest was vested, might compel an admission upon the payment of a single fine.—Consult *Scriven* or *Elton on Copyholds.*

Surrender of Fugitives. Penal laws of foreign countries are strictly local, and affect nothing more than they can reach and can be seized by virtue of their authority. A fugitive who passes hither comes with all his transitory rights. He may recover money held for his use, and stock, obligations, and the like; and cannot be affected in this country by proceedings against him in that which he has left, beyond the limits of which such proceedings do not extend. 'The *lex loci* must needs govern all criminal jurisdiction, from the nature of the thing and the purpose of the jurisdiction.'—*Warrender* v. *Warrender*, (1834) 9 Bligh, at p. 119. See EXTRADITION.

Surrenderee, Surrenderor, the persons to or by whom surrender is made.

Surreptitious, fraudulent, stealthy. For the difference between surreptitious and obreptitious fraud, see *Sanchez de Matrimonio.*

Surrise, to forbear or neglect.—*Bract.* l. 5.

Surrogate, one that is substituted or appointed in the room of another, as by a bishop, chancellor, judge, etc., especially an officer appointed to dispense licences to marry without banns.—2 *Steph. Com.*

By the Legal Practitioners Act, 1877 (repealed by, and see now Part IV. of the Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37)), any surrogate, not being 'a qualified practitioner,' i.e., a barrister, solicitor, etc., who for a fee prepares papers on which to found a grant of probate, etc., is liable to a penalty.

Sursum redditio [Lat.], a surrender.

Survey (Ordnance). See ORDNANCE SURVEY.

Surveyor, one who has the overseeing or care of another person's land or works. See HIGHWAYS. There are local authority surveyors, see, e.g., Loc. Gov. Act, 1933, s. 104.

A Court of Surveyors was erected by 33 Hen. 8, c. 39, for the benefit of the Crown. The Court had long fallen into disuse, when the sections of that Act (of which many sections relating to Crown debts are still upon the Statute Book) relating to the Court were repealed by the Statute Law Revision Act, 1863.

Survivorship, the living or one of two or more persons after the death of the other or others. See COMMORIENTES; JOINT TENANCY. In questions of construction of wills the difficulty generally arises in regard to the persons or class of or from whom the

survivor is to be ascertained and whether the word has a natural or stipital meaning (see, e.g., *Gilmour* v. *MacPhillamy*, 1930, A. C. 712).

Suspend, to forbid an attorney or solicitor or ecclesiastical person from practising for an interval of time.

Suspense, Suspension, a temporary stop or hanging up as it were of a right for a time; also a censure on ecclesiastical persons, during which they are forbidden to exercise their offices or take the profits of their benefices.

Suspension, Pleas in, were those which showed some matter of temporary incapacity to proceed with the action or suit.—*Steph. on Plead.*, 7th ed., 45. See ABATEMENT.

Suspensory Act, 1914 (4 & 5 Geo. 5, c. 88), an Act which suspended the operation of the Government of Ireland Act, 1914, and the Welsh Church Act, 1914, in consequence of the war with Germany.

Sus. per coll. When indictments were in Latin, this abbreviation for *suspendatur per collum*—'let him be hanged by the neck'—was the usual indorsement by the clerk of arraigns in the case of a capital sentence. At the present day indorsements are in English, and no special form of words is used.

Suthdure, the south door of a church, where canonical purgation was performed, and plaints, etc., were heard and determined.

Swans. A swan, it is said, is a royal fowl, and all swans which have no other owner belong to the King by his prerogative. See *Case of Swans*, 7 *Rep.* 16 *a*. The Game Act, 1831, s. 24, imposes a penalty not exceeding 5*s*. on any person who takes a swan's egg on land where he has not the right of killing game. See Protection of Birds Act, 1933 (23 & 24 Geo. 5, c. 52), and ANIMALS.

Swarf-money, warth-money or guard-money, paid in lieu of the service of castle-ward.

Swear, to put on oath, to administer an oath to. See OATH.

Swearing, the act of declaring upon oath, as to which, see OATH.

Profane swearing and cursing is an offence against God and religion, punishable summarily by fine under the Profane Oaths Act, 1745 (19 Geo. 2, c. 21), of 1*s*. for every day-labourer, soldier, or seaman; 2*s*. for every other person under the degree of a gentleman; and 5*s*. for every person of or above the degree of a gentleman. In *Reg.* v. *Scott*, (1863) 33 L. J. M. C. 15, a cumulative penalty of 2*l*., being for twenty oaths in one day, was held good.

There is also a penalty of 40*s*. for profane language *in the streets*, by the Town Police Clauses Act, 1847, s. 28, and the Metropolitan Police Act, s. 12.

Swearing the Peace, showing to a judge that one has just cause to be afraid of another in consequence of his menaces, in order to get him bound to keep the peace.

Sweepstakes. The Betting and Lotteries Act, 1934 (24 & 25 Geo. 5, c. 58), subject to the provisions of the Act, all lotteries are illegal, but certain lotteries are exempted (s. 23) small lotteries incidental to certain entertainments; (s. 24) private lotteries; (s. 25) lotteries of Art Unions.

A sweepstake as usually run is a lottery (see *Allport* v. *Nutt*, (1845) 14 L. J. C. P. 272; *Hardwick* v. *Lanes*, 1904, 1 K. B. 204); as to the scheme promoted by the Duke of Atholl, see 97 J. P. 778. See *Lush on Betting and Lotteries*, and see LOTTERY.

Sweinmote, Court of, one of the forest-courts, which was anciently held before the verderers as judges, by the steward, thrice in every year, the sweins or freeholders within the forest composing the jury. The principal jurisdiction of this Court was first to inquire into the oppressions and grievances committed by the officers of the forests; and secondly, to receive and try presentments, certified from the court of attachments, against offenders in vert and venison.—4 *Inst.* 289.

Swimming Baths may be provided by local authorities under the Baths and Wash-houses Act, 1878 (41 & 42 Vict. c. 18), in the same manner as ordinary baths, repealed with its amending Acts and replaced by Part VIII. of the Public Health Act, 1936, ss. 221 to 234. See BATHS AND WASH-HOUSES.

Swoling of Land, so much land as one's plough can till in a year; a hide of land.

Sworn Brothers [*fratres jurati*, Lat.], persons who, by mutual oaths, covenant to share in each other's fortunes. See *Sedg. Edw. Conf.* c. 35.

Sworn Clerks in Chancery. These offices are abolished by 5 & 6 Vict. c. 103.

Syb and Som, peace and security.—*Termes de la Ley.*

Syllogism, the full logical form of a single argument. To a legitimate syllogism it is essential that there should be three, and no more than three, propositions—namely, the conclusion, or proposition to be proved, and two other propositions which together prove it, and which are called the premises. There must be three terms—viz., the subject and

predicate of the conclusion, and another called the middle term, which must be found in both premises, since it is by means of it that the other two terms are to be connected together, e.g., all *men* are mortal; John is a *man*; therefore John is mortal. Consult *Jevon's* or *Mill's* or *Bain's Logic*.

Sylva cædua [*subbois*, Fr.], wood under twelve years' growth.—45 Edw. 3, c. 23.

Symbolæography, the art or cunning rightly to form and make written instruments. It is either judicial or extra-judicial; the latter being wholly occupied with such instruments as concern matters not yet judicially in controversy, such as instruments of agreements or contracts, testaments or last wills.—*West's Symbol.* See *Dav. Prec. in Conv.*, vol. i., pp. 1 *et seq.*

Symbolic Delivery. See SEISIN, LIVERY OF.

Symbolum animæ [Lat.], a mortuary.

Symond's Inn, formerly an Inn of Chancery.

Synallagmatical, that which involves mutual and reciprocal obligations and duties.

Synchronize, to concur in time.

Syncopare, to cut short, or pronounce things so as not to be understood.—*Cowel.*

Syndic, an advocate or patron; a burgess or recorder; an agent or attorney who acts for a corporation or university; an actor or procurator, an assignee.—*Civ. Law.* See *In the Goods of Eliz. Darke (deceased)*, (1860) 29 L. J. (Prob. M. & A.) 71.

Syndicate. A body of persons taking part jointly in some venture or undertaking; commercially, a body of persons associated temporarily for the purpose of buying a private business or other property and selling it at a profit- usually to a limited company. Private companies formed to carry out and complete some pending operation or transaction, or some contemplated operation or transaction, are commonly called *Syndicates.* —*Palmer's Co. Prec.*, pt. I.

Syngraph, a deed, bond, or writing, under the hands and seals of all the parties.—*Civ. Law.*

Synod, a meeting or assembly of ecclesiastical persons concerning religion; being the same thing in Greek as convocation in Latin.

As to authority of synods in the Church of England, see Canons 139–141.

A synod in Scotland is composed of three or more presbyteries.

Synodal, a tribute or payment in money paid to the bishop or archdeacon by the inferior clergy at the Easter visitation.—25 Hen. 8, c. 10.

Synodales testes, synods-men (corrupted into sidesmen), were the urban and rural deans, now the churchwardens. See SIDESMEN.

T.

T, every person who was convicted of felony, short of murder, and admitted to the benefit of clergy, was at one time marked with this letter upon the brawn of the thumb. The practice is abolished—7 & 8 Geo. 4, c. 27. See BENEFIT OF CLERGY.

Tabard [fr. *tabardum*, Low Lat.], a short gown; a herald's coat; a surcoat.

Tabarder, one who wears a tabard or short gown; the name is still used as the title of certain bachelors of arts on the old foundation of Queen's College, Oxford.

Tabellio, a Roman officer who reduced contracts and wills into proper form, and attested their execution.

Tables, under the Companies Act, 1929, First Schedule:—

"A." The model form of Articles of Association for a company limited by shares. See ASSOCIATION, and ss. 8, 115, 333, 379 and 380.

"B." The model form of a Memorandum of Association of a company limited by shares. See ASSOCIATION, and ss. 11 and 379.

"C." The model form of Memorandum and Articles of Association of a company limited by guarantee and not having a share capital. See COMPANY, and ss. 11 and 379.

"D." The same of a company limited by guarantee and having a share capital (ss. 11 and 379).

Table Rents, payments which used to be made to bishops, etc., reserved and appropriated to their table or housekeeping.

Tabula in naufragio [Lat.] (a plank in a shipwreck). See TACKING; ATTENDANT TERM.

Tabulæ nuptiales, a written record of a marriage; or the agreement as to the *dos.*—*Civ Law.*

Tabularius, a notary.—*Civ. Law.*

Tacfree, exempt from rent, payments, etc.

Tacit relocation, a silent or understood reletting of premises after the expiration of a lease, upon the same terms, etc., as those of such lease.—*Scots Term.*

Tack, a lease or contract of location; also an addition, supplement; also cattle taken in by a tenant on agistment.

Tack Duty, rent reserved upon a lease.

Tacking. Before 1926 the law was that, 'if a third mortgagee buys in the first mortgage, though it be pendente lite, pending a bill brought by the second mortgagee to redeem the first, yet the third mortgagee having obtained the first mortgage and got the law on his side, and equal equity, he shall thereby squeeze out the second mortgagee.'—*Brace* v. *Duchess of Marlborough*, (1728) 2 P. Wms. 491, per Jekyll, M.R. This process was called 'tacking.' But the third mortgagee could not tack unless he made his original advance without notice of the mesne incumbrance: see *Marsh* v. *Lee*, (1669) 2 Vent. 337; 1 Ch. Cas. 162; 1 *W. & T. L. C.* The tacking mortgagee gained this right by virtue of his legal title under the first mortgage, and by the operation of the rule that where the equities (as those under the second and third mortgage) are equal the law shall prevail. 'Tacking' must not be confounded with 'consolidation' of mortgages. See that title.

By the Vendor and Purchaser Act, 1874, s. 7, tacking was abolished, but that section was in the next session repealed by the Land Transfer Act, 1875, s. 129. Tacking has been abolished by the Law of Property Act, 1925, s. 94, except in the case of further advances made by a prior mortgagee. See MORTGAGE; FURTHER ADVANCE.

Tail [fr. *tailler*, Fr., to prune]. An estate-tail was formerly a freehold of inheritance and is now an equitable interest which may be created after 1925 in respect of personalty as well as realty by way of trust and which (if not barred or disposed of by will after 1925) will devolve in equity on the person who would have taken realty as heir of the body or as tenant by the curtesy if the Law of Property Act, 1925, had not been passed (s. 130 (4) (*ibid.*)).

An estate-tail in land now constitutes a settlement (Settled Land Act, 1925, s. 1).

With this and other statutory modifications under the Law of Property Act, 1925, the rules relating to this form of estate are still applicable (*a*) in the investigation of all titles to land in existence on the 31st December, 1925; (*b*) in the construction of equitable interests into which these were converted on the 1st January, 1926, or created after that date. An estate-tail, or more accurately now, an equitable interest in tail, is an estate limited to a person and the heirs of his body general or special, male or female, and was the creature of the statute *De Donis*. The estate, if the entail be not barred, reverts to the donor or reversioner, if the donee die without leaving descendants answering to the conditions annexed to the estate upon its creation, unless there be a limitation over to a third person on default of such descendants, when it vests in such third person or remainder-man.

Before 1926, in order to create an estate-tail by deed, the word 'heir' or 'heirs' must be used (*White* v. *Collins*, (1719) 1 Comyns' Rep. 289, 301; 2 *Prest. Est.* 475), unless the deed was executed since the Conveyancing Act, 1881, when the words 'in tail' without the words 'heirs of the body' might be used: see s. 51. Subject to this Act, the deed must contain, either in direct terms or by reference, *words of procreation*, to describe the body from whom the heirs are to proceed, or the person by whom they are to be begotten.

By the Legitimacy Act, 1926, s. 3, in tracing descents under entailed interests created after the date of legitimation, a legitimated person will rank according to seniority next after all children born legitimate on the day of his or her legitimation, as if he or she had been born on that day.

In a will technical terms of limitation were before 1926 not necessary, if upon construction it appeared that the words were terms of limitation and not gifts to children or issue as purchasers or otherwise; thus a devise

To A. and his issue; or

To A. and his seed; or children; or sons; or

To A. and his heirs male; or

To A. and his heirs lawfully begotten; or

To A., and if he die before issue, or not having issue, or not having a son, then to another, would have given an estate-tail.

By s. 130 of the Law of Property Act, 1925, an interest in tail or in tail male or in tail female or in tail special (in the Act referred to as an 'entailed interest') may be created by way of trust in any property real or personal, but only by the like expressions as those by which before 1926 a similar estate-tail could have been created by deed *not being an executory instrument* in freehold land (see s. 60 (4) (*b*) and (*c*) of the L. P. Act, 1925, reproducing s. 51 of 1881). It is necessary now either to limit to the heirs of the body etc. (but see s. 131 *ibid.*, and SHELLEY'S CASE), or in tail, i.e., to create the interest. Informal limitations which would have created an entail in wills or executory instruments but would not have created an estate tail by deed before 1926, coming into operation after 1925 will be construed

for this purpose according to their effect if the limitations had been limitations before 1926 of personal property (L. P. Act, 1925, s. 130 (2), except personalty settled by reference to land (s. 130 (3)).

Sub-s. (4) of s. 130 provides for the devolution of unbarred estates-tail according to the general law in force before 1926, and by sub-s. (6) an entailed interest shall only be capable of being created by a settlement of real or personal property or the proceeds of sale thereof (including the will of a person dying after 1925), or by agreement for a settlement in which the trusts to affect the property are sufficiently declared.

Subject to his powers and duties as tenant for life under the Settled Land Act, 1925, if a tenant-in-tail grant the fee-simple in the property to another person and his heirs without barring the entail, only a qualified or base fee will pass, commensurate with the estate-tail, capable, however, of being rendered absolute by barring the entail, but until so barred, defeasible by the entry not only of the reversioner, or remainder-man, when he becomes entitled to enter into possession of the estate, but also of the issue-in-tail upon the death of the tenant-in-tail. After 1925 a devise by a tenant-in-tail in possession (but not after possibility of issue extinct and other exceptions) of the estate tail operates as a bar of the entail and passes the fee (Law of Property Act, 1925, s. 176 ; see *infra*).

This estate or equitable interest possesses the following incidents and privileges :—

(1) It was like a fee-simple formerly subject to curtesy and dower (if not barred) ; see now s. 130 (4), and see DOWER.

(2) With the exception of a tenant-in-tail after possibility of issue extinct who may be liable for equitable waste, the owner may commit waste upon it without being impeachable for it, and so it is said may his grantee.—3 *Leon.* 121, but see now L. P. Act, 1925, s. 135, as to equitable waste.

(3) It is liable to every kind of debt to the extent of the debtor's interest in the estate and a trustee in bankruptcy may bar the entail, see Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), ss. 69 *et seq.*, and now by s. 176, L. P. Act, 1925, a tenant-in-tail in possession may after 1925 dispose of the whole estate by will either expressly or by general reference to his entailed estates, and in that case it passes to his personal representatives and is liable for his debts.

(4) It might have been lost by escheat ; by forfeiture for treason or felony (but such forfeiture is now abolished by the Forfeiture Act, 1870) ; or by extinguishment.

(5) As 'estate owner,' having an inheritable freehold, he has a right to the title-deeds which equity will secure to him ; see also s. 98 (3), S. L. Act, 1925.

(6) Although a tenant-in-tail must generally keep down the interest, yet, having only a particular interest, he is not bound to pay off any charge or incumbrance affecting the estate ; if, however, he do so, the presumption is that he meant to exonerate the estate (for he might, if he pleased, have acquired the fee-simple), unless he evince the contrary intention by taking an assignment of the incumbrance to a trustee in trust for himself, or by some other express act. As to his powers as tenant for life in regard to the employment of capital money or otherwise to discharge incumbrances, see S. L. Act, 1925, ss. 16 (2), 69, 73.

(7) The donee, if in possession, may exercise the powers of a tenant for life under the Settled Land Acts (S. L. Act, 1925, s. 20).

(8) This estate could not be merged, surrendered, or extinguished by the accession of the fee-simple of the tenant-in-tail except by tenant-in-tail after possibility of issue extinct.—*Co. Litt.* 27 *b* ; ***Halsbury, L. E., 'Real Property.'***

(9) The issue-in-tail is not bound to complete, either at law or in equity, any contract made by his ancestor as tenant-in-tail, since he claims from the original grantor, and not from his immediate ancestor. If, however, he do any act towards completing such a contract, equity will then compel its performance. See now ss. 63 and 90 of the Settled Land Act, 1925, replacing s. 6, S. L. Act, 1890, in regard to his powers as 'estate owner.'

(10) Neither was such issue bound to pay off his ancestor's incumbrances, nor to keep down the interest thereon ; but he is liable to Crown debts under 33 Hen. 8, c. 39, s. 75.

(11) A tenant-in-tail might cut timber and dispose of it, without barring the entail ; but if he sold the growing trees, the buyer must sever them during his life, otherwise the issue-in-tail would have been entitled to them as part of the inheritance ; and the buyer, though obliged to pay the purchase-money, would not then have been allowed to sever them. These rights have not been impaired by the Settled Land Act, 1925.

(12) If a tenant-in-tail grant estovers, or the vesture of his woods, to another, the

grant determines with his death; for being a charge upon the inheritance, it necessarily ceases when his power is determined.

(13) It may be barred by the tenant-in-tail in possession or by the remainder-man in tail with the consent of the protector of the settlement, though not by the issue-in-tail, except as a base fee (*q.v.*), under the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74); but the entail of offices or dignities cannot be barred.

Before the statute *De Donis Conditionalibus*, the donee could, after issue born, have alienated the land, whereby the issue would have been disinherited and the donor deprived of his right of reversion. This being the case, the statute declared that the will of the donor should be observed; and that an estate granted to a man and the heirs of his body should descend to the issue (he not having power to alienate the estate), and that in default of issue, the land should revert to the donor or his heirs. Estates-tail were thus made inalienable, and neither the issue nor the remainder-man could be barred. And many other inconvenient consequences were produced, which quickened the ingenuity of the judicature, until it produced, at length (in its efforts to recover the liberty of alienation), the complicated machinery of fines and recoveries. See FINE; DONIS CONDITIONALIBUS; and RECOVERY.

The modes, then, of barring an estate-tail were two: viz., a fine, according to the statute law (which was a compromise of a fictitious action), giving a base fee commensurate with the existence of the issue upon whom the estate-tail would (if unbarred) have devolved, and a recovery at the Common Law (which was a real action carried on to judgment), giving the fee-simple absolute. These were abolished by the Fines and Recoveries Act, 1833, here described in consequence of its importance.

The Fines and Recoveries Act, 1833, entitled 'An Act for the Abolition of Fines and Recoveries, and for the Substitution of more Simple Modes of Assurance,' which received the royal assent August 28, 1833, and has not been repealed by the land legislation of 1925, abolished all the fictions together with their cumbrous technicality (see RECOVERY). The F. and R. Act, 1833, effected the virtual repeal of the Statute of Westminster 2, and the recognition of the right of barring estates-tail, prescribing and simplifying the mode of disposition.

The general enabling clause (s. 15) enacts, that 'after December 31st, 1833, every *actual tenant-in-tail*, whether in possession, remainder, contingency, or otherwise, shall have full power to dispose of (by deed enrolled, etc., see ss. 40 *et seq.*, *ibid.*), for an estate in fee-simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate-tail which shall be vested in, or might be claimed by, or which, but for some previous Act, would have been vested in, or might have been claimed by, the person making the disposition, at the time of his making the same, and also as against all persons, including the King's most excellent Majesty, his heirs and successors, whose estates are to take effect *after* the determination, or in defeasance of any such estate-tail; saving always the rights of all persons in respect of estates prior to the estate-tail in respect of which such disposition shall be made, and the rights of all other persons except those against whom such disposition is by this Act authorized to be made.'

Enrollment has been abolished for deeds executed after 1925 (L. P. Act, 1925, s. 133).

In order to prevent a son tenant-in-tail defeating a strict family settlement, against the wish of his father, the tenant for life, the legislature has introduced a reasonable but unaccountable agent, denominated '*the protector of the settlement*,' who is, in many respects, but not in all (as will presently be seen), analogous to the abolished '*tenant to the præcipe*' (*q.v.*). The office of the protector is to grant or withhold his consent, which is required to enable a tenant-in-tail *in remainder, expectant* on an estate of freehold, to bar as well his own issue as also those in remainder, to the same extent as might have been effected by a recovery. It is to be observed that an expectant tenant-in-tail may bar his own issue *only*, under this Act, without the consent of the protector.

The procedure (now further simplified) is that every disposition of lands by a tenant-in-tail is to be effected by some one of the assurances evidenced by deed (*not* being a will or a contract either expressed or implied) used for the conveyance of fee-simple estates. If the tenant-in-tail be a *feme covert* (under coverture which began before 1883) (Law Reform (M. W. and T.) Act, 1935, s. 4, and Law of Property Act, 1925, s. 167), her husband's concurrence only is necessary, but her deed required acknowledgment under the F. and R. Act, 1833, s. 40, if executed before 1926 (L. P. Act, 1925, s. 167).

These modes of assurance of a fee-simple were feoffment (at the Common Law), bargain and sale, covenant to stand seised, a release (under the Statute of Uses), or grant, which is the best mode of assurance, and which must be adopted, if the estate be incorporeal, and now by deed; s. 51, L. P. Act, 1925, replacing Real Property Act, 1845, s. 2, and Conveyancing Act, 1881, s. 49; or will (*supra*).

As to the protector's consent, it may either be given by the same assurance by which the disposition is effected, or by a deed distinct from the assurance, executed either on or at any time before the day on which the assurance is made, otherwise the consent will be void; if the protector consent by a distinct deed, such consent will be deemed absolute and unqualified, unless he refer to the particular assurance, and confine his consent to the disposition thereby made. His consent once given cannot be revoked. A married woman, being a protector, gives her consent in the same manner as if she were a *feme sole* in respect of her separate estate either by limitation or statute (ss. 42, 43. 44, 45), otherwise if still under a coverture which began before 1883 she and her husband are the 'protector' (F. and R. Act, 1883, s. 24). As to disentailing assurances, see K. and E. under that title and ss. 17 and 18, Settled Land Act, 1925, as to discharge of trustees and freeing the property from the provisions of the S. L. Act, 1925. As to undivided shares see L. P. (Amendment) Act, 1932. See PROTECTOR; RECOVERY, and SETTLED LAND.

Tail after Possibility of Issue Extinct, Tenant in. This estate arises out of a special entail as to the parentage of the issue, when the express condition has become impossible by reason of death. Thus, if an estate be granted to husband and wife, and their issue, male or female, if either of them die without issue, the survivor is tenant-in-tail after possibility of issue extinct; and even if there have been issue, yet if the issue die without issue, then the surviving parent is also such a tenant; and also if an estate be entailed upon a man and his issue from a particular wife, if she die without issue, the interest of the husband becomes reduced to a tenancy-in-tail after possibility of issue extinct. Only a donee in tail-special can become such a tenant, for if the entail be general, such a tenancy can never arise; for whilst he lives he may have issue, the law not admitting the impossibility of having children at any age. As an estate-tail is originally carved out of a fee-simple, so this estate is carved out of a special entail.

There may be tenant-in-tail after possibility, etc., of a remainder as well as of a possession. And thus, if a lease for life be made, remainder to husband and wife in special tail, and the husband die without issue, now is the wife tenant-in-tail after possibility, etc., of this remainder; and if the tenant for life surrender to her, as he may (an estate for one's own life being greater than an estate for the life of another), now she is tenant-in-tail after possibility, etc., in possession.—*Lewis Bowles's case*, (1616) 11 *Rep.* 81 *a*.

This estate must be created by death; it cannot arise out of any arrangement of parties, but *ex dispositione legis*, and not *ex provisione hominis*; if, therefore, an estate be given to husband and wife, and the heirs of their bodies, should they afterwards be divorced *causâ præcontractûs vel consanguinitatis vel affinitatis*, their estate is converted into a joint estate for life, and not into a tenancy-in-tail after possibility of issue extinct, because their estate has been altered by their own act, and not by the act of God. Such a tenancy can endure only for the life of the surviving donee-in-tail, who has no power under the Fines and Recoveries Act, 1833 (3 & 4 Wm. 4, c. 74), s. 18, to bar the remainders or reversion over, and if he convey his interest to another, such other will be only a tenant *pur autre vie*, and will be punishable for waste. Apparently, impossibility will not be presumed on account of age.—*Co. Litt.* 28 *a*.

The attributes of this estate are these:—

(1) The tenant is dispunishable for waste; he may, therefore, not only commit it, but also convert to his own use the property wasted. Equity, however, will restrain him from committing wilful waste.

(2) The estate is liable to forfeiture.

(3) It will merge in a fee-simple or fee-tail, immediately expectant thereon.

(4) The reversioner or remainder-man shall be received upon the tenant's default.

(5) The tenant has the powers of a tenant for life under the Settled Land Act, 1925; see s. 20 (i.).

Tallage [fr. *tailler*, Fr.], a piece cut out of the whole; a share of one's substance paid by way of tribute; a toll or tax.—*Cowel.*

Taille, the fee which is opposed to fee-simple, because it is so minced or pared that it is not in the owner's free power to dispose of it, but it is, by the first giver,

cut or divided from all other, and tied to the issue of the donee—in short, an estate-tail. See TAIL.

Tailzie, or Entail, an arbitrary line of succession laid down by a proprietor, in substitution of a legal line of succession.—*Scots term.* A deed of tailzie creates a Scots entail by which, until 11 & 12 Vict. c. 36, and succeeding Acts, an estate might be tied up for ever. See the *Case of the Queensberry Leases,* (1819) 1 Bligh, 339 ; 20 R. R. 61. No entails can now be executed (Entail (Scotland) Act, 1914 (4 & 5 Geo. 5, c. 43)).

Tales de circumstantibus. If a sufficient number of jurors do not appear upon a trial, or if by means of challenges or exemptions a sufficient number of unexceptionable ones do not remain, either party may pray a *tales ;* which is a supply of such men as are summoned upon the panel, in order to make up a deficiency. See County Juries Act, 1825 (6 Geo. 4, c. 50), s. 37, and JURY.

Talesman, a person summoned to act as a juror from amongst the bystanders in the court.

Talfourd's Act. (1) The (repealed) Copyright Act, 1842. See COPYRIGHT.

(2) Giving a mother the custody of children under seven ; 2 & 3 Vict. c. 54, repealed and replaced by 35 & 36 Vict. c. 12, which extends the age to sixteen. See INFANT.

Talion, law of retaliation. See LEX TALIONIS.

Tallage, taxation. See DE TALLAGIO NON CONCEDENDO.

Tallagers, tax or toll-gatherers ; mentioned by *Chaucer.*

Tallagium facere, to give up accounts in the Exchequer, where the method of accounting was by tallies.

Talley, or Tally, a stick cut into two parts, on each whereof is marked, with notches or otherwise, which is due between debtor and creditor. It was the ancient mode of keeping accounts ; one part was held by the creditor, and the other by the debtor. The use of tallies in the Exchequer was abolished by 23 Geo. 3, c. 82, and the old tallies ordered to be destroyed by 4 & 5 Wm. 4, c. 15, and destroyed they were in a fire which led to the burning down of the Houses of Parliament.

Tallia, commons in meat and drink.

Talliage. See TAILAGE.

Tally Man, Tally Trade, a system of dealing by which dealers furnish certain articles on credit, upon an agreement for the payment of the stipulated price by certain weekly or monthly instalments.—*McCull. Comm. Dict.* A tally was a common security for money in the days of Edward I. 2 *Reeves,* ch. 11, p. 253, n. (*b*). See PEDLARS.

Talookdar, a holder of a *talook,* which is a small portion of land ; a petty land agent.—*Indian.*

Taltarum's Case, Y. B. 12 Edw. IV. 19 (translated in *Tudor's Leading Cases on Real Property*), decided that an estate tail could be barred by a common recovery (*q.v.*).

Tam quam, writ of error from inferior Courts, when the error is supposed to be as well in giving the judgment as in awarding execution upon it. (*Tam in redditione judicii, quam in adjudicatione executionis.*)

Tangible Property, corporeal property.

Tanistry, or Tanistria, an ancient municipal law or tenure, which allotted the inheritance of lands, castles, etc., to the oldest and most worthy and capable house of the deceased's name and blood, without any regard to proximity. This, in reality, was giving it to the strongest, and naturally occasioned bloody wars in families, for which reason it was abolished in the reign of James I.—*Encyc. Londin. ;* see 3 *Hall. Const. Hist.,* c. xviii., p. 377 ; *Dav. Rep.* 28.

Tannahdar, a petty police officer.—*Indian.*

Tare and Tret. See ALLOWANCE.

Tariff [Span.], a cartel of commerce, a book of rates, a table or catalogue, drawn up usually in alphabetical order, containing the names of several kinds of merchandise, with the duties or customs to be paid for the same, as settled by authority or agreed on between the several States that hold commerce together.

The Customs Tariff Act, 1876, consolidated the then Customs Duties, and some of the duties imposed by that Act are still in force.

In 1932 there was a change in the fiscal policy of this country. By the Import Duties Act, 1932 (22 Geo. 5, c. 8), a general *ad valorem* customs duty of 10 per cent. was imposed on all imports with additional duties on special classes or descriptions of goods. But imports from Dominions were subject to special agreements and the Ottawa Agreements. The 1932 Act set up an Advisory Committee to make recommendations to the Treasury as to additional customs duties. Since this Act several further duties have been imposed. See CUSTOMS.

Tasmania, formerly called Van Diemen's Land ; the name of Tasmania was substituted by Order in Council of July 21, 1855. For union with Australian Colonies, see AUSTRALIA ; and for early statutory history.

see 9 Geo. 4, c. 83, and 13 & 14 Vict. c. 59.

Tath. In Norfolk and Suffolk the lords of manors anciently claimed the privilege of having their tenants' flocks or sheep brought at night upon their own demesne lands, there to be folded for the improvement of the ground, which liberty was called by the name of the tath.—*Spelm.*

Tau, a cross.—*Selden.*

Tauri liberi libertas, a common bull, because he was free to all the tenants within such a manor, liberty, etc. See BULLS.

Tautology, describing the same thing twice in one sentence in equivalent terms; a fault in rhetoric. It differs from repetition or iteration, which is repeating the same sentence in the same or equivalent terms: the latter is *sometimes* either excusable or necessary in an argument or address; the former (tautology) never.

Tax [fr. *tâsg*, Wel.; *taxe*, Fr. and Dut.], an impost; a tribute imposed on the subject; an excise; tallage.

Some general principles of taxation have been said to be:—

(1) The subjects of every State ought to contribute to the support of the Government as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the State. In the observation or neglect of this maxim consists what is called the equality or inequality of taxation.

(2) The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quality to be paid, ought all to be clear and plain to the contributor, and to every other person.

(3) Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it.

(4) Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the State.

Taxes are either direct or indirect. A direct tax is one that is demanded from the very persons who are intended or desired to pay it. Indirect taxes are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another, such as the excise or customs. Taxes may be laid on any one of the three sources of income (rent, profits, or wages); or a uniform tax on all of them.—*Smith's Wealth of Nat.*, b. 5, ch. ii.; *Mill's Pol. Econ.*, b. 5, chs. ii., iii.

All duties of Inland Revenue are collected by the Commissioners of Inland Revenue (Inland Revenue Regulation Act, 1890 (53 & 54 Vict. c. 21)), subject to the direction of the Treasury, of excise, by the Commissioners of Customs and Excise: see Finance Act, 1908, s. 4, and Orders in Council made thereunder. As to the collection of taxes for a limited period under the authority of a mere resolution of the House of Commons, see the Provisional Collection of Taxes Act, 1913 (3 Geo. 5, c. 3). See *Chitty's Statutes*, tit. '*Revenue.*' See also DEATH DUTIES; ESTATE DUTY; INCOME-TAX; LAND-TAX.

Taxatio Ecclesiastica, the valuation of ecclesiastical benefices made through every diocese in England, on occasion of Pope Innocent IV. granting to King Henry III. the tenth of all spirituals for three years. This taxation was first made by Walter, Bishop of Norwich, delegated by the Pope to this office in 38 Hen. III., and hence called *Taxatio Norwicencis.* It is also called Pope Innocent's Valor.

Taxation of Costs. The mode by which certain officers of the various courts allow or disallow the sums claimed by solicitors from their clients, or by the one party in an action from the other. In the High Court taxation is carried out by Taxing Masters who are Masters of the Supreme Court (R. S. C. Ord. LXI., r. 1B), and in county courts by the registrars.

As between party and party a taxation of costs is always had, and the costs disallowed cannot be recovered by the successful from the unsuccessful party, but must be paid by such successful party to his solicitor unless they be disallowed as between solicitor and client.

Costs as between solicitor and client can be recovered by a public authority from an unsuccessful defendant by virtue of s. 1 of the Public Authorities Protection Act, 1893; and also in an action for the infringement of a patent by the plaintiff, if in a prior action he has obtained a certificate of the validity of his patent, under s. 35 (as amended) of the Patents and Designs Act, 1907.

Taxation as between solicitor and client, which may be had whether the business be transacted in court or not, is only obtained upon the application of the party chargeable by a signed bill of costs, until the expiration of a month from the delivery of which the

solicitor is disabled, by the Solicitors Act, 1932, s. 65, from suing the client upon such bill. The mode of taxation is pointed out by that enactment, and in particular it is provided (with an exception for 'special circumstances') that if the bill when taxes be less by a sixth part than the bill delivered, the solicitor must pay the costs of the taxation, but if otherwise, the party chargeable must pay them (s. 66 (5)).

The Taxing Master's Certificate can be reviewed by application within fourteen days to a judge in chambers (R. S. C. Ord. LXV., r. 27 (41)), but there is no further appeal except by leave (*Re Jerome*, 1907, 2 Ch. 145). See COSTS, and consult *Ann. Pract.*; *Morgan and Wurtzburg on Costs*.

Taxers, two officers yearly chosen in Cambridge to see the true gauge of all the weights and measures.

Taximeter. By s. 6 of the London Club and Stage Carriage Act, 1907 :—

> The expression 'taximeter' means any appliance for measuring the time or distance for which a cab is used, or for measuring both time and distance, which is for the time being approved for the purpose by or on behalf of the Secretary of State.

The relationship between a taxi-cab driver and the company owning the taxi-cabs is not usually that of master and servant (*Doggett* v. *Waterloo Taxi-Cab Co.*, 1910, 2 K. B. 336).

Taxing Masters, officers of the Supreme Court, who examine and allow or disallow items in bills of costs. As to their powers and duties, see R. S. C. Ord. LXV., r. 27, Regs. 25 *et seq.*

Tax-ward, an annual payment made to a superior in Scotland, instead of the duties due to him under the tenure of ward-holding. Abolished.

Taylor's (Michael Angelo) Act (57 Geo. 3, c. xxix.), for paving certain streets of London. See MICHAEL ANGELO TAYLOR'S ACT.

Tea. The Sale of Food (Weights and Measures) Act, 1926 (16 & 17 Geo. 5, c. 63), makes it an offence to sell tea otherwise than by net weight and in multiples of ounces and pounds. Tea was first taxed in 1660 (12 Car. 2, c. 23) as a beverage at 8*d.* a gallon, and afterwards in the leaf at 5*s.* per lb. in 1688 (1 W. & M. Sess. 2, c. 6).

Team, or **Theame** [fr. *tyman*, Sax., to teem or bring forth], a privilege granted by royal charter to a lord of a manor, for the having, restraining, and judging of bondmen and villeins, with their children, goods, and chattels, etc.—*Glan.* l. 5, c. 2.

Teamster, a waggoner who carries goods for hire.

Technical Instruction. By the repealed Technical Instruction Act, 1889 (52 & 53 Vict. c. 76), technical instruction, i.e., by s. 8, instruction in the principles of science and art applicable to industries, but not including the teaching the practice of any trade or industry or employment, might be provided by local authorities at the expense of the ratepayers; and by the repealed Technical Instruction Act, 1891 (54 & 55 Vict. c. 4), a local authority might provide for a supply of such instruction in a school outside its own district, so far as necessary for the requirements of its own district, in cases where similar provision could not be so advantageously made by aiding a school within its own district; but these Acts are superseded by the Education Act, 1921, Part VI., and the Unemployment Insurance Act, 1935 (25 & 26 Geo. 5, c. 35), ss. 83 and 113.

Teding-penny, Tething-penny, Tithing-penny, a small duty to the sheriff from each tithing, towards the charge of keeping courts, etc., from which some of the religious houses were exempted by royal charter.

Teep, a note of hand, a promissory note given by a native banker or money lender to zemindars and others, to enable them to furnish government with security for the payment of their rents.—*Indian.*

Tehsildar, one who has charge of the collections; a native collector of a district acting under a European or zemindar.—*Indian.*

Teind-masters, those entitled to tithes.

Teinds, tithes. See *addenda*.

Teinland, thaneland, which see.

Telegraphiæ, written evidence of things past.—*Blount.*

Telegraphs. See the Telegraph (Construction) Acts, 1863 to 1925, by which provisions are made for transferring telegraphs to the Postmaster-General. Telegraph means a wire or wires used for the purpose of telegraphic communication, with any casing, coating, tube, or pipe inclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication, and any apparatus for transmitting messages or other communications by means of electric signals (Acts of 1863, s. 3, and 1869, s. 3). This definition includes telephones. The destruction or removal of an electric telegraph or the obstruction of messages is a misdemeanour by the Malicious Damage Act, 1861, ss. 37, 38, and as to offences in

regard to telephones, see Post Office Act, 1935 (25 & 26 Geo. 5, c. 15). See WIRELESS TELEGRAPHY. As to the monopoly possessed by Government by means of the exclusive privileges given by the Acts to the Postmaster-General, see *Postmaster-General* v. *National Telephone Co.*, 1909, A. C. 269.

As to disputes, see RAILWAY AND CANAL COMMISSION.

Telephone. See TELEGRAPHS, and the Telephone Transfer Act, 1911, and the amending Act of the same year, 1 & 2 Geo. 5, c. 56, and later amending Acts.

Teller, one who numbers; a numberer; four officers in the Exchequer, whose offices were abolished by 4 & 5 Wm. 4, c. 15. In Parliament two tellers are appointed to count the votes on a division in either House of Parliament.

Telligraphum [fr. *tellus*, Lat., land; and *γράφω*, Gk., to write], an Anglo-Saxon charter of land.—1 *Reeves' Hist. Eng. Law*, c. 1, p. 10.

Tellwore, that labour which a tenant was bound to do for his lord, for a certain number of days.

Tementale, or **Tenementale,** a tax of two shillings upon every ploughland; a decennary. See that title.

Temple, two Inns of Court, thus called because anciently the dwelling-place of the Knights-Templars. On the suppression of that Order, they were purchased by some professors of the Common Law, and converted into *hospitia*, or inns of court. They are called the *Inner* and *Middle Temple*, in relation to Essex House, which was also a part of the House of the Templars, and called the *Outer* Temple, because situated without Temple-bar. The Inner and Middle Temples are now within the assessment area of the City of London by the Loc. Gov. Act, 1929, s. 18(*h*). *Encyc. Londin.* Consult *Addison's Hist. of the Knights Templars; Bellot's Inner and Middle Temple.* See INNS OF COURT.

Temporal Lords, the peers of the realm; the bishops are not in strictness held to be peers, but merely lords of parliament.—2 *Steph. Com.*

Temporality, or **Temporals,** secular possessions, as distinguished from ecclesiastical rights; such revenues, lands, and tenements as archbishops and bishops have had annexed to their sees by the kings and others, from time to time, as they are barons and lords of Parliament.

Temporality, the laity; secular people.

Temptatio, or **Tentatio,** a trial or proof.

Tempus pessonis, mast-time in the forest, which is about Michaelmas to St. Martin's Day, November 11.—*Cowel.*

Tempus semestre, half a year, and not six lunar months.—*West. II.* c. 5.

Tena, a coif worn by ecclesiastics.

Tenancy [fr. *tenentia*, law Lat.], the condition of a tenant; the temporary possession of what belongs to another by his consent.

Tenancy in Common. Legal estate in undivided shares in land has been abolished by the Law of Property Act, 1925, s. 1, which reduced the interest of tenants-in-common to that of a *cestui que trust* under a trust for sale of land. The following notes have been kept verbatim to explain titles as they existed immediately before 1926. This estate is created when several persons have several distinct estates, either of the same or of a different quantity, in any subject of property, in equal or unequal shares, and either by the same act or by several acts, and by several titles, and not a joint title. A tenancy-in-common will, as a rule, be construed to exist wherever the instrument creating it indicates that the land is to be held in shares, equally, or in moieties, or the nature of the transaction is such as to preclude the intention of survivorship such as an acquisition of land by partners for the purposes of their business.

A tenancy-in-common differs from a joint-tenancy in this respect: joint-tenants have one estate in the whole, and no estate in any particular part; they have the power of alienation over their respective aliquot parts, and by exercising that power, may give a separate and distinct right to their particular parts. Tenants-in-common have several and distinct estates in their respective parts which may be in unequal shares and for estates of unequal duration; hence the difference in the several modes of alienation and assurance by them. Each tenant-in-common has, in contemplation of law, a distinct tenement and a distinct freehold.

Tenants-in-common hold by unity of possession, because neither of them knows his own severalty, and therefore they all occupy promiscuously. This is the only unity belonging to the estate; for since the tenants may hold different kinds of interest, so there exists no necessary unity of interest, and there is no unity of title, for one may claim by descent, and another by purchase; also the estate may vest in each tenant at different times. There being no entirety of

interest among tenants-in-common, each is seised of a distinct though undivided share; they hold neither 'per mie' (not at all) nor 'per tout' and consequently the *jus accrescendi* does not apply to them.

This estate is subject to curtesy and dower. It is dissolvable—

(1) By a voluntary deed of partition;

(2) By the union of all the titles and interests in one tenant by grant, devise, surrender, or otherwise, which reduces the whole estate to a severalty;

(3) By compulsory partition.

See PARTITION; UNDIVIDED SHARES.

Tenancy, Joint. See JOINT TENANCY.

Tenant, one that holds land of any one inclusive of the sovereign; it is therefore applicable to every subject holding land in this country; but the word is always used relatively, and as the relation to the sovereign is seldom called in question, it more commonly signifies one who holds of another subject, as (formerly) of the lord of a manor, or of a landlord: the owner is seldom characterized as tenant except where it is necessary to particularize the quantity of his estate. The term is frequently used to denote a lessee.

Tenant at Sufferance. See SUFFERANCE.

Tenant at Will. See WILL, ESTATE AT.

Tenant by Copy, i.e., by copy of the Court Roll, a copyholder. See COPYHOLDS.

Tenant by the Curtesy. See CURTESY OF ENGLAND.

Tenantable Repair. See LANDLORD AND TENANT.

Tenant-right, in England—(1) a custom ensuring to an out-going tenant compensation from his landlord for not being able to reap the full benefit of labour or improvements expended or made during the tenancy; or (2) the money due in pursuance of the custom. There is an implied contract by the landlord to pay this (*Faviell* v. *Gaskoin*, (1852) 7 Ex. 273), and a custom throwing liability on the incoming tenant is bad (*Bradburn* v. *Foley*, (1878) 3 C. P. D. 129). though as a matter of fact and for convenience the incoming tenant generally pays the compensation by agreement with the landlord.

Also the name given to tenures in ancient demesne in the North of England.

See also CUSTOM OF THE COUNTRY and AGRICULTURAL HOLDINGS; MARKET GARDEN.

In Ireland, also a custom either ensuring a permanence of tenure in the same occupant without liability to any other increase of rent than may be sanctioned by the general sentiment of the community; or entitling a tenant of a farm to receive purchase-money, amounting to so many year's rent, on its being transferred to another tenant. It has long prevailed in Ulster.—1 *Mill's Pol. Econ.* 385. See 33 & 34 Vict. c. 46 (the Landlord and Tenant (Ireland) Act, 1870), 44 & 45 Vict. c. 49 (the Land Law (Ireland) Act, 1881, and 19 Geo. 5, c. 14 (the Northern Ireland Land Act, 1929.

Tenants-in-Common with Cross Remainders in Tail. Each of the tenants-in-common takes his or her (now equitable) share in tail. On failure of his or her issue that share falls to the remaining grantees or devisees as tenants-in-common in tail. On failure of issue of any of the remaining grantees or devisees, that share goes to the then remaining tenants-in-common in tail in the same way and so on until only one line of the original grantees or devisees is left. In wills, cross remainders in tail are generally implied if there is a gift to a class as tenants-in-common in tail with a gift over, but not if the grant is by deed.

Tenants' Compensation Act, 1890 (53 & 54 Vict. c. 57), repealed by and see now the Allotments Act, 1922 (12 & 13 Geo. 5, c. 57), ss. 1 and 4 (2). At Common Law a mortgagor, and therefore any tenant of his becoming such after mortgage without concurrence of the mortgagee, is a mere trespasser, liable to ejectment without notice, and so liable to lose all his growing crops, etc., without compensation from the mortgagee. The Tenants' Compensation Act, to remedy this hardship, provided that where a person occupies land under a contract of tenancy (whenever made) with the mortgagor, which is not binding on the mortgagee, the occupier shall, as against the mortgagee who takes possession, be entitled to such compensation for crops, improvements, or other matters whatever, under the custom of the country, or the Agricultural Holdings Act, as would be due to him but for the mortgagee taking possession; and further gives such occupier a right to six months' notice, before being deprived of possession by the mortgagee otherwise than in accordance with the contract of tenancy. The provisions of the Act are incorporated in s. 15 of the Agricultural Holdings Act, 1923 (see that title). The Act itself was repealed by the Allotments Act, 1922. See *Jackson* or *Aggs on Agricultural Holdings*.

As to the respective statutory rights of mortgagors and mortgagees in possession to

grant leases and accept surrendors, see Conveyancing Acts, 1881, s. 18; 1911, s. 3, replaced in regard to mortgages effected after 1925 by s. 99, Law of Property Act, 1925.

Tende, to tender or offer.—*O. N. B.* 123.

Tender, offer; proposal for acceptance.

A tender of satisfaction is allowed to be made in most actions for money demands. It need not be made by the debtor personally to the creditor personally; it may be made through an authorized agent, and a tender to one of several joint creditors is sufficient. A tender must be absolute and unconditional, and the money must be actually produced at the time of the tender, unless that be dispensed with by the creditor; but a tender under protest is good in law, so long as no condition is imposed (*Greenwood* v. *Sutcliffe*, 1892, 1 Ch. 1—C. A.).

If a defence set up tender, the money alleged to be tender must be paid into court.—R. S. C. Ord. XXII.—r. 1; Cty. Ct. R. Ord. X., r. 20.

By the Coinage Act, 1870 (33 & 34 Vict. c. 10), s. 4, it is provided that a tender of payment of money, if made in coins legally issued by the Mint in accordance with the provisions of that Act, and not called in, and not become materially diminished in weight, shall be legal tender:—

'In the case of gold coins for payment of any amount; in the case of silver coins for a payment of an amount not exceeding 40*s.*, but for no greater amount; and in the case of bronze coins for the payment of an amount not exceeding 1*s.*, but for no greater amount.'

Bank of England notes under 3 & 4 Wm. 4, c. 98, including notes for 1*l.* and for 10*s.* issued by the Bank of England under the Currency and Bank Notes Act, 1928, (18 & 19 Geo. 5, c. 13), are legal tender for a payment of any amount.

Tender of Amends. See AMENDS.

Tenement [fr. *teneo*, Lat., to hold], in its vulgar acceptation, is only applied to houses and other buildings, but in its original, proper, and legal sense, it signifies everything that may be *holden*, provided it be of a permanent nature, whether it be of a substantial and sensible, or of an unsubstantial, ideal kind. Thus *liberum tenementum*, frank tenement, or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, advowsons, franchises, peerages, etc.—2 *Bl. Com.* 16. 'Tenement' may denote the estate in as well as the land. *Halsb. L. E.*, tit. '*Real Property.*'

Local authorities sometimes refer to separately rated parts of houses or flats as tenements.

Tenementary Land, the outlands of manors, granted to tenants by the Saxon thanes, under arbitrary rents and services.

Tenementis legatis, an ancient writ, lying to the City of London, or any other corporation (where the old custom was, that men might devise by will lands and tenements, as well as goods and chattels), for the hearing and determining any controversy touching the same.—*Reg. Brev.* 244.

Tenendas, that clause of a charter by which the particular tenure is expressed.

Tenendum, that clause in a deed wherein the tenure of the land is limited. See DEED.

Tenentibus in assisâ non onerandis, a writ that formerly lay for him to whom a disseisor had alienated the land whereof he disseised another, that he should not be molested in assize for damages, if the disseisor had wherewith to satisfy them.—*Reg. Brev.* 214.

Tenheded, or **Tienheofed** [Sax.], a dean.

Ten Hours Act. The popular name for 10 & 11 Vict. c. 29, which first limited the time of work for women and children in mills and factories—repealed by the Factory and Workshop Act, 1878, itself repealed by the Act of 1901. See FACTORY.

Tenmentale, or **Tenmantale,** the number of ten men, which number, in the time of the Saxons, was called a decennary; and ten decennaries made what we call a hundred. Also a duty or tribute paid to the Crown, consisting of two shillings for each ploughland.—*Encyc. Londin.*

Tenne, tawny, orange, or brusk; orange colour.

In engravings it should be represented by lines in bend sinister crossed by others barways. Heralds who blazon by the names of the heavenly bodies call it *dragon's head*, and those who employ jewels, *jacinth*. It is one of the colours called stainand.—*Heraldic term.*

Tennis, Game of, legalized by the Gaming Act, 1845 (8 & 9 Vict. c. 109).

Tenor, Action of Proving the, an action in Scotland to prove the contents of a lost or mislaid document.

Tenor (spelt 'tenour' in s. 88 of the Bills of Exchange Act, 1882 (see MAKER)), sense contained; general course or drift. *Tenor* implies that a correct copy is set out, but the word *effect* alone implies that the substance only is set out.

Where the appointment of an executor is not express, but only constructive, upon construction of the will or codicil, he is usually called 'executor according to the tenor'; see *Williams on Executors; In the Goods of Lush*, (1887) 13 P. D. 20.

Tenor est qui legem dat feudo. *Craig Jus. Feud.*, 3rd ed. 66.—(It is the tenor of the feudal grant which regulates its effect and extent.)—*Broom's Leg. Max.*

Tenore indictamenti mittendo, a writ whereby the record of an indictment, and the process thereupon, was called out of another court into the King's Bench.—*Reg. Brev.* 69. See CERTIORARI.

Tenore præsentium, by the tenor of these presents; i.e., the matter contained therein, or rather the intent and meaning thereof.—*Cowel.*

Tenseriæ, a sort of ancient tax or military contribution.

Tentates panis, the essay or assay of bread.—*Blount.*

Tenths [*decimæ*, Lat.], tithes; also the tenth part of the annual value of every spiritual preferment, paid in early times to the pope, transferred from the pope to the Crown by 26 Hen. 8, c. 3, and from the Crown, for the augmentation of small livings, to the Church by 2 Anne, s. 8. See also FIRST FRUITS; BOUNTY OF QUEEN ANNE.

Tenure, the mode of holding property. The only tenures in land now existing with a few unimportant exceptions are (1) free and common socage in fee-simple, including enfranchised copyhold, which is subject to paramount incidents; and (2) a term of years absolute (see LAND). The idea of tenure or holding is said to derive from feudalism, which separated the *dominium directum* (the dominion of the soil), which it placed mediately, or immediately, in the Crown, from the *dominium utile* (the possessory title), the right to use the profits in the soil, designated by the term 'seisin,' which is the highest interest a subject can acquire. As to tenures generally, see 2 *Bl. Com.* 59 *et seq.*

Without tracing the origin of tenure back into remote antiquity, it is ascertained that there were originally two modes of holding land, viz.:—(1) *Allodial* (from *los*, signifying *lot*), over which the owner had entire and irresponsible dominion, which he could dispose of at his own pleasure, or transmit as an inheritance to his children. The land was also attachable to answer the owner's debts, and could also be made available for commercial enterprise. Such tenure was acquired by the distribution of lands by *lot* among the Franks. (2) *Feudal* (from *od*, possession, or estate, and *feo*, wages, pay), over which the owner had but a conditional dominion, acknowledging a superior lord, upon whose pleasure the tenure precariously depended, and without whose consent nothing could be done. And this is the groundwork of *the feudal system*, which displaced the laws obtaining in this country at the time of the Norman Conquest.

Out of feudalism arose the maxim, that all lands in this kingdom were originally granted by our kings, and held mediately or immediately of the king, as lord paramount, in consideration of certain services to be rendered by the holder. There is then no allodial land in England. Those who held immediately from the king were called tenants *in capite* (in chief), which was the most honourable tenure. This was of two kinds, either *ut de honore*, where the land was held of the king as proprietor of some honour, castle, or manor, or *ut de coronâ*, where it was held of him in right of the Crown itself. When these tenants granted portions of their lands to inferior persons they were called *mesne* (middle) lords or barons, with regard to such inferior holders, who were styled tenants *paravail*, the ultimate tenant in possession, because they were supposed to make avail or profit of the land. The lands were called feuds (*feoda*), either proper, which were purely military, given *militiæ gratiâ* to persons qualified for military service; or improper, which did not, in point of acquisition, services, and the like, strictly conform to the nature of a mere military feud, such as those that were sold and bartered for any equivalent, or granted free from all circumstances, or in consideration of any certain services.

Knight service proper, or *tenure in chivalry*, was the original and most honourable species of tenure created by a determinate quantity of land called a knight's fee. Its extent was twelve ploughlands, that is, as much land as could be reasonably ploughed in one year by twelve ploughs, or, according to other authorities, 800 acres of land, and others say 680, and its value in those times was 20*l. per annum.* This tenure was granted by words of pure donation, *dedi et concessi* (I have given and granted); transferred by investiture, i.e., by a solemn and public delivery of the very land itself by the lord to a vassal, in the presence of his other vassals, and perfected by homage and fealty; *homage* being the acknowledgment of tenure,

and *fealty* the solemn oath made by the vassal of fidelity and attachment to the lord.

The owner of a knight's fee was bound to attend the lord to the wars on horseback, armed as a knight, for forty days in every year, if called upon, and this attendance was his rent or service for the land he held, but the service was usually commuted by payment in the form of escuage or scutage. Among the incidents of this tenure were reliefs or payments upon succession, aids, or contributions to the lord, wardships and marriage of heirs succeeding in infancy and escheat.

Grand serjeanty was another species of tenure which some writers think was superior to knight-service, whereby the tenant was bound, instead of serving the king *generally* in the wars, to do him some special, certain, and honorary service in person, as to be marshal of his host, or high steward of England, or to carry his banner or his sword, or to be his butler, champion, or other officer at his coronation. In most other respects it was similar to knight-service, only he was not bound to pay aid or escuage; and when a tenant by knight-service paid 5*l*. for a relief, a tenant by grant serjeanty paid one year's value of his land, were it much or little.

At last these military tenures, together with all their grievances, were destroyed at the Restoration. The statute 12 Car. 2, c. 24, enacted that the court of award and liveries, and all wardships, liveries, *primer seisins* and *ouster-lemains*, values, and forfeitures of marriage, by reason of any tenure of the king or others, be totally taken away. And that all fines for alienations, tenures by homage, knight-service, and escuage, and also aids for marrying the daughter or knighting the son, and all tenures of the king *in capite*, be likewise taken away; and that all sorts of tenures held of the king or others be turned into free and common socage, save only tenures in frankalmoigne, tenures by copy of court roll, and honorary services of grand serjeanty; and that all tenures which shall be created by the king, his heirs or successors, in future shall be free and common socage.

The other subdivision of frank tenement is *free socage* [*soca*, Lat.], which, most probably, means plough-service. It is distinguished from knight-service in this respect, that it is held by a certain determinate duty; whereas we have seen that the tenure in chivalry or knight-service was uncertain and indeterminate. These free socage tenures are said by some persons to be the relics of Saxon liberty, which were left untouched by the oppressive hand of the Norman.

Included among free socage tenures were *petit serjeanty*, *tenure in burgage*, and *gavelkind*.

(1) *Petit serjeanty* [*parva serjeantia*, Lat.] greatly resembles grand serjeanty, for as the latter is a personal service, the former is a rent or render, both tending to some purpose concerning the king's person. The service in *petit serjeanty* is the rendering annually to the king some small implement of war, as a sword, a buckler, a bow without a string, or the like. Both the tenures in serjeanty must be held from the Crown. The lands and property which were granted to the Dukes of Marlborough and Wellington for their brilliant military services are held in *petit serjeanty*, each rendering annually a small flag or ensign, which is deposited in Windsor Castle. Existing incidents of tenures in grand and petit serjeanty have been saved as incidents in free and common socage by the Law of Property Act, 1922, s. 136.

(2) *Tenure in burgage* [*burgus*, Lat.] (now abolished, see *infra*) is where houses, or lands which were formerly the site of houses, in an ancient borough are held of some lord by a certain rent. There were a great many customs affecting these tenures, the most remarkable of which was the custom of *borough-English*, evidently of Saxon origin, and so named to distinguish it from the Norman customs. See BOROUGH-ENGLISH.

(3) *Gavelkind* (*gyfe-eal-kyn*, given to all the kindred]. See GAVELKIND (now abolished, see *infra*).

The other great class of tenements was *villenage*, which was subdivided into *pure* and *privileged* villenage.

Pure villenage was the origin of the present copyhold tenures, or tenure by copy of court roll, at the will of the lord. See MANOR; COPYHOLD; HERIOT.

Privileged villenage, sometimes called *villein-socage*, is where lands have been held of the Crown from the Conquest. This was an exalted species of copyhold, held according to custom, and not according to the mere will of the lord. It subsisted until 1926 under the name of tenure in *ancient demesne*, which consisted of those lands or manors that appeared in Domesday Book to have been actually in the possession of the Crown in the reign of Edward the Confessor or William the Conqueror. These tenants were esteemed

highly privileged, for they could not be compelled to relinquish their lands at the will of their superior, *et ideo dicuntur liberi*. This tenure was not abolished by the 12 Car. 2, c. 24.

Tenures in ancient demesne were, it has been said, of three kinds :—

(1) Tenures in ancient demesne (properly so called), which was a free holding by grant from the Crown. The tenants were bound, in respect of their lands, to perform some of the better sort of certain villein services, which were commuted into money rents.

(2) Privileged copyholds, customary freeholds or free copyholds, held of a manor, which was ancient demesne, according to the custom of the manor, but not of the lord's will. These lands were in fact copyholds, and therefore the term customary freeholds is not strictly correct; for although the tenants had an interest nearly as good as freehold, yet they had not a freehold interest.

(3) Copyholds of base tenure were lands of a manor, which was ancient demesne, but held merely at the lord's will.

There is, however, a good deal of confusion in the books as to ancient demesne; see ANCIENT DEMESNE, and the authorities there referred to.

The old Saxon ecclesiastical tenures, which were continued under the Normans, are these :

(1) *Frankalmoigne* [free alms], by which religious corporations and their successors held lands of the donor, without any service other than the praying for the souls of the donor and his heirs. See FRANK-ALMOIGNE.

(2) *Tenure by divine service*, to which was annexed some special divine service, as to sing so many masses, to distribute a certain sum in alms, etc., which were contradistinguished from *free* alms; for if unperformed the lord could distrain without complaining to the visitor.

The statute 12 Car. 2, c. 24, excepts these spiritual tenures from abolition, so that many were subsisting in 1925, but only the Crown could create them in modern times.

The Law of Property Acts, 1922 and 1925, extinguished the customs of borough-English and gavelkind and all tenures which were not immediately before the 1st January, 1926, freehold or leasehold, grand or petty serjeanty, or frankalmoigne and converted them nominally, subject to the provisions of these Acts, into free and common socage, or leasehold, and in the case of copyholds, excepting and reserving to the lord his property and rights, if any, to mines and minerals, franchises and privileges, etc., set out in the 12th Sched., s. 5, of the Law of Property Act, 1925. See COPYHOLD; ESCHEAT.

Terce, thirds; *Scots term*. See WIDOW'S TERCE.

Term Fee, a certain sum, which a solicitor is entitled to charge to his client, and the client to recover, if successful, from the unsuccessful party who has to pay costs to him; it is payable for every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, other than the issuing and serving the writ of summons, shall take place. See *App. N.* to R. S. C. *ad fin.* See TERMS.

Term in Gross. A term which would have been attendant on the inheritance if it had been assigned by a purchaser of settled land to a trustee for himself, and while outstanding and not merged it was kept in existence upon an implied trust for the parties entitled according to their estates and interests.—*Halsb. L. E.*, title '*Real Property*,' *etc.* See ATTENDANT TERM; OUTSTANDING TERM.

Term of Years Absolute, defined for the purposes of the Law of Property Act, 1925, s. 205 (1) (xxvii.), as a term of years in possession or reversion whether or not at a rent with or without impeachment for waste, subject or not to another legal estate and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser of redemption or in any other event (other than the dropping of a life or the determination of a determinable life interest, but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest, nor if created after 1925 a term of years which is not expressed to take effect in possession within twenty-one years where required by the Act to take effect within that period (i.e., leases at a rent or in consideration of a fine and not being leases of a reversion on a term, see s. 149 of the Act); and in that definition, term of years includes terms for less than years or from year to year; and see LAW OF PROPERTY ACT.

Terminal Charges of a railway company, those made at either terminus, in addition to the charges for carriage, as for warehousing, loading, unloading, cartage to or from

station, etc. The special Act of each company, in prescribing a maximum rate, usually excepts from such rate 'a reasonable sum,' for, e.g., 'loading, covering, and unloading of goods at any terminal station of such goods, and for delivery and collection and any other services incidental to the duty or business of a carrier, where such services are or any of them is performed by the company'; and the Railway and Canal Traffic Commission has jurisdiction to determine what is a reasonable sum in case of dispute. See *Hodges on Railways*.

The Railway and Canal Traffic Act, 1888, which by s. 24 directs railway companies to prepare revised classifications of traffic and schedules of maximum rates, and to state therein the nature and amount of all 'terminal charges,' by s. 55 defines the term 'terminal charges' as including 'charges in respect of stations, sidings, wharves, depots, warehouses, cranes, and other similar matters, and of any services rendered thereat.' See the Railways Act, 1921, especially Part III. and Schedules 4 and 5; also *Aggs & Knowles on Railways*; and RAILWAYS.

Terminating Building Societies, societies where the members commence their monthly contributions on a particular day, and continue to pay them until the realization of shares to a given amount for each member, the society advancing the capital of the society to such members as require it by mortgage to secure the payment of interest as well as principal by them, and so as to ensure such realization within a given period of years, when the society terminates. See Building Societies Act, 1874 (37 & 38 Vict. c. 42), s. 5, and BUILDING SOCIETY. Consult *Wurtzburg* or *Davis on Building Societies*.

Termor, he that holds lands or tenements for a given number of years or for life.

Terms, the periods during which the superior courts at Westminster were open.

The legal year consists of four terms: Michaelmas, Hilary, Easter, and Trinity (which see), the year beginning with Michaelmas Term.

The commencement and duration of the terms were fixed by 11 Geo. 4 & 1 Wm. 4, c. 70, s. 6, and 1 Wm. 4, c. 3, s. 3. By the first of these enactments Hilary Term began on the 11th and ended on the 31st of January; Easter Term began on the 15th of April and ended on the 8th of May; Trinity Term began on the 22nd of May and ended on the 12th of June; and Michaelmas Term began on the 2nd and ended on the 25th of November. Vacations in the Equity Courts were regulated also by Cons. Ord. V.

By the Judicature Act, 1873, s. 26, now repealed, it was provided that the division of the legal year into terms should be abolished so far as relates to the administration of justice. But in all other cases in which, under the law previously existing, the terms into which the legal year is divided were used as a measure for determining the time at or within which any act was required to be done, the same continues to be referred to, for the same or the like purpose, unless and until provision is otherwise made by any lawful authority (see now, e.g., R. S. C. Appx. N. 201). The same section provided that, 'subject to rules of Court,' the High Court and Court of Appeal may sit at any time. See R. S. C. Ord. LXIII., and SITTINGS.

Our university terms are different from the law terms; and the dining terms at the Inns of Court are the terms of the old law, and do not correspond with the sittings.

Terms (to be under terms), conditions on which indulgence is granted by the Court, as to take short notice of trial, etc.

Terms for Years. An estate for years is denominated a term, because its enjoyment is strictly fixed, for by 'term' is meant not only the interest which passes, but also the period for which it is held. It is a chattel real: chattel, because the estate passes to the owner's executors at his death, and did not pass to his heir-at-law, and so far partakes of the nature of personalty; real, because it is an interest in lands, and therefore partakes of the nature of real property.

A term is usually created by a deed or specialty contract, called a lease or demise under the Common Law (see LEASE), and the appropriate operative verbs therein are 'demise,' *or* 'grant, lease, and to farm let'; but any words showing the intent of the parties that the one (the lessor) shall divest himself of the possession, and the other (the lessee) come into it for a determinate time, are generally sufficient for the purpose.

Terms could not be limited in succession or by way of remainder except by way of trust or by will as executory devises and an estate tail could not be limited in a term at all. It vested in the first tenant-in-tail in possession absolutely: see now Law of Property Act, 1925, ss. 130 *et seq.* See also TERM OF YEARS; LEASE; LEASES, RENEWAL OF.

Termes (Les) de la Ley. See RASTELL.

Terminum, a day given to a defendant.

Terminus a quo, the starting point.

Terminus ad quem, the terminating point.

Terminus annorum certus debet esse et determinatus. *Co. Litt.* 45 *b.*—(A term of years ought to be certain and determinate.)

Terminus et feodum non possunt constare simul in unâ eâdemque personâ. *Plow.* 29.—(A term and the fee cannot both be in one and the same person at the same time.)

Terra, arable land.—*Kennett's Gloss.*

Terra affirmata, land let to farm.

Terra boscalis, woody land.

Terra culta, cultivated land.

Terra debilis, weak or barren land.—*Inq.* 22 *R.* 2.

Terra dominica, or **Indominicata,** the demesne land of a manor.

Terra excultabilis, land which may be ploughed.—*Dugd. Mon.* i. 426.

Terra extendenda, a writ addressed to an escheator, etc., that he inquire and find out the true yearly value of any land, etc., by the oath of twelve men, and to certify the extent into the chancery.—*Reg. Brev.* 293.

Terra frusca, or **frisca,** fresh land, not lately ploughed.

Terra hydata, land subject to the payment of hydage.—*Selden.*

Terra lucrabilis, land gained from the sea or enclosed out of a waste.

Terra Normanorum, land held by a Norman.—*Paroch. Antiq.* 197.

Terra nova, land newly converted from wood ground or arable.

Terra putura, land in forests held by the tenure of furnishing food to the keepers therein.—4 *Inst.* 307.

Terra sabulosa, gravelly or sandy ground.

Terra testamentalis, gavelkind land, being disposable by will.—*Spelm.*

Terra vestita, land sown with corn.—*Cowel.*

Terra wainabilis, tillable land.

Terra warrenata, land that has the liberty of free-warren.

Terræ dominicales regis, the demesne lands of the Crown.

Terrages, an exemption from all uncertain services.

Terrarius, a landowner.—*Leg. William* 1.

Terre-tenant, Tertenant, he who is in the actual possession and enjoyment of land.—2 *Bl. Com.* 91.

Terrier, or **Terrar,** a register or survey of land. As to when it is evidence, see 3 *Price,* 380.

Terris bonis et catallis rehabendis post purgationem, a writ for a clerk to recover his lands, goods, and chattels, formerly seised, after he had cleared himself of the felony of which he was accused, and delivered to his ordinary to be purged.—*Reg. Brev.*

Terris et catallis tentis ultra debitum levatum, a judicial writ for the restoring of lands or goods to a debtor who is distrained above the amount of the debt.—*Reg. Judic.*

Terris liberandis, a writ that lay for a man convicted by attaint, to bring the record and process before the king, and take a fine for his imprisonment, and then to deliver to him his lands and tenements again, and release him of the strip and waste.—*Reg. Brev.* 232. Also, it was a writ for the delivery of lands to the heir, after homage and relief performed, or upon security taken that he should perform them.—*Ibid.* 293.

Territorial Army. A body of men first created as the Territorial Force by the Territorial and Reserve Forces Act, 1907, to replace the Yeomanry and Volunteers. As to the position of the Militia, see that title. The scheme upon which the Act is based is the organization of the Force by counties through County Associations (ss. 1-5). Enlistment is generally for four years, and with a right to the soldier to obtain his discharge earlier on giving three months' notice, paying a sum not exceeding 5*l.*, and giving up arms, clothing, etc., in good condition, except that he loses this right when the Army Reserve has been called out on permanent service. All ranks are subject to military law when serving, and officers, other than members of the permanent staff, if on the active list, at all times (Army Act, 1881, s. 175 (3) ((A), as amended by the Territorial Army and Militia Act, 1921 (11 & 12 Geo. 5, c. 37), s. 4 (1)), and Army Act, 1881, s. 176 (6) (A)). The Force may be called out immediately upon the issue of a proclamation ordering the Army Reserve (*q.v.*) to be called out on permanent service. Service is only within the United Kingdom, unless a man offer himself for foreign service (s. 13, Act of 1907).

Territorial Waters. This expression is used with regard to that portion of the sea, up to a limited distance, which is immediately adjacent to the shores of any country, and over which the sovereignty and exclusive jurisdiction of that country extends. The generally recognized limit is three miles, which was the range of cannon in the seventeenth century (see *Grotius*). Territorial waters are considered as territory to the extent that fishing in such waters is

reserved for the exclusive benefit of the subjects of the adjacent country. See the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), passed in consequence of the decision in *R.* v. *Keyn*, (1876) 2 Ex. D. 63.

Tertius interveniens, one who voluntarily interposes in a suit depending between others, with a view to the protection of his own interests.—*Civ. Law.*

Test: (1) To bring one to a trial and examination; or to ascertain the truth. (2) A criterion. (3) A declaration preliminary to admission to an office or corporate body. See UNIVERSITY.

Test Act (25 Car. 2, c. 2), by which it was provided that all persons having any offices, civil or military (with the exception of some few of an inferior kind), or receiving pay from the Crown, or holding a place of trust under it, should take the oaths of allegiance and supremacy, subscribe a declaration against transubstantiation, and receive the Sacrament of the Lord's Supper according to the usage of the Church of England. The Test Act, after having been extended by 1 Geo. 1, st. 2, c. 13, 2 Geo. 2, c. 31, and 9 Geo. 2, c. 26, was repealed by 9 Geo. 4, c. 17.

Testa de Nevil, an ancient document in two volumes, in the custody of the King's Remembrancer in the Exchequer, more properly called *Liber Feodorum.*

These books contain principally accounts (1) of fees holden either immediately of the king, or others who held of the king *in capite*, and if alienated whether the owners were infeoffed *ab antiquo* or *de novo*, as also fees holden in frankalmoigne, with the values thereof respectively; (2) of serjeanties holden of the king, distinguishing such as were rented or alienated, with the values of the same; (3) of widows, and heiresses of tenants *in capite*, whose marriages were in the gift of the king, with the values of their lands; (4) of churches in the gift of the king, and in whose hands they were; (5) of escheats, as well of the lands of Normans as others, in whose hands the same were, and by what services holden; (6) of the amount of the sums paid for scutage and aid, etc., by each tenant.

These volumes were printed in 1807, under the authority of the commissioners of the records of the realm.

Testament, a disposition of personal property to take place after the owner's decease, according to his desire and direction. See WILLS.

As to the modes of making a testament according to the Civil Law, see *Sand. Just.*; *Cum. C. L.* 117; *Maine's Anc. Law.*

Testamenta latissimam interpretationem habere debent. *Jenk. Cent.* 81.—(Wills ought to have the broadest interpretation.)

Testamentary, given by will; contained in a will.

Testamentary Causes, proceedings in the Probate Branch of the High Court of Justice relating to the proving and validity of wills and intestacies, over which it has acquired exclusive jurisdiction, by the Court of Probate Act, 1857, amended by the Court of Probate Act, 1858. See PROBATE.

Testamentary Expenses include the costs of an administration action (*Penny* v. *Penny*, (1879) 11 Ch. D. 440). As to whether the expression includes estate duty, see *Porte* v. *Williams*, 1911, 1 Ch. 188, and cases there cited. Generally, it includes estate duty on personalty (*Re Trenchard*, 1905, 1 Ch. 82), and primarily, in respect of land, subject to payment as provided by ss. 16 to 18 of the Law of Property Act, 1925. Under the Intestates Estates Act, 1890, s. 6, now repealed, it included expenses of letters of administration and of administration generally (*Re Twigg*, 1892, 1 Ch. 579).

Testamentary Guardian, one appointed by a father's will over his child, pursuant to 12 Car. 2, c. 24. See GUARDIAN.

Testamenti factio, the ceremony of making a testament, either as a testator, heir, or, witness.—*Civ. Law.*

Testamentum, i.e., **testatio mentis, facta nullo præsentis metu periculi, sed solâ cogitatione mortalitatis.** *Co. Litt.* 322 *b.*—(A testament, that is, the witnessing of the mind, made not in fear of present danger, but only by the thought of death.)

Testamentum omne morte consummatum. *Ibid.*—(Every will is perfected by death.)

Testate, having made a will.

Testation, witness, evidence.

Testator, a man who makes a will or testament. See WILLS.

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam. *Ibid.*—(The last will of a testator is to be thoroughly fulfilled according to his real intention.)

Testatrix, a woman who makes a will or testament.

Testatum, the witnessing part of a deed or agreement. See DEED.

Testatum Writ, a process of execution which was issued into a different county than that in which the venue was laid in the declaration; it must have been founded on a writ *ejusdem generis*, issued into the county

of the venue, and returned *nulla bona*, etc. It was abolished by C. L. P. Act, 1852, s. 21. See GROUND WRIT.

Teste [being witness], the witnessing part of a writ, warrant, or other proceeding which expresses the date of its issue.

Tested, to bear the *teste*. A writ is issued in the name of the sovereign, and the Lord Chancellor is supposed to witness it. All writs are, by R. S. C. 1883, Ord. II., r. 8, tested in the name of the Lord Chancellor. They were before the Judicature Acts tested in the name of the Lord Chancellor if issuing from the Court of Chancery, or of the Lord Chief Justice if issuing from the Queen's Bench, etc.

Testes ponderantur, non numerantur.—(Witnesses are weighed, not numbered.) See UNUS NULLUS RULE.

Testes qui postulat debet dare eis sumptus competentes. *Reg. Jur. Civ.*—(Whosoever demands witnesses must find them in competent provision.) See CONDUCT MONEY.

Testimoignes, witnesses.—*Law French.*

Testimonial Proof, parol evidence.—*Civ. Law.*

Testimony, evidence given; proof by a witness. See EVIDENCE and PERPETUATING TESTIMONY.

Testing Clause. In Scotland, the final clause of attested documents, indicating the designation of signatories; place and date of attestation; and names and designation of the witnesses.

Text-book, a legal treatise which lays down principles or collects decisions on any branch of the law—e.g., *Mayne on Damages; Chitty on Contracts,* etc.; *Dart on Vendors and Purchasers.* They are, of course, not binding on the Court, but some of them are by general consent treated as guiding authorities: see *Ecclesiastical Commissioners* v. *Parr,* 1894, 2 Q. B. p. 428, per Lord Esher, M.R. Text-books written by living authors who are practising barristers are not cited in the courts as authorities, although passages therefrom may be adopted as part of an argument.

Textile Factory. Any premises wherein or within the close or curtilage of which steam, water, or other mechanical power is used in preparing, etc., wool, cotton, etc. (Factory and Workshop Act, 1901, s. 149 (1)). See FACTORY.

Thames. See Thames Conservancy Act, 1894 (57 & 58 Vict. c. clxxxvii.); defined in s. 3 as meaning and including:—

So much of the rivers Thames and Isis respectively as are between the town of Cricklade and an imaginary straight line drawn from the entrance to Gantlet creek in the county of Kent to the City stone opposite to Canvey Island in the county of Essex and so much of the river Kennet as is between the common landing-place at Reading in the county of Berks and the river Thames and so much of the river Lee and Bow creek respectively as are below the south boundary stones in the Lee Conservancy Act, 1868, mentioned and all locks, cuts, and works within the said portions of rivers and creeks:

Provided that no dock, lock, canal, or cut, existing at the passing of this Act and constructed under the authority of Parliament and belonging to any body corporate established under such authority, and no bridge over the river Thames or the river Kennet belonging to or vested in any county council or municipal authority or to or in any railway company shall be deemed to form part of the Thames.

The Act of 1894 repeals thirty Acts, from 21 Jac. 1, c. 32, to the Thames Preservation Act, 1885. The 'conservators' under the Act are partly elected by shipowners, dock-owners and wharfingers, and partly appointed by Water Companies. In them are vested (see s. 58) the bed and shores of the river, and they have ample powers (see s. 191) to make bye-laws for prevention of obstruction; for regulation of vessels, of persons using tow-paths, piers, etc., and of passage through locks; for regulation of bathing, fishing, and exhibition of advertisements; 'for prescribing the numbers of persons who may be carried in or on randans, wherries, skiffs, dingeys, shallops, punts, canoes, rafts, and other small boats and craft however navigated on the Thames *above Teddington Lock,* and for preventing the overcrowding of such vessels'; and for very many other purposes. See also the Port of London Act, 1908, repealed, except as to the Upper Thames, by the Local Act of 1920 (10 & 11 Geo. 5, c. clxxiii.), dealing with the Thames from and below Teddington and providing for the Port of London Authority, and SANITARY AUTHORITY; LONDON, PORT OF; and Land Drainage Act, 1930 (20 & 21 Geo. 5, c. 44).

Thames Embankment, from Westminster Bridge to Blackfriars Bridge (25 & 26 Vict. c. 93; 26 & 27 Vict. cc. 45, 75). As to the Southern Embankment of the Thames, see 26 & 27 Vict. c. 75. See also Local Government Act, 1929, providing for the transfer of functions relating to the Thames Embankments to the London County Council upon Order: see S. R. & O. 1933 (No. 114) and 1934 (No. 523), and many other statutes, both public and local, indicated in Appx. VI. of the *Index of Statutes in Force;* and 50 & 51 Vict. c. 34 (Chelsea).

Thames Watermen.—By 7 & 8 Geo. 4, c. lxxv., the watermen, wherrymen, and

lightermen of the Thames were consolidated into one body corporate, in the freemen and apprentices whereof was vested, subject to certain exceptions, the exclusive right of navigating that river for hire; and see Part IV. of the Thames Conservancy Act, 1894 (*local*). The powers of this body were transferred to the Port of London Authority by the (repealed) Port of London Act, 1908, s. 11. See now THAMES and LONDON, PORT OF.

Thanage of the King, a certain part of the king's land or property, of which the ruler or governor was called 'thane.'—*Cowel.*

Thane [fr. *thegn*, Sax., a servant], an Anglo-Saxon nobleman: an old title of honour, perhaps equivalent to baron. There were two orders of thanes, the king's thanes and the ordinary thanes. Soon after the Conquest this name was disused.

Thanelands, such lands as were granted by charter of the Saxon kings to their thanes with all immunities, except the *trinoda necessitas.*

Thaneship, the office and dignity of a thane; the seigniory of a thane.

Thavies Inn, an inn of Chancery. See INNS OF CHANCERY.

Theatre, a place kept for the public performance of stage-plays (see STAGE-PLAY), which expression includes 'every tragedy, comedy, farce, opera, burletta, interlude, pantomime, or other entertainment of the stage.' By the Theatres Act, 1843 (6 & 7 Vict. c. 68), such a place may not be had or kept without a licence from the Lord Chamberlain of the Household of the sovereign in the metropolis, and from the justices of the peace elsewhere, s. 2 of the Act enacting that:—

> 2. It shall not be lawful for any person to have or keep any house or other place of public resort in Great Britain, for the public performance of stage plays, without authority by virtue of letters-patent from Her Majesty, her heirs and successors, or predecessors, or without licence from the Lord Chamberlain of Her Majesty's household for the time being, or from the justices of the peace as hereinafter provided; and every person who shall offend against this enactment shall be liable to forfeit such sum as shall be awarded by the Court in which or the justices by whom he shall be convicted, not exceeding twenty pounds for every day on which such house or place shall have been so kept open by him for the purpose aforesaid, without legal authority.

Hiring, without control, is not within this enactment (*Reg.* v. *Strugnell*, (1865) L. R. 1 Q. B. 93), but allowing the public to enter, for payment to be devoted to charitable purposes, the house of the owner and occupier, is within it (*Shelley* v. *Bethell*, (1883) 12 Q. B. D. 11).

The licensing power of the justices is transferred to the County Councils by the Local Government Act, 1888.

By s. 12 of the Act a copy of every new stage-play intended to be acted in any theatre must be sent to the Lord Chamberlain seven days at least beforehand, and if he disallow the same, or any part thereof, the same may not be acted contrary to the disallowance, under pain (s. 15) of a penalty not exceeding 50*l.* and absolute avoidance of the licence of the theatre. See *Chitty's Statutes*, tit. '*Public Entertainment.*'

A picture house is not a theatre for the purpose of building restrictions applicable to a theatre (*Richie* v. *Scottish Cinema and Variety Theatres Ltd.*, 1929, S. C. 350).

The Theatre and Employers Registration Act, 1925 (15 & 16 Geo. 5, c. 50), and the Amendment Act, 1929 (18 & 19 Geo. 5, c. 46), have for object to prevent persons of no substance from engaging companies and then abandoning them; all theatrical employers are to be registered. But the Act does not apply to a person or his agent who has a licence under the Theatres Act, 1843. As to cinematograph exhibitions and theatres, see CINEMATOGRAPH and Loc. Gov. Act, 1933 (22 & 23 Geo. 5, c. 51).

Theft, larceny, which see.

Theftbote [fr. *theof*, Sax., thief, and *bote*, compensation], compounding a felony. See COMPOUNDING and REWARD.

Theftbote est emenda furti capta, sine consideratione curiæ domini regis. 3 *Inst.* 134.—(Theftbote is the paying money to have goods stolen returned, without having any respect for the court of the king.)

Thellusson Act (39 & 40 Geo. 3, c. 98). See ACCUMULATION.

Thelonio irrationabili habendo, a writ that formerly lay for him that had any part of the king's demesne in fee-farm, to recover reasonable toll of the king's tenants there, if his demesne had been accustomed to be tolled.—*Reg. Brev.* 87.

Thelonium, an abolished writ for citizens or burgesses to assert their right to exemption from toll.—*Fitz. N. B.* 226.

Thelonmannus, the toll-man or officer who receives toll.

Them, or **Theme,** the right of having all the generation of villeins, with their suits and cattle.—*Termes de la Ley.*

Themmagium, a duty or acknowledgment

paid by inferior tenants in respect of theme or team.

Theoden, an under-thane ; a husbandman or inferior tenant.—*Spelm.*

Theof [*prædones*, Lat.], offenders who joined in a body of seven to commit depredations.—*Ang.-Sax.*

Theows, Theowmen, or **Thews,** slaves, captives, or bondsmen.—*Spelm. on Feuds*, cap. 5.

Therm, a hundred thousand British thermal units. A British thermal unit is the amount of heat required to raise 1 lb. of water 1 degree Fahrenheit (Gas Regulation Act, 1920 (10 & 11 Geo. 5, c. 28), s. 1, subss. (2) and (7)). The Gas Undertakings Acts, 1920 to 1934, provide for orders by the Board of Trade permitting gas undertakings to sell gas at a specified maximum rate per therm. See GAS.

Thesaurus, Thesaurium, the treasury.

Thesaurus competit domino regi, et non domino libertatis, nisi sit per verba specialia. *Fitz. Coron.* 281.—(A treasure belongs to the king, and not to the lord of a liberty, unless it be through special words.)

Thesaurus inventus, treasure-trove, which see.

Thesaurus inventus est vetus dispositio pecuniæ, etc., cujus non extat modo memoria, adeo ut jam dominum non habeat. 3 *Inst.* 132.—(Treasure-trove is an ancient store of money, etc., of which no recollection exists, so that it now has no owner.)

Thesmothete [fr. θεσμοθέτης, Gk.], a law-maker ; a law-giver.

Thethinga, a tithing.

Things, the subjects of dominion or property, as distinguished from *persons*. They are distributed into three kinds : (1) things real or immovable, comprehending lands, tenements, and hereditaments ; (2) things personal or movable, comprehending goods and chattels ; and (3) things mixed, partaking of the characteristics of the two former, as a title-deed, a term for years. The civil law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*). See CHOSE.

Thingus, a thane or nobleman ; knight or freeman.

Third-borough, or **Thirdborow,** an under-constable.

Thirdings, the third part of the corn growing on the land, due to the lord for a heriot on the death of his tenant, within the manor of Turfat, in Hereford.—*Blount.*

Third-night-awn-hinde [*trium noctium hospes*, Lat.]. By the laws of St. Edward the Confessor, if any man lay a third night in an inn, he was called a third-night-awn-hinde, and his host was answerable for him if he committed any offence. The first night, for-man-night, or uncuth (unknown), he was reckoned a stranger ; the second night, twa-night, a guest ; and the third night, an agen-hinde, a domestic. *Bract.* l. 3.

Third Party. The phrase used to introduce any one into a scene already occupied by two in a definite relation to one another, as principal and agent, guardian and ward, solicitor and client. See AS AGAINST, AS BETWEEN.

As to third-party insurance of motor vehicles ; by the Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 35, users of motor vehicles are to be insured against third-party risks. See Part II. of the Road Traffic Act ; the Motor Vehicles (Third Party Risks) Regulations, 1933, S. R. & O., No. 311 ; and Part II. of the Road Traffic Act, 1934—the latter Act provides that even though the policy is voidable or cancelled, the third party can recover from the insurers the amount of any judgment, and is designed to safeguard the interests of insurers in certain cases ; and see Third Parties (Rights against Insurers) Act, 1930 (20 & 21 Geo. 5, c. 25), and INSURANCE.

A 'third party' may be introduced into an action by a defendant who claims contribution or indemnity over against him ; see Jud. Act, 1873, s. 24, sub-s. 3 (see now Jud. Act, 1925, s. 39), and R. S. C. 1883, Ord. XVI.A.

A person may sometimes be liable for the tort even though by the intervention of a third party : see *Baker* v. *Snell*, 1908, 2 K. B. 825.

Third Penny. See DENARIUS TERTIUS COMITATUS.

Thirlage (*obsol.*), a servitude or tenure in Scotland, by which the occupier of certain lands was bound to carry his grain to a certain mill to be ground, for which he was bound to pay a portion of the flour or meal, varying from a thirtieth to a twelfth part, which was termed 'multitude.' This servitude was commuted for an annual payment in grain by 39 Geo. 3, c. 55. See *Bell's Scots Law Dict.*

Thistle. It was the custom within the manor of Halton, in Chester, that if, in driving beasts over a common, the driver permitted them to graze or take but a thistle, he should pay a halfpenny a-piece, called a 'thistle-take,' to the lord of the fee.

And at Fiskerton, in Nottinghamshire, by ancient custom, if a native or a cottager killed a swine above a year old, he paid to the lord a penny, which purchase of leave to kill a hog was also called thistle-take.

It has been held that an occupier of land has no duty towards his neighbour to prevent thistles from seeding, and is not liable to his neighbour for damage by the seeds being blown on to his neighbour's land (*Giles* v. *Walker*, (1890) 24 Q. B. D. 656).

Thornton (C. J.), author of a *summa* or abridgment of Bracton, containing most of the titles of the law in a concise form. Though a professed epitomiser, he omits many things in that author, and does not adhere to his method.—2 *Reeves*, c. 11, p. 281.

Thorp, Threp, or **Trop** [*villa*, *vicus*, Lat.], either in the beginning or end of the names of places, means a street or village.

Thrave, or **Threave** [Nor.-Fr.], twenty-four sheaves or four shocks of corn; a certain quantity of straw; also a herd, a drove, a heap.

Threats, or menaces of bodily hurt, through fear of which a man's business is interrupted, are civil injuries affecting the right of personal security. The remedy for this species of injury is in pecuniary damages.

By the Larceny Act, 1916, s. 30,

Every person who with intent—

(*a*) to extort any valuable thing from any person, or

(*b*) to induce any person to confer or procure for any person any appointment or office of profit or trust,

(1) publishes or threatens to publish any libel upon any other person whether living or dead; or

(2) directly or indirectly threatens to print or publish or directly or indirectly proposes to abstain from or offers to prevent the printing or publishing of any matter or thing touching any other person (whether living or dead),

shall be guilty of a misdemeanour, and on conviction thereof liable to imprisonment, with or without hard labour, for any term not exceeding two years.

See also s. 29 (*ibid.*), as to threats to accuse of certain serious crimes, and BLACKMAIL

The sending of letters threatening to murder is punishable by penal servitude not exceeding ten years (Offences against the Person Act, 1861, s. 16). The sending of letters threatening to burn or destroy houses, buildings, ships, etc., is similarly punishable. (Malicious Damage Act, 1861, s. 50.)

Patents.—Threatening by a patentee with legal proceedings is dealt with by s. 36 of the Patents and Designs Act, 1907, as substituted by s. 6 of the Act of 1932 (see LETTERS-PATENT), which is as follows:—

Sect. 36 (1).—Where any person, by circulars, advertisements or otherwise, threatens any person with an action for infringement of patent or other like proceedings, then, whether the person making the threats is or is not entitled to or interested in a patent or an application for a patent, any person aggrieved thereby may bring an action against him, and may obtain a declaration to the effect that such threats are unjustifiable, and an injunction against the continuance of such threats and may recover such damage, if any, as he has sustained thereby, unless the person making the threats proves that the acts in respect of which the proceedings are threatened constitute or, if done, would constitute an infringement of a patent in respect of a claim in the specification which is not shown by the plaintiff to be invalid or an infringement of rights arising from the acceptance of a complete specification in respect of a claim therein which is not shown by the plaintiff to be capable of being successfully opposed.

(2) The defendant in any such action as aforesaid may apply, by way of counterclaim in the action, for any relief to which he would be entitled in a separate action in respect of any infringement by the plaintiff of the patent to which the threats relate.

By s. 61 the above remedy is made applicable with the necessary modifications (see s. 13 and Sched., Act of 1932) to the proprietor of a registered design.

Threnges, vassals, but not of the lowest degree, of those who held lands of the chief lord.

Threshing Machines. Steam threshing machines, by the Threshing Machines Act, 1878 (41 & 42 Vict. c. 12), must be fenced.

Thrithing, a division consisting of three or four hundreds.

Throw Out, to reject a Bill in Parliament; to ignore a bill of indictment.

Thrymsa, a Saxon coin worth fourpence.—*Du Fresne.*

Thude-weald, a woodward, or person that looks after a wood.

Thwertnick, the custom of giving entertainments to a sheriff, etc., for three nights.

Tichborne Case. A very celebrated case in which one Arthur Orton, for falsely swearing in 1867 and afterwards that he was Sir Roger Charles Doughty Tichborne, who had been drowned at sea in 1854, was sentenced in 1873 to fourteen years' penal servitude—being seven years (the maximum sentence for perjury) for each of two perjuries. See *Best on Evidence*, 10th ed., s. 517 B, where an extract from Orton's confession, sworn before a commissioner for oaths, is given; *Article in Supplement to Dictionary of Biography*, tit. '*Orton*'; *Famous Trials of the Century* (19*th*), by *J. B. Atlay*, and other authorities referred to in *Best on Evidence*, latest book.

Ticket. For a railway passenger not to produce a railway ticket on request by an

officer or servant of a railway company, *or* to pay his fare from the place whence he started, *or* to give the officer or servant his name and address, is summarily punishable by fine up to 40*s*. See FARE.

Tickets of Leave, licences to be at large, granted to convicts for good conduct, but recallable upon subsequent misconduct. See the Prevention of Crimes Act, 1871, and Penal Servitude Acts of 1864 and 1891.

Tidal Water in the Merchant Shipping Act, 1894, by s. 742 'means any part of the sea and any part of a river within the ebb and flow of the tide at ordinary spring tides, and not being a harbour.'

Tidesman, or **Tidewaiter,** a name, now obsolete, for a custom-house officer who is placed on board a merchant ship till the goods on board are examined and placed in bond or the duties paid.

Tiel, or **Tel** [Nor.-Fr.], such. See NUL TIEL RECORD.

Tierce, the third part of a pipe, or forty-two gallons.

Tigh [fr. *tèag*, Sax.], a close or inclosure.

Tigni immittendi, a servitude which is the right of inserting a beam or timber from the wall of one house into that of a neighbouring house, in order that it may rest on the latter, and that the wall of the latter may bear this weight.—*Civ. Law.*

Tignum, any material for building.—*Ibid.*

Tihler [Sax.], an accusation.

Timber, wood felled for building or other suchlike use; in a legal sense it generally means oak, ash, and elm, but in some parts of the country is used in a wider sense, which is recognized by the law.

Until extinguishment as provided by Part VI. of the Law of Property Act, 1922 (see COPYHOLD), the lord's right to timber on copyhold land remained as an incident of the enfranchised tenure. The right was the whole value if the lord could enter and remove the timber, otherwise half the value. *Co. Litt.* 53 *a*; 1 *Rol. Abr.* 649. See *Dashwood* v. *Magniac*, 1891, 3 Ch. 306; *Sugd. V. and P.* 26; *Woodf. L. and T.*; TREE; and WASTE.

Carriage of Timber.—Section 61 of the Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (see DECK CARGO), provides for timber cargo regulations as to how timber is to be carried.

Timberlode, a service by which tenants were bound to carry timber felled from the woods to the lord's house.

Time. Before 1751 the legal year in England began on the 25th March, therein differing from the common usage in the whole kingdom, and the legal method in Scotland. In 1751 the Gregorian, or present, calendar was substituted for the Julian Calendar by 24 Geo. 2, c. 23.

Time in Acts of Parliament (see, e.g., the definition of night in the Larceny Act) and legal instruments means, in Great Britain, Greenwich mean time, and in Ireland, Dublin mean time, by virtue of the Statute (Definition of Times) Act, 1880 (43 & 44 Vict. c. 9). See, however, *Gordon* v. *Cann*, (1899) 68 L. J. Q. B. 434. The effect of the Summer Time Act, 1922, continued annually, should be noted. The time for Great Britain, Northern Ireland, the Channel Islands, and the Isle of Man is one hour in advance of Greenwich time during the 'period of summer time' practically for all purposes.

The computation, etc., of time for purposes of procedure in the Supreme Court is regulated by Ord. LXIV., r. 7 of which provides that 'a Court or a Judge may enlarge or abridge the time appointed by the Rules of Court, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.'

As to time in County Courts, see County Court Rules, 1936, Ord. XIII., r. 5; Ord. XLVIII., r. 10.

As to computation of time under the Municipal Corporations Act, 1882, see s. 230 of that Act. And see FRACTION OF A DAY; LIMITATION OF ACTION OR PROSECUTION; MONTH; PRESCRIPTION; REASONABLE TIME.

Time Bargains.—Contracts for the sale of a certain amount of stock at a certain price at a future day, sometimes called *puts and calls* or *refusals*, which see.

Time for Consideration of Offer.—An offer with a limited time for acceptance may be revoked at any moment before the limited time has been reached, on the ground that the stipulation for time to consider is void for want of consideration: see *Cooke* v. *Oxley*, (1790) 3 T. R. 653; 1 R. R. 783, and the many cases in which it has been followed, especially *Bristol Bread Co.* v. *Maggs*, (1890) 44 Ch. D. 616, and *Dickinson* v. *Dodds*, (1876) 2 Ch. D. 463, C. A. In the latter case the defendant on a Wednesday by signed writing offered his house to the plaintiff for 800*l.*, adding in a P.S., 'This offer to be left over until Friday, 9 o'clock A.M., 12th June,' and a sale on Thursday to another person

was held good, although on Friday about 7 A.M. the plaintiff gave notice of acceptance to the defendant.

Time Immemorial, from time whereof the memory of man is not to the contrary. See MEMORY, TIME OF LEGAL; PRESCRIPTION.

Time, when of the Essence of the Contract.—At Common Law, time was always of the essence of the contract, but the equitable doctrine now recognized in all courts since the Judicature Act, 1873, s. 25 (7) (now replaced by Law of Property Act, 1925, s. 41), was that time was not of the essence of the contract unless made so either expressly or by implication; see per Chitty, J., in *Dibbins* v. *Dibbins*, 1896, 2 Ch. at p. 350. As to making time of the essence of the contract by notice, see *Stickney* v. *Keeble*, 1915, A. C. 386, and Sale of Goods Act, 1893, s. 10.

Timocracy [Gk.], an aristocracy of property.

Tinel le roy, the king's hall, wherein his servants used to dine and sup.—13 Rich. 2, st. 1, c. 3.

Tineman, or **Tienman**, a petty officer in the forest, who had the care of vert and venison at night, and other duties.

Tinet, brushwood and thorns.

Tinewald, the ancient parliament or annual convention of the people in the Isle of Man.

Tinkermen, fishermen who destroyed the young fry in the river Thames by nets and unlawful engines.

Tinpenny, a tribute paid for the liberty of digging in tin mines.

Tinsel of the Feu, the loss of an estate held in feu in Scotland, from allowing two years' feu-duty to remain unpaid.—*Bell's Scots Law Dict.*

Tippling Act. The Sale of Spirits Act, 1750 (24 Geo. 2, c. 40), s. 12, by which no person may maintain any action for any debt 'for any spirituous liquors, unless such debts shall have really been contracted at one time to the amount of 20*s*.'

By the Sale of Spirits Act, 1862 (25 & 26 Vict. c. 38), the above enactment is repealed so far only as relates to spirituous liquors sold to be consumed elsewhere than on the premises where sold, and delivered at the residence of the purchaser thereof in quantities not less at any one time than a reputed quart.

By the County Courts Act, 1934, s. 188, replacing County Courts Act, 1888, s. 182, no action may be brought in any court to recover any debt alleged to be due for ale, porter, beer, cider, or perry, consumed on the premises where sold.

Tipstaffs, or **Tipstaves**, constables attending courts. See 5 & 6 Vict. c. 22, s. 23; and 11 & 12 Vict. c. 7, s. 5.

Tithe Commissioners, appointed under the Tithe Act, 1836, s. 2; now superseded. See LAND COMMISSIONERS and next title.

Tithe Rent-Charge. A charge on land, substituted by commutation for that charge on the produce of the land for the benefit of the Church, which was called tithe from being the *tenth* part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants; the first species being usually called *prædial*, the second *mixed*, the third *personal*.

This commutation was effected by a procedure set on foot by the Tithe Act, 1836 (6 & 7 Wm. 4, c. 71), amended by subsequent Acts. See *Chitty's Stat.*, tit. '*Tithe Rent-Charge*.' The amount to be paid was annually adjusted, according to the price of corn.

The commutation was effected in one of two ways—either by a voluntary parochial agreement, confirmed by the commissioners, or by the compulsory award of the commissioners. The value, either voluntarily agreed upon or awarded by the commissioners, was considered as the amount of the total rent-charge to be paid in respect of the tithes in that parish, and to be afterwards apportioned among the lands of that parish, having regard to their average tithable produce and productive quality; and such lands were absolutely discharged from the payment of all tithes, and, instead thereof, became subject to their portion of the rent-charge, thenceforth payable to the former tithe-owner, by two half-yearly payments, fluctuating according to the price of corn. An advertisement was inserted by authority in the *London Gazette*, in January in every year, stating the average price of wheat, barley, and oats for seven years, ending on the Thursday before Christmas then next preceding; every rent-charge then was deemed of the value of as many hundredweights of 112 lbs. of wheat, barley, and oats in equal quantities as it would have been competent to purchase according to the prices contained in such advertisement; and after every first of January it varied so as always to consist of the price of the same quantities, according to the advertisement then next preceding.

A tithe rent-charge varies in amount, and

no person being personally liable to its payment, it differs from a rent-charge generally. By the Tithe Act, 1891, it was payable by the landowner to the tithe-owner. Every contract between landowner and occupier, made *after that Act*, for payment of it by the occupier is void, and the occupier ceased to be bound by any such contract made *before that Act*, being made by the Act expressly liable, however, to repay to the landowner such sum as the landowner had properly paid on account of tithe rent-charge to the tithe-owner: see *Tuff* v. *Guild of Drapers of the City of London*, 1913, 1 K. B. 40. When the rent-charge was in arrear for twenty-one days, the remedy was, until 1891, in every case by distress on the land; but the Tithe Act, 1891, effected a great change in this respect. By that Act, in the ordinary case of land being let by the owner to a tenant, the remedy of distress by the tithe-owner was extinguished, and recovery through a receiver appointed by the county court of the district was substituted for it, except where the land was occupied by the landowner, in which case an officer of the court might distrain for it. The landowner also, in case of a contract before the passing of the Act (March 26th, 1891), binding the occupier to pay tithe, might recover by distress on the occupier any sum he may have paid the tithe-owner on account of tithe. By the same Act (s. 8), a remission of tithe rent-charge for any one year exceeding two-thirds of the annual value of the land out of which it issued might be obtained from the county court, as in the case of landlord and tenant.

As to the consideration money formerly payable on the redemption of a tithe rent-charge and the discharge thereof by an annuity, see Tithe Act, 1918, and Tithe Annuities Apportionment Act, 1921, and the Tithe Act, 1925, which contained provisions (since repealed) for the stabilization of tithe rent-charge and also, by s. 3 (unrepealed), transferred to Queen Anne's Bounty all tithe rent-charges attached to benefices, and contained provisions (since repealed) for the extinguishment of Queen Anne's Bounty rent-charges at the expiration of 85 years with consequential provisions.

As to compulsory redemption of small annuities (1*l.* or less), and annuities on numerous plots of building land, see the Acts (9 & 10 Vict. c. 73), s. 5; (41 & 42 Vict. c. 42), ss. 3, 6; (8 & 9 Geo. 5, c. 54), s. 4 and Sched. I., and the Tithe Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 43).

The Tithe Act, 1936 (26 Geo. 5 & 1 Edw. 8, c. 43), has extinguished tithe rent-charge and has freed land charged therewith absolutely from the 2nd October, 1936 (s. 1). The Act creates redemption stock secured by the consolidated fund to be issued for compensation to persons interested in tithe rent-charge to yield interest equal to the gross annual value of the rent-charge less the specified deductions, the gross annual value to be taken in the case of agricultural land and ecclesiastical tithe rent-charge at 91*l.* 11*s.* 2*d.* per cent. of the rent-charge on the 1st April, 1936, and at 105*l.* per cent. of a lay tithe rent-charge not being agricultural land at the same date. The substituted charge is a 60 years' annuity at the like rates charged on the enfranchised land and payable to the Crown. A tithe redemption commission is established, consisting of a chairman and not more than four other Commissioners appointed by the Treasury after consultation with the Minister of Agriculture and Fisheries. Their principal duties are (1) to determine what tithe rent-charges have been extinguished by the Act, the amount of stock to be issued and the persons to receive that stock for compensation, and (2) to determine and register the annuities charged in substitution, to apportion annuities in respect of land owned by two or more persons and to manage the annuities until the management is directed to be transferred to the Commissioners of Inland Revenue. Sect. 5 defines the particulars which owners are required to give to the Commission. All collecting lists and similar documents of tithe rent-charge are to be placed at the disposal of the Commission (s. 6). Sect. 7 relates to the issue of stock subject to specified deductions in the Third Schedule and deductions set aside to provide for liabilities to repair chancels, etc. (see s. 29), and the Bank of England is to issue the specified stock upon certificate of the Commission. Sect. 8 relates to transitional provisions. A register of annuities indicating by reference to a map of the district and the land charged is to be made, one copy to be kept at the principal office of the Commission and the other in the district as directed by the Commission (s. 9), and see s. 18 as to registration of owners in the annuities register, and s. 43 as to inspection by the public. Sect. 10 relates to apportionment of or extinguishing certain annuities. Sect. 11 relates to compulsory redemption (*supra*), and see s. 15, also s. 29 as to corn rents and extraordinary tithe

rent-charge. The legal incidents of annuities are set out in s. 13. Sect. 14 provides for remissions where the annuity is over one-third the annual value of agricultural land. Redemption is provided for by s. 15. As to recovery of annuities (*inter alia*), the relevant provisions of the Tithe Act, 1891 (*supra*), are reproduced with necessary modifications, and powers of distress are conferred (see s. 16 (5) (*a*) and (*b*)). Sect. 17 includes a special definition of owner of the land charged, i.e. (*a*) the estate owner in respect of the fee-simple unless it is subject to a long lease of more than 14 years at a rent less than a rack rent (see that title), and (*b*) in the latter case the owner of the term, or if there are one or more successive sub-leases of the kind, the owner of the ultimate lease on which the others are reversionary. Sect. 19 is transitional. Sect. 20 relates to the recovery of arrears due before 2nd October, 1936 (see *Queen Anne's Bounty* v. *Tithe Redemption Commission, Times*, 10th July, 1937). Sect. 23 excludes tithe rent-charges extinguished by the Act from rates and future valuation lists. For the meaning of tithe rent-charge and extraordinary tithe rent-charge, see s. 47.

The Act does not affect the so-called 'tithe rent-charge' in the City of London, which is a mere rate, and see s. 47 (1), Tithe Act, 1936.

As to the custody of the tithe apportionment and map by a parish council, see *Lewis* v. *Poole*, 1898, 1 Q. B. 164; and s. 36 of the Tithe Rent Act, 1936.

Tithing, a Saxon subdivision of the hundred, replacing the name of township as the unit of local administration (see *Stubbs's Constitutional History*, vol. i. p. 85) in some parts of England, the name still existing in Somersetshire and Wiltshire; the number or company of ten men with their families, knit together in a society, all of them being bound to the king for their peaceable and good behaviour, the chief of whom was called the tithing-man. See TOWNSHIP.

Tithing-man, a peace-officer, an under-constable. See preceding title.

Tithing-penny. See TEDING-PENNY.

Title : 1, a general head, comprising particulars, as in a book; 2, an appellation of honour or dignity; 3, the means whereby the owner of lands has the just possession of his property—*titulus est justa causa possidendi id quod nostrum est : Co. Litt.* 345*b*.

There are several stages and degrees requisite to form a complete title to lands and tenements.

1. The lowest and most imperfect degree of title consists in the mere *naked possession*, or actual occupation of the estate, without any apparent right or any shadow of pretence of right to hold and continue such possession.

2. The next step to a good and perfect title is the *right of possession*, which may reside in one man, while the actual possession is not in himself but in another.

3. The mere right of property, the *jus proprietatis*, without either possession or even the right of possession. This is frequently styled the *mere right, jus merum;* and the estate of the owner is in such cases said to be totally divested and *put to a right.*

4. A complete legal title. This exists where the right of possession is joined with the right of property. See 2 *Bl. Com.* 196.

The principal circumstances to be attended to in drawing conclusions as to title are—

1. That there be a deduction of title to the legal estate for a period of thirty years, unless an earlier title than forty years was required under the Vendor and Purchaser Act, 1874, or the Conveyancing Acts, 1881 and 1882, as in the case of leaseholds, advowsons, titles, etc. (Law of Property Act, 1925, s. 44, and see ss. 45 *et seq.*);

2. That the legal estate can be obtained free from any equities affecting it. A stipulation by the vendor that the purchaser of a legal estate shall accept a title made with the concurrence of an equitable beneficiary if title can be made free from equities under a trust for sale or under the Law of Property Act, 1925, or any other statute is void (L. P. Act, 1925), s. 42, and see s. 43 as to registered interests;

3. That all the particular estates either were determined before 1926, or if no vesting deed, trust for sale, probate or grant of administration, vesting or order has been executed or granted or made since 1925, enabling the vendor to deal with the whole legal estate, so that the whole estate can be conveyed under the L. P. Act, 1925, to the purchaser or his trustee free from equitable interests unless the purchaser agrees to accept it subject to a family charge (see Law of Property Amendment Act, 1926).

4. That no reversion or remainder is outstanding in the Crown, or in any stranger; and

5. That there are no registered incumbrances which the purchaser cannot procure either to be extinguished or assigned (see

s. 43, L. P. Act, 1925, as to purchaser's rights of rescission); and if there has been no dealing with the legal estate since 1925, that the purchaser can obtain the estate free from all equities which would have been registrable if they had been created or conveyed after 1925, and of which he has notice. See LAND CHARGES.

There are at least three species of doubtful titles: (1) where the title is doubtful by reason of some uncertainty in the law itself; (2) where the doubt is as to the application of some settled principle or rule of law; and (3) where a matter of fact upon which a title depends is either not in its nature capable of satisfactory proof, or, being capable of such proof, is yet not satisfactorily proved.

There is no defect which more frequently renders it impossible for a person who has a good title to prove it, and enables a party who has a bad title fraudulently to exhibit a colourable ownership, than the want of evidence of the identity of the parcels.

A good title to a freehold or leasehold estate is made whenever it appears that the legal estate in the property contracted for will become vested in the purchaser free from any equity which would be capable of being over-reached by a disposition in trust for sale made in pursuance of the Law of Property Act, 1925, s. 2 (2), as amended by the amending Act of 1926 (see *K. & E.*, Vol. I., Part I. p. 235), and free from all incumbrances not specially provided for in the contract; see ABSTRACT and CONDITIONS OF SALE, and consult *Dart* or *Williams on Vendors and Purchasers*.

See REAL REPRESENTATIVE and REGISTRATION.

The title to things personal may be acquired by: (1) Occupancy. (2) Invention. (3) Prerogative. (4) Forfeiture. (5) Custom. (6) Succession. (7) Marriage. (8) Judgment. (9) Gift or grant. (10) Contract. (11) Bankruptcy. (12) Will. (13) Administration. (14) Statute.

Title, Covenants for. In every conveyance of real or personal property expressed to be conveyed by the instrument of conveyance made on or after the 1st January, 1882, and in regard to assents by personal representatives, after 1925, of land, certain 'covenants for title' (being for the most part usually *expressed* in the conveyance before that date), of which the following is an abstract, are *implied* by virtue of the 7th section of the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), replaced and extended by the Law of Property Act, 1925, s. 76, and 2nd Sched., but in the following cases A and B the covenants are limited, while in cases C and D they are unqualified and absolute (see *David* v. *Sabin*, 1893, 1 Ch. 523):—

(A) In a conveyance for valuable consideration other than a mortgage by a person *expressed* to convey as *beneficial owner*:—That, notwithstanding anything done, omitted, etc., by the person conveying, or anyone through whom he derives title otherwise than by purchase for value that the person conveying has the right to convey:—That the person to whom the conveyance is made shall 'quietly enjoy' the subject-matter of the conveyance without disturbance by the person conveying, or any person claiming by, through, under, or in trust for the person conveying:—That the subject-matter of the conveyance is free from incumbrances by the person conveying or anyone deriving title from him or from whom he derives title otherwise than by purchase for value, except as expressly mentioned in the conveyance:—And that the person conveying, and every person claiming through him otherwise than by purchase for value, and anyone through whom he derives title otherwise than by purchase for value will execute all such 'further assurances' for more perfectly assuring the subject-matter of the conveyance to the person to whom it is made, as from time to time may reasonably be required.

(B) In a conveyance of leasehold property for valuable consideration other than a mortgage, the *further* covenant, by a person *expressed* to convey as *beneficial owner*:—That notwithstanding anything done or omitted by that person or anyone from whom he derives title otherwise than by purchase for value as mentioned, the lease creating the term is valid, unforfeited, unsurrendered, and in nowise become void or voidable, and that the obligations under the lease have been performed.

In these provisions A and B purchase for value does not include a conveyance in consideration of marriage.

(C) In a conveyance by way of mortgage or charge by a person *expressed* to convey as *beneficial owner*, an unqualified covenant for right to convey, with the addition that if default be made in payment of the money intended to be secured or interest thereon, the person to whom the conveyance is made may thenceforth enter upon and enjoy the subject-matter of the conveyance, and with the benefit of the same covenants for 'free-

dom from incumbrance ' and ' further assurance ' as in (A).

(D) In a conveyance by way of mortgage (including charge or lien) of freehold property subject to rent or leasehold property by a person *expressed* to convey as *beneficial owner*, that without any qualification the grant or lease is valid and in full force and is nowise void or voidable, and also a covenant that the person conveying or the person deriving title under him has paid the rent and performed the covenants and will pay the rent and perform the covenants under the lease, and will keep the person to whom the conveyance is made indemnified against actions for non-payment of rent or breach of covenant.

The same section of the Act also implies a limited covenant for further assurance in a conveyance by way of settlement by a person *expressed* to convey as *settlor*; and against incumbrances in a conveyance by a trustee, mortgagee, etc., *expressed* to convey as *trustee*, *mortgagee*, personal representative, committee or receiver of a person of unsound mind or under an order of court, etc.

For covenants implied upon a conveyance for value made after 1925 (not being a mortgage and not being a lease for rent) of any land affected by a rent-charge and for similar covenants upon an assignment for value made after 1925 (not being a mortgage) of a lease, see s. 77, L. P. Act, 1925, and 2nd Sched. As to cross powers of distress and entry, see L. P. Act, 1925, s. 190. For covenants implied in respect of registered land, see Land Registration Act, 1925, and Land Registry Rules, r. 77.

Title-deeds. See TITLE TO LANDS, DOCUMENTS OF.

Title of Clergymen (to orders), the assurance required by the 33rd Canon, and generally given by a nomination to a curacy, that a person seeking ordination has some place where he may exercise the functions of an ordained person.

Title to Lands, Documents of. As to dealing with title-deeds as mere personal chattels, see *Swanley Coal Co.* v. *Denton*, 1906, 2 K. B. 873. Properly speaking, however, they are not chattels; Coke calls them ' the sinewes of the land ' (*Co. Litt.* 6 *a*), and they are so closely connected with it that they will pass, on a conveyance of the land, without being expressly mentioned; the property in the deeds passes out of the vendor to the purchaser simply by the grant of the land iteself.—*Williams on Personal Property*. Sect. 45 (1) of the Law of Property Act, 1925, provides that a vendor shall be entitled to retain documents of title where (*a*) he retains any part of the land to which the documents relate, or (*b*) the document consists of a trust instrument or other instrument creating a trust which is still subsisting or an instrument relating to the appointment or discharge of a trustee of a subsisting trust. As a rule the estate owner (*q.v.*) is entitled to possession of the documents relating to his title (see *Clayton* v. *Clayton*, 1930, 2 Ch. 12).

By the Larceny Act, 1861, s. 28, as amended, ' Whosoever shall, for any fraudulent purpose, destroy, cancel, obliterate, or conceal the whole or any part of any *document of title to lands*, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three years; or to be imprisoned for any term not exceeding two years, with or without hard labour.' The term, ' document of title to lands,' includes any deed, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate, or to any interest in or out of real estate (s. 1). As to theft, see Larceny Act, 1916, ss. 7 and 46.

In the Forgery Act, 1913, ' document of title to lands ' includes any deed, map, roll, register, or instrument in writing being or containing evidence of the title or any part of the title to any land or any interest in or arising out of any land, or any authenticated copy thereof (s. 18 (1)). See FORGERY.

Title to Lands, Registration of. See REGISTRATION.

Titles (Ecclesiastical). By the Ecclesiastical Titles Assumption Act, 1851, the assumption of the title of archbishop or bishop of a pretended province or diocese, or archbishop or bishop of a city, place, or territory in England or Ireland, not being the see, province, or diocese of an archbishop or bishop, recognized by law, was prohibited under penalties; but this Act (which was passed after great public excitement, in consequence of the division of England into Roman Catholic dioceses by Pope Pius IX., under Cardinal Wiseman, as Archbishop of Westminster) was never enforced, and has been repealed by the Ecclesiastical Titles Act, 1871.

Titles of Honour are a species of incorporeal hereditament: see *Co. Litt.* 20 *a*, and Mr. Hargrave's note (3); *Earl Ferrers' Case*,

2 Eden, App., p. 373. Accordingly a baronetcy was held to be 'land' within the meaning of the Settled Land Act, 1882, so that heirlooms annexed to the baronetcy could be sold with the leave of the Court (*Re Rivett-Carnac*, (1885) 30 Ch. D. 136, Chitty, J.).

Titulars of Erection. See LORDS OF ERECTION.

Toalia, a towel. There is a tenure of lands by the service of waiting with a towel at the king's coronation.

Tobacco. The growth of tobacco was formerly prohibited in any part of the United Kingdom, and any person growing it was liable to a penalty of 10*l.* for every rood grown, recoverable by penal action. See 12 Car. 2, c. 34 (the preamble of which shows the origin of the prohibition to have been the protection and maintenance of the colonies and plantations in America, and of the commerce of this country with them); 15 Car. 2, c. 7; and the Tobacco Cultivation Act, 1831 (1 & 2 Wm. 4, c. 13). As to Ireland the Irish Tobacco Act, 1907 (7 Edw. 7, c. 3), largely removed the restrictions as to growth, etc., and similar provision is now made for Scotland and England by the Finance (1909–10) Act, 1910, which repeals the two Acts of Charles II. and the Act of 1831, and by s. 83 (5) entirely removes all prohibition or restraint on the growth, making, or curing of tobacco in England and Scotland, and at the same time imposes (s. 83 (2)) an excise duty of 5*s.* for a licence to grow, cultivate, or cure tobacco.

The duties on tobacco are mainly imposed by the Manufactured Tobacco Act, 1863, as amended by subsequent Acts. As to the duty on tobacco grown for agricultural purposes, see Finance Act, 1912, s. 4.

Tobacco factories, as 'non-textile,' are subject to the restrictions of the Factory and Workshop Act, 1901. See FACTORY.

By the Children Act, 1933, s. 7 (see CHILDREN), it is an offence to sell cigarettes to a person apparently under 16, or other forms of tobacco, unless the seller had no reason to believe that such tobacco was for the use of that person. There is also power for certain persons to seize any tobacco or cigarettes in the possession of a person apparently under 16 who is found smoking.

Tobago and Trinidad. See 11 & 12 Vict. c. 22; 18 & 19 Vict. c. 107.

Toft, a place where a messuage has stood.—2 *Br. & Had. Com.* 17.

Toftman, the owner or possessor of a toft.

Togati, Roman advocates.

Token: 1, a sign of the existence of a fact; 2, private money.

Tolbooth, a prison, a custom-house, an exchange; also the place where goods are weighed. The ancient Tolbooth, or city prison, of Edinburgh was commonly called 'The Heart of Midlothian.' It was built by the citizens in 1561 and removed, with the mass of buildings in which it was incorporated, in 1817.

Toleration Act (1 W. & M. st. 1, c. 18), confirmed by 10 Anne, c. 2, by which all persons dissenting from the Church of England (except Papists and persons denying the Trinity) were relieved from such of the Acts against Nonconformists as prevented their assembling for religious worship according to their own forms, or otherwise restrained their religious liberty, on condition of their taking the oaths of allegiance and supremacy, and subscribing a declaration against transubstantiation; and in the case of dissenting ministers, subscribing also to certain of the Thirty-nine Articles. So much of the Toleration Act as excepted persons denying the Trinity from its benefits, and so much of the Blasphemy Act of William III. as related to persons who 'deny any one of the Three Persons in the Holy Trinity to be God,' were repealed in 1813 by 53 Geo. 3, c. 160. See the case of *Lady Hewley's Charities, Shore* v. *Wilson*, (1842) 9 Cl. & Fin. 355, and the Act was repealed, save for some minor provisions in s. 5, part of s. 8 and s. 15, by the Promissory Oaths Act, 1871 (34 & 35 Vict. c. 48).

Toll [fr. *tollo*, Lat.], to bar, defeat, or take away, as to 'toll an entry' is to deny and take away the right of entry. See Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27), s. 39.

Toll [fr. *tol*, Sax. and Dut.; *told*, Dan.; *toll*, Wel.; *taille*, Fr.] has two significations:—

(1) A liberty to buy and sell within the precincts of the manor, which seems to import as much as a fair or market.

(2) A tribute or custom paid for passage. For its importance in railway law, see ss. 3, 86 and 92 of the Railways Clauses Consolidation Act, 1845, s. 86, providing that:—

> It shall be lawful for the company to use and employ locomotive engines or other moving power, and carriages and waggons to be drawn or propelled thereby, and to carry and convey upon the railway all such passengers and goods as shall be offered to them for that purpose, and to make such reasonable charges in respect thereof as they may from time to time determine upon, not exceeding the tolls by the special Act authorized to be taken by them.

By s. 3 ' toll ' includes ' any rate or other payment payable under the special Act for any passenger, animal, carriage, goods, merchandise, articles, matters or things conveyed on the railway.' See RAILWAY, and *Hunt* v. *Great Northern Railway Co.*, (1851) 10 C. B. 900.

County Courts have no jurisdiction over tolls (County Courts Act, 1933, s. 40).

Tollage, any custom or imposition.

Tolldish, a vessel by which the toll of corn for grinding is measured.

Toller, one who collects tribute or taxes.

Toll-gatherer, the officer who takes or collects toll.

Toll-thorough, when a town prescribes to have toll for such a number of beasts, or for every beast that goes through the town, or over a bridge or ferry belonging to it.—*Com. Dig.*, tit. ' *Toll* ' (*C*).

Toll-traverse, or **Travers,** toll taken for every beast driven across a man's land. He may prescribe and distrain for it *viâ regiâ*.—*Cro. Eliz.* 710.

Tolsester, an old excise ; a duty paid by tenants of some manors to the lord for liberty to brew and sell ale.

Tolsey, the same as tolbooth, which see. Also a place where merchants meet. The Tolzey Court is a local tribunal, for civil causes, held at the Guildhall, Bristol. The Recorder of Bristol is the judge of this court, and has jurisdiction over mixed and personal actions of a judge of the King's Bench Division provided the cause of action arose within ' the city and county of Bristol,' whatever be the amount claimed.

Tolt, a writ whereby a cause depending in a court-baron was taken and removed into a county court.—*O. N. B.* 4.

Tolta, wrong, rapine, extortion.

Ton, 20 cwts. of 112 lbs. avoirdupois each : see Weights and Measures Act, 1878, s. 14.

Tonnage, the estimated number of tons burden that a ship will carry ; as to measurement, see ss. 77 to 78 and Sched. II. of the Merchant Shipping Act, 1894, and ss. 54, 55 of the Merchant Shipping Act, 1906 (*Chitty's Statutes*, tit. ' *Shipping* ').

Tonnage Duties, those imposed on wines imported, according to a certain rate per ton. This, with poundage, was formerly granted to the sovereign for life by Acts of Parliament, usually passed at the beginning of each reign ; but by 1 Geo. 1, c. 12, and 3 Geo. 1, c. 7 (repealed), they were made perpetual.

Tontine, a life-annuity, or a loan raised on life-annuities, with benefit of survivorship. The term originated from the circumstance that Lorenzo Tonti, an Italian, invented this kind of security in the seventeenth century, when the Governments of Europe had some difficulty in raising money in consequence of the wars of Louis XIV., who first adopted the plan in France. A loan was obtained from several individuals on the grant of an annuity to each of them, on the understanding that, as deaths occurred, the annuity should continue payable to the survivors, and that the last survivor should take the whole. This mode of raising money has more than once been adopted by the English Government (see, e.g., 29 Geo. 3, c. 41, amended by 30 Geo. 3, c. 45), and also for the purpose of private speculations, but it has almost entirely fallen into disuse.

Tools. As to their privilege from distress, see DISTRESS. In bankruptcy, Bankruptcy Act, 1914, s. 38, and as to execution upon tools of trade of small value, see Small Debts Act, 1845 (8 & 9 Vict. c. 127), s. 8.

Tools, Exportation of. This was formerly a criminal offence, but it is no longer so, since the restrictions upon trade are removed.—4 *Steph. Com.*

Tor, Toira, or **Tyrra,** a mount or hill.

Tora Garas Huk, an annual payment or rent-charge of a fixed nature on a village *jampa*, made by the Bombay Government through their collectors in the different *zillahs* of Guzerat.—*Indian.*

Torrens' Act, the repealed Artisans' and Labourers' Dwellings Act, 1868. See LABOURERS' DWELLINGS.

Tort [fr. *tortus*, Lat.], an injury or wrong independent of contract, as by assault, libel, malicious prosecution, negligence, slander, or trespass (see those titles). Actions are divided into actions in contract and actions in tort : see as to county court jurisdiction in actions of tort when claim is under 100*l.* (except libel, slander, seduction). See County Courts Act, 1934, s. 40, and as to costs of actions of tort commenced in High Court which could have been commenced in County Court, see s. 47, and COUNTY COURT. An action founded on tort has been held to include—detinue (*Bryant* v. *Herbert*, (1877) 3 C. P. D. 389) ; an action against a carrier for loss of goods by refusal to stop *in transitu* (*Pontifex* v. *Mid. Ry. Co.*, (1877) 3 Q. B. D. 23) ; and an action for injury to a railway passenger (*Kelly* v. *Metropolitan Ry. Co.*, 1895, 1 Q. B. 944). The distinction between tort and contract is not a logical one and it is sometimes difficult to say whether a particular thing is a wrong or a breach of contract. If the

claim of the plaintiff had been set out at large, pointing to some particular stipulation in the contract, which stipulation had been broken, the action would be founded on contract, but where it is only necessary to refer to the contract to establish the relationship between the parties and the claim goes on to aver a breach of duty arising out of that relationship, the action is one of tort—per Collins, M.R., in *Sachs* v. *Henderson*, 1902, 1 K. B. 612. Apparently if the plaintiff has suffered an injury for which, apart from the contract, he could have recovered damages, it is a tort, although it may also be a breach of contract and not less if the tort has been suffered in the execution or purported execution of the contract (*Turner* v. *Stallibrass*, 1898, 1 Q. B. 56).

A married woman cannot sue her husband for tort unless the action is for the protection and security of her separate property (*Ralston* v. *Ralston*, 1930, 2 K. B. 238). Consult *Addison on Torts ; Clerk & Lindsell on Torts*.

Tortfeasor, a wrongdoer ; a trespasser.

Tortious, anything done by wrong ; an act involving a forfeiture of property. See INNOCENT CONVEYANCES.

Torture, an account of this atrocious expedient may be found in the *Encyclopædia Britannica* (tit. ' *Torture* '). Reference may also be made to Jardine's *Reading on the Use of Torture in the Criminal Law of England previously to the Commonwealth* (1837), and an article by Mr. Wyatt Paine in the *Law Times* of January 28th, 1905, at p. 294, where attention is directed to the preamble of the Act for Pirates, 27 Hen. 8, c. 4 (repealed by the Statute Law Revision Act, 1863).

Torture is strictly the infliction of gradually increasing pain for the purpose of extracting confession, or accusation, but it is also used in the secondary sense of those ' cruel and unusual punishments ' which, by the Bill of Rights of 1688, ' ought not to be inflicted.' The *peine forte et dure* (see that title) is also a kind of torture in the primary sense. All three kinds have long been obsolete in English law, and the better opinion is that torture in the primary sense is wholly illegal in England as declared by the judges in 1628, when it was proposed to torture Felton, the assassin of Buckingham, to make him disclose his accomplices. It was, however, frequently the practice to torture by virtue of Royal Warrant, a warrant of 1640, for instance (*Jardine*, p. 108), directing the Lieutenant of the Tower ' to cause John Archer to be carried to the rack, and that there yourself,' with two named ' serjeants-at-lawe, shall examine him upon such questions as our said serjeants shall think fit to propose to him.' It was abolished in Scotland by 7 Anne, c. 21, s. 8.

Torquemada in the Inquisition frequently employed torture, and it was only in 1816 that it was abolished by Papal Bull. See *Encycl. Brit., ubi sup.*, sub-tit. ' *The Church.*'

In Athens the torture was applied to slaves. Aristotle was in favour of it. In Rome, under the Republic, only slaves could be tortured, but under the Empire it was applied to freemen in cases of *læsa majestas*. Cicero (*pro Sullâ*, c. 28) emphatically denounced it as leaving no place for truth, and Seneca as forcing even the innocent to lie.

Under British rule torture is universally acknowledged to have been a most unsatisfactory mode of getting at the truth, often leading the innocent through weakness to plead guilty to crimes they had not committed.

Tory, originally a nickname for the wild Irish in Ulster. An Act of the Irish Parliament for ' better suppressing tories, robbers, and rapparees,' 7 Wm. 3, c. 21, is repealed by the Statute Law Revision Act, 1878. Afterwards given to, and adopted by, one of the great parliamentary parties. See WHIG.

Totidem verbis [Lat.] (in so many words).

Toties quoties (as often as occasion shall arise).

Totted. A good debt to the Crown is by the officer in the Exchequer noted for such by writing the word ' Tot ' to it.—*Jac. Law Dict.*

Toujours et encore presz [Nor.-Fr.] (always and still ready).

Tourn, the sheriff's tourn or rotation. See SHERIFF'S TOURN.

Tout temps presz encore est [Nor.-Fr.] (always was and is at present ready).

Towage, money paid for towing.

Town, ville [fr. *tun*, Sax.], a tithing or vill ; any collection of houses larger than a village. A place ' cannot be a towne in law, unlesse it hath, or in time past hath had, a church, and celebration of divine service, sacraments, and burials ' (*Co. Litt.* 115 *b*). ' And it appeareth by Littleton, that a towne is the *genus*, and a borough is the *species ;* for hee saith that every borough is a towne, but every towne is not a borough ' (*ibid.*). In *London and South Western Ry. Co.* v. *Blackmore*, (1879) L. R. 4 H. L. 611, it was said that where there is such a continuous

occupancy of houses that persons living in them may be said to be living in the same town, there the place may be said to be a town. Town, for the purposes of the Licensing Consolidation Act, 1910 (10 Edw. 7 & 1 Geo. 5, c. 24), and see Sched. VI., is a borough or urban district with at least 1,000 inhabitants and any adjacent collection of houses so declared by order.

Town Clerk, a fit person (usually, but not necessarily, a solicitor) from time to time appointed by the council of a municipal borough to manage their legal business. He may not be a councillor, and holds office during the pleasure of the council. In case of his illness or absence, the council may appoint a deputy.—Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 17 (repealed, except as to London); see Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), ss. 106, 115, 122, 279 (2).

Town Council, the council of a municipal borough, elected by the burgesses to act for the corporation. See MUNICIPAL CORPORATION.

Town Crier, an officer in a town whose business it is to make proclamations. The time-honoured summons is 'Oyez' (hear ye), repeated three times, accompanied by ringing a bell or blowing a horn.

Town Hall, the hall where the public business of a town is transacted, and on or near the door of which, in the case of a municipal borough, public notices are directed to be fixed by s. 232 of the Municipal Corporations Act, 1882 (repealed except as to London). See Local Government Act, 1933 (23 & 24 Geo. 5, c. 51), s. 288.

Town and Country Planning Acts. See IMPROVEMENT OF TOWNS, and *Addenda.*

Town Police Clauses Acts, 1847 (10 & 11 *Vict. c.* 89), *and* 1889 (52 & 53 *Vict. c.* 14). Adoptive Acts. The Act of 1847 related to obstructions and nuisances in streets, fires, places of public resort, hackney carriages, and public bathing and other matters for the order and good government of towns and other districts. The Act of 1847 is still in force as amended; the Act of 1889 was repealed by the Road Traffic Act, 1930; see also Public Health Acts, 1875 to 1936, and Road Traffic Acts, 1930 to 1934.

Township, the district of a town, tithing, or vill, which three are of the same signification in law.—*Steph. Com.*, vol. 1, *Introduction.* The township is the unit of the early constitutional machinery in England (*Stubbs's Constitutional History of England*, vol. 1, p. 82), and the boundaries of the parish, and the township or townships with which it coincides, are generally the same (*ibid.*), 'parish' being properly the ecclesiastical term, and 'township' the civil one.

Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34). An Adoptive Act. The provisions of this Act relating *inter alia* to 'naming streets and numbering houses,' 'improving line of streets,' etc., 'ruinous and dangerous buildings,' and 'precautions during construction and repair of sewers, streets, and houses,' are 'for the purpose of regulating such matters in urban districts.' See also the Public Health Acts, 1875 to 1936.

Traction Engine. This expression is generally used with regard to any locomotive used upon a highway—it may be a light locomotive if over 7½, and not exceeding 11½ tons, or a heavy locomotive if over 11½ tons weight unladen; see Road Traffic Act, 1930, s. 2, and the Motor Vehicles (Construction and Use) Regulations, 1931, S. R. & O., No. 4 (see LOCOMOTIVE; MOTOR CAR); *Chitty's Statutes,* tit. '*Highways.*' They are frequently employed to draw other vehicles, and if their user occasions extraordinary traffic, the owner will be liable in damages: see *Kent County Council* v. *Gerard* (*Lord*), 1897, A. C. 633; *Bromley Council* v. *Croydon Corporation,* 1908, 1 K. B. 353.

Trade [fr. *trutta,* Ital.], traffic; intercourse; commerce; exchange of goods for other goods, or for money.

As to contracts in restraint of trade, see RESTRAINT OF TRADE.

Trade, Board of. The Board of Trade is in theory a committee of the Privy Council, and by s. 12 of the Interpretation Act, 1889, the expression means 'The Lords of the Committee for the time being of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations.' The constitution of the Board rests on an Order in Council of the 5th March, 1784, by which amongst the members composing it are the Archbishop of Canterbury, the Speaker of the House of Commons, the Paymaster-General and the Master of the Mint.

The Board as so constituted has in fact never met, but in practice is an ordinary administrative Government Department, presided over by a President whose salary is determined by Parliament under the Board of Trade Act, 1909 (9 Edw. 7, c. 23); see also President of Board of Trade Act, 1932 (21 & 22 Geo. 5, c. 21). Its powers include supervision over the following matters:

shipping, railways, mines, companies, bankruptcy and insolvency, assurance, companies, explosives inquiries, and other matters relating to trade.

As to the responsibility of members of the Board, see *Kain* v. *Farrer*, reported in *The Times*, 1st to 5th April and 8th to 12th May, 1879.

Trade Boards. The Trade Boards Act, 1909, as amended by the Trade Boards Act, 1918, applies to certain trades specified in the Schedule, and to such others as are brought within the Act by Order of the Board of Trade or by special Order of the Minister of Labour. The Board of Trade can establish Trade Boards with respect to such trades, and the Boards when established must fix minimum rates for both timework and piecework. Notice must be given of the minimum rates established, and such rates are obligatory on employers, who are placed under penalties if they fail to pay in accordance with such rates. Section 11 gives the constitution and proceedings of Trade Boards under this section :

(1) The Board of Trade may make regulations with respect to the constitution of Trade Boards, which shall consist of members representing employers and members representing workers (in this Act referred to as representative members) in equal proportions and of the appointed members. Any such regulations may be made so as to apply generally to the constitution of all Trade Boards, or specially to the constitution of any particular Trade Board or any particular class of Trade Boards.

And the Board of Trade may make regulations with respect to the proceedings and meetings of Trade Boards as provided by the Act.

Trade Description means ' any description, statement, or other indication, direct or indirect, (*a*) as to the number, quantity, measure, gauge, or weight of any goods, or (*b*) as to the place or country in which any goods were made or produced, or (*c*) as to the mode of manufacturing or producing any goods, or (*d*) as to the material of which any goods are composed, or (*e*) as to any goods being the subject of an existing patent, privilege, or copyright, and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters.' A ' " false trade description " means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Act.' See also the Merchandise Marks Acts, 1894, 1903 and 1911 ; and the Acts 1914 and 1916 (Port and Madeira), and 1926. These Acts provide penalties for infringement.

By the Merchandise Marks Act, 1926 (16 & 17 Geo. 5, c. 53), imported goods bearing the name or trade mark of a British manufacturer or trader are not to be sold unless accompanied by indication of origin, and the prohibition is extended to any other imported goods referred to by Order in Council after inquiry (see s. 2 (*ibid.*)). Local authorities are authorized to execute the Act in relation to foodstuffs, except in respect of importation (s. 9). Origin may be indicated by the words ' foreign ' or ' Empire,' as the case may be, or by a clear indication of the country of manufacture or production.

Trade Dispute. This expression is defined in s. 5 (3) of the Trade Disputes Act, 1906, as follows :—

' Trade dispute ' means any dispute between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person, and the expression ' workmen ' means all persons employed in trade or industry whether or not in the employment of the employer with whom a trade dispute arises.

By s. 1, ' An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.' But the provisions of the Act shall not apply to any act done in contemplation or furtherance of a strike or lock-out which is by the Trade Disputes and Trade Unions Act, 1927 (see s. 1 (1), (4)), declared to be illegal, and any such act shall not be deemed to be done in furtherance of a trade dispute. The Act does not apply to illegal strikes or lock-outs within the meaning of the Trade Disputes and Trade Unions Act, 1927 (17 & 18 Geo. 5, c. 22). See STRIKE, and also PICKETING ; TRADE UNION ; *Conway* v. *Wade*, 1909, A. C. 506 ; *Larkin* v. *Long*, 1915, A. C. 814.

Trade Facilities Acts, 1921 to 1926. By these Acts the Treasury was authorized to guarantee (after consultation with advisory

committees before 31st March, 1927), up to a maximum of 75 million pounds, the capital or interest of any capital expenditure loan, raised by any Government, public authority or company, for purposes calculated to promote employment in the United Kingdom.

Trade Libel. See LIBEL.

Trade Marks. By the Trade Marks Act, 1905 (5 Edw. 7, c. 15), s. 3 :—

A ' mark ' shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof.

A ' trade mark ' shall mean a mark used or proposed to be used upon or in connexion with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

A ' registrable trade mark ' shall mean a trade mark which is capable of registration under the provisions of this Act.

Subject to the Trade Mark Acts, the owner of a trade mark has a right to its use in connection with the goods associated with it, whether or not it is registered or registrable by him, and if that right is infringed by a sale of other goods under his mark, or a colourable imitation or otherwise so as to be calculated to deceive a purchaser that those goods are goods of his manufacture, sale or mark, the owner is protected by the common law action of passing off, one of the forms of deceit, and see title TRADE DESCRIPTION.

The Trade Mark Acts, 1905 to 1919, provide a further protection. Trade Marks may be registered in the Register of Trade Marks, of which the Comptroller-General of Patents is the Registrar under Part A or B of the Register. The effect of registration under A (see ss. 38 to 45 of the Act of 1905 as amended by the 1909 Act (2nd Sched.)) is, that, subject to the statutory provisions, the registered trade mark in itself becomes the exclusive and assignable property of the owner in connection with the class of goods for which it is registered, for the infringement of which the statutory remedies are available. No unregistered owner can avail himself of any such remedy for infringement of a trade mark (apart from passing off) unless the mark was in use before 13th August, 1875, and has been refused registration by the Registrar (s. 42 of 1905). The effect of registration in Part B of the Register is that the registration affords *primâ facie* evidence only that the registered proprietor has the exclusive right to use the trade mark but that it is open to the defendant in an action for infringement to prove that the user of which the plaintiff complains is not calculated to deceive or to lead to the belief that the goods, the subject of such user, were goods manufactured, selected, certified, dealt with or offered for sale by the proprietor of the mark.

As a rule trade marks must be registered within twelve months after application. After seven years, registration under Part A is conclusive. For the general law relating to application, inquiries, opposition and registration, etc., see the Acts. A trade mark can only be assigned in connection with the goodwill of the business in the goods for which it has been registered (s. 22 of 1905) ; and see *Addenda*.

A county court may not entertain an action for infringement (*Bow* v. *Hart*, 1905, 1 K. B. 693).

As to the marking of Irish hand-woven goods, see the Irish Handloom Weavers Act, 1909. See also Trade Mark Rules, 1920 (S. R. & O. 1920, No. 397) and 1925 (S. R. & O. 1925, No. 1057), and consult *Kerly on Trade Marks*.

Trader, one engaged in trade or commerce. See BANKRUPT. As to who were ' traders ' within the meaning of the repealed Bankruptcy Act, 1869, see Schedule I. of that Act.

Trade Union. The Acts 30 & 31 Vict. cc. 8, 74, provided for facilitating the proceedings of a commission appointed by Queen Victoria to inquire into and report on the organization and rules of trade unions, and other associations of employers and workmen. The Trade Union Act, 1871 (34 & 35 Vict. c. 31), provides :—

Section 2. ' The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.'

Section 3. ' The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.'

Section 4. ' Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for breach of any of the following agreements, namely,

(1) Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed :

(2) Any agreement for the payment by any person of any subscription or penalty to a trade union :

(3) Any agreement for the application of the funds of a trade union ;—

(a) To provide benefits to members; or
(b) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union; or
(c) To discharge any fine imposed upon any person by sentence of a court of justice; or
(4) Any agreement made between one trade union and another; or
(5) Any bond to secure the performance of any of the above-mentioned agreements.

'But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.'

The Act, which was amended as to insurance of children's lives, the membership of minors, the local jurisdiction of justices, and other matters by the Trade Union Act Amendment Act, 1876, provides for the registration of unions by the Registrar of Friendly Societies, but excludes the operation of the Friendly Societies Acts, the Industrial and Provident Societies Acts, and the Companies Acts. By s. 6 of the 1871 Act, any seven or more members may register, but the registration is void if any of the purposes of the union are unlawful. The Act of 1871 was further and very materially amended by the Trade Union Act, 1913, and the Trade Disputes and Trade Unions Act, 1927. These Acts make further provision as to registration, amend the law as to the objects and powers of a trade union, declare certain strikes and lock-outs illegal, prevent intimidation of workers, restrict and regulate the application of trade union funds for political purposes. The latter Act regulates the membership of trade unions of civil servants.

In the celebrated case of *Allen* v. *Flood*, 1898, A. C. 1, it was held by a majority of six to three in the House of Lords, after consulting eight judges, and reversing the judgment of the Court of Appeal, that no action lay against Mr. Allen (who was the London delegate of the boiler-makers' society) by two dismissed shipwrights for maliciously inducing their employer to dismiss them. The trade union in that case threatened a strike unless workmen who had broken a trade union rule were dismissed, and the employer yielded to the threats; but the House of Lords afterwards held in *Quinn* v. *Leathem*, 1901, A. C. 495, that a combination of two or more without justification or excuse to injure a man in his trade by inducing his customers or servants to break their contracts with him or not to deal with him or continue in his employment is, if it results in damage to him, actionable; in this case the employer recovered 250*l*. from the president, secretary, treasurer, and two members of a trade union registered as the 'Belfast Journeymen Butchers and Assistants Association.'

It was held in the Taff Vale Railway case that a trade union registered under the Act of 1871 might be sued in its registered name, so as to be liable for the consequences of a strike instigated and regulated by its secretaries (*Taff Vale Ry. Co.* v. *Amalgamated Society of Railway Servants*, 1901, A. C. 426), but the effect of this decision appears to be overriden by the Trade Disputes Act, 1906, s. 4 of which is as follows:—

4.—(1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of the trustees of a trade union to be sued in the events provided for by the Trade Union Act, 1871, section 9, except in respect of any tortious act committed by or on behalf of the union in contemplation or in furtherance of a trade dispute.

The section is general in its application and is not limited to tortious acts committed in contemplation or furtherance of a trade dispute (*Vacher & Sons* v. *London Society of Compositors*, 1913, A. C. 107), and 'trade union' is not limited to masters and workmen: *Hardie* v. *Chiltern*, 1928, 1 K. B. 663 (*motor manufacturers*).

See CONSPIRACY; PICKETING; STRIKE; TRADE DISPUTE; MASTER AND SERVANT. Consult *Cohen's Trade Union Law*.

Trading with the Enemy Act, 1914 (4 & 5 Geo. 5, c. 87), provided that any person who 'during the present war [i.e., the war with Germany] trades or has since 4th August, 1914, traded with the enemy within the meaning of this Act, shall be guilty of a misdemeanour. The Act was partly repealed (S. R. & O. 1921 (No. 1276), and see 15 & 16 Geo. 5, c. 43). As to what constitutes an alien enemy, see *Daimler Co.* v. *Continental Tyre Co.*, 1916, 2 A. C. 307.

Tradition, the act of handing over; delivery.

Trailbaston, Court of, erected by Edward I. by the statute of Ragman. This was a commission of oyer and terminer of an unusual kind, and was issued in the fulness of zeal for the correction of public disorders. The rigour, however, with which this was executed creating some discontent, it was thought expedient, in course of time, to

discontinue it.—2 *Reeves*, p. 277; 4 *Inst.* 186.

Trainbands, the militia; the part of a community trained to martial exercises.

Training, Military, without full authority, illegal, by the Unlawful Drilling Act, 1819 (60 Geo. 3 & 1 Geo. 4, c. 1); and see SEDITION.

Traitor [fr. *traditor*, Lat.], one who, being trusted, betrays; one guilty of treason. See TREASON.

Traitor's Gate, the river gate of the Tower of London by which traitors, and state prisoners generally, were committed to the Tower.—*Oxf. Dict.*

Tramways, rails for conveyance of traffic along a road not owned, as a railway is, by those who lay down the rails and convey the traffic. The construction and regulation of tramways is provided for by the Tramways Act, 1870 (33 & 34 Vict. c. 78), and numerous special Acts. See *Chitty's Statutes*, tit. '*Tramways*'; and *Sutton's Tramways Acts*.

As to purchase of tramways by local authority within six months after the expiration of twenty-one years from the time of authorization of construction, or within six months after the expiration of every subsequent period of seven years, see s. 43 of the Tramways Act, 1870, as amended by the Local Government Act, 1933, and *London Street Tramways Co.* v. *London County Council*, 1894, A. C. 489. As to the powers of the Ministry of Transport, see ss. 2 and 5 of the Ministry of Transport Act, 1919 (9 & 10 Geo. 5, c. 50).

The abandonment of tramways is regulated by ss. 41, 42 of the Act of 1870.

As to the partial exemption from rates, see *Thornton Urban Council* v. *Blackpool Tramroad Co.*, 1909, A. C. 264, and as to liability to a passenger, see *Clarke* v. *West Ham Corporation*, 1909, 2 K. B. 858, and QUARTER RATING.

Transcript, a copy; anything written from an original.

Transcripto pedis finis levati mittendo in cancellariam, a writ which certified the foot of a fine levied before justices in eyre, etc., into the Chancery.—*Rev. Brev.* 169, 4th ed.

Transcripto recognitionis factæ coram justiciariis itinerantibus, etc., an old writ to certify a cognizance taken by justices in eyre.—*Ibid.* 151.

Transfer, to convey; to make over to another; the document by which property, as shares in public companies, is made over by one to another. The Real Property Act, 1845 (8 & 9 Vict. c. 106) (reproduced in an amended form by s. 52, Law of Property Act, 1925) provided that a transfer (therein called a feoffment) (see that title) of land, and an assignment of a lease (therein called a 'chattel interest') of land must be by deed. See DEED.

By the Companies Act, 1929, s. 62, shares or other interest of any member in a company shall be personal estate transferable in manner provided by the articles of the company, and under s. 63 (*ibid.*), a transfer of shares in or debentures of the company is not to be registered except on production of a proper instrument of transfer (as provided for by the articles (see Table A or other articles). As to shares transmissible by law or by personal representatives, and other matters relating to transfer, see ss. 52 to 66. See also for power to transfer shares, s. 14 of the Companies Clauses Act, 1845 (8 & 9 Vict. c. 16). As to the transfer of chattels, see SALE OF GOODS ACT; GIFT; *Goodeve on Personal Property*.

A forged transfer is a nullity. See FORGERY.

Transfer of Cases. By the Judicature Act, 1925, s. 59 (replacing Judicature Act, 1873, s. 36), and R. S. C. 1883, Ord. XLIX., power is given to transfer causes from one Division of the High Court to another.

Transfer of Land Acts. The Land Registry Act, 1862 (25 & 26 Vict. c. 53), and the Land Transfer Act, 1875 (38 & 39 Vict. c. 87), were passed to facilitate the transfer of land in England. The Acts were practically a dead letter: see *Report of Select Committee of House of Commons on Land Titles and Transfers*, 1879. Compulsory registration on Order of Council not dissented from by the local county council was introduced by the Land Transfer Act, 1897 (60 & 61 Vict. c. 65). The first Order in Council (18th July, 1898) applied compulsory registration to the Administrative County of London as from specified dates; this Act has been superseded by the Land Registration Act, 1925 (see REGISTRATION OF TITLE), and as to the previous Acts, *Fortescue-Brickdale and Sheldon's Land Transfer Acts*. The L. T. Act, 1897, Part I., established a 'Real Representative,' see that title.

Transgressione, a writ or action of trespass.

Transhipment, taking the cargo out of one ship, and loading another with it.

Transire, a warrant or permit from the custom-house to let goods pass.

Transitory Actions were those in which

the venue might be laid in any county. See VENU.

Transitus. See STOPPAGE IN TRANSITU.

Translation, the removal from one place to another; the removal of a bishop to another diocese.

Transport, Ministry of, was established by the Ministry of Transport Act, 1919, to take over the duties of various Government departments in relation to transport. See the Act and the London Traffic Act, 1924.

Transportation, the banishing or sending away a criminal into another country.

This punishment was introduced in the reign of Queen Elizabeth, 39 Eliz. c. 4. The word is first used in the 14 Car. 2, c. 23. The punishment was chiefly regulated by 5 Geo. 4, c. 84. Returning from transportation before the expiration of the term of punishment was an offence against public justice, and punishable by transportation for life.—4 & 5 Wm. 4, c. 67. Transportation has been superseded by penal servitude under the Penal Servitude Act, 1853 (16 & 17 Vict. c. 99), as amended by subsequent Acts. See PENAL SERVITUDE.

Also the carriage of passengers or property.

Transubstantiation, 'the change of the substance of the Bread and Wine in the Supper of our Lord' (Art. 28 of the Thirty-nine Articles of Religion); 'a conversion of the whole substance of the Bread into the Body and of the whole substance of the Wine into the Blood, which conversion the Catholic Church calls Transubstantiation.'—Creed of Pope Pius IV., founded on Ch. iv., sess. xiii., of the Council of Trent.

Declaration against Transubstantiation.—A Declaration (commonly called the 'Declaration against Transubstantiation') was required of all members of either House of Parliament in 1678, by 30 Car. 2, st. 2, c. 1, with the effect of disabling Roman Catholics from sitting in either House till the passing of the Roman Catholic Relief Act of 1829 (10 Geo. 4, c. 7).

Declaration by each new Sovereign.—Both the Bill of Rights (1 W. & M. sess. 2, c. 2), and the Act of Settlement (12 & 13 Wm. 3, c. 2), by an incorporation, by reference only, of 30 Car. 2, st. 2, c. 1 (of which 'so much as is unrepealed' was repealed by the Parliamentary Oaths Act, 1866), required the sovereign 'on the first day of the meeting of the first Parlyament next after his or her comeing to the crowne sitting in his or her throne in the House of Peeres in the presence of the lords and commons therein assembled or at his or her coronation (which shall first happen)' to 'make subscribe and audibly repeate' the Declaration, as also did, in the case of many officials, etc., the Test Act and the Toleration Act. The Declaration was as follows:—

> I A. B. do solemnly and sincerely in the presence of God profess testify and declare that I do believe that in the Sacrament of the Lord's Supper there is not any transubstantiation of the elements of bread and wine into the body and blood of Christ at or after the consecration thereof by any person whatsoever; and that the invocation or adoration of the Virgin Mary or any other saint, and the sacrifice of the mass as they are now used in the Church of Rome are superstitious and idolatrous, and I do solemnly in the presence of God profess testify and declare that I do make this declaration and every part thereof in the plain and ordinary sense of the words read unto me as they are commonly understood by English protestants without any levasion [*sic.*, but, in the Statutes of the Realm, evasion] equivocation or mental reservation whatsoever, and without any dispensation already granted me for that purpose by the Pope or any other authority or person whatsoever or without thinking that I am or can be acquitted before God or man or absolved of this declaration or any part thereof although the Pope or any other person or persons or power whatsoever should dispense with or annul the same or declare that it was null and void from the beginning.

See now the Accession Declaration Act, 1910, under the title BILL OF RIGHTS.

Transumpts. An action of transumpt is an action competent to any one having a partial interest in a writing, or immediate use for it, to support his title or defences in other actions. It is directed against the custodier of the writing, calling upon him to exhibit it, in order that a transumpt, i.e., a copy, may be judicially made and delivered to the pursuer. The action is now very rare.—*Bell's Scots Law Dict.*

Traveller. Under the Licensing (Consolidation) Act, 1910, s. 61 (see INTOXICATING LIQUORS), intoxicating liquors were not to be sold at certain hours except to '*bonâ fide* travellers,' and by s. 61 (3) a person was not to be deemed a '*bonâ fide* traveller unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor'; but although a man was not a *bonâ fide* traveller unless he had travelled the three miles, he did not necessarily become so by merely having travelled the three miles. The expression *bonâ fide*, which appears to owe its origin to the Scottish Forbes-Mackenzie Act (16 & 17 Vict. c. 67), seems merely intended to point the distinction between those who travel to drink, and those who drink to travel. Section 61 of the Act of

1910 was repealed by the Licensing Act, 1921. Consult *Paterson's Licensing Acts.*

For obligation of innkeepers to entertain travellers, but travellers only, see INNKEEPER, and *Sealey* v. *Tandy*, 1902, 1 K. B. 296.

Traverse, the denial of some matter of fact alleged in a pleading, whether in an action or in criminal prosecutions. See PLEADING ; STATEMENT OF DEFENCE.

Traverse of an Office, proof that an inquisition made of lands or goods by the escheator is defective and untruly made.

Traverser, in Ireland, a prisoner.

Traversing Indictment, postponing the trial of it.

The Criminal Procedure Act, 1851, s. 16, repeals 60 Geo. 3 & 1 Geo. 4, c. 4, as to the traverse of indictments in cases of misdemeanour, and provides, by s. 27, that no person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any session of the peace, session of oyer and terminer, or session of gaol delivery; but if the Court upon the application of the person so indicted, or otherwise, thinks that he ought to be allowed a further time to prepare for his defence, or otherwise, such Court may adjourn the trial to the next session, upon such terms as to bail, etc., as shall seem meet, and may respite the recognizances of the prosecutor and witnesses; the prosecutor and witnesses to be bound to attend and prosecute and give evidence, without entering into fresh recognizances.

Traversing Note. In equity a plaintiff, after an appearance had been entered, might, in default of answer to interrogatories which had been filed for the examination of the defendant, proceed with his cause by filing a traversing note as to such defendant.—1 *Dan. Ch. Pr.*, 5th ed.

Traversum, a ferry.

Trawling. See SEA FISHERIES ACTS.

T. R. E., the initials of the phrase *tempore regis Edwardi.*

Treacher, Trechetour, or **Treachour,** a traitor.

Treadmill, an instrument of prison discipline. It was composed of a large revolving cylinder, having ledges or steps fixed round its circumference ; the prisoners walked up these ledges, and their weight moved the cylinder round. Now disused.

Treason [fr. *trahir*, Fr., to betray ; *proditio*, Lat.], or *leze-majesty*, an offence against the duty of allegiance, and the highest known crime, for it aims at the very destruction of the commonwealth itself. Five species of treason are declared by the Treason Act, 1351, or 'Statute of Treasons' (25 Edw. 3, st. 5, c. 2), as follows :—

(1) When a man doth compass or imagine the death of our lord the king (a queen regnant is within these words), of our lady his queen, or of their eldest son and heir.

(2) If a man do violate the king's companion (i.e., his wife), or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir.

(3) If a man do levy war against our lord the king in his realm. (After a battle has taken place, it is termed *bellum percussum ;* before it, *bellum levatum.*)

(4) If a man be adherent to the king's enemies in his realm, giving to them aid or comfort in the realm or elsewhere.

(5) If a man slay the chancellor, treasurer, or the king's justices assigned to hear and determine, being in their places during their offices.

The following species have been created by subsequent statutes :—

If any person shall endeavour to deprive or hinder any person, being the next in succession to the crown, according to the limitations of the Act of Settlement (12 & 13 Wm. 3, c. 2), from succeeding to the crown, and shall maliciously and directly attempt the same by any overt act.—1 Anne, st. 2, c. 17, s. 3.

If any person shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm that any other person hath any right or title to the crown of this realm, otherwise than according to the Act of Settlement, or that the kings of this realm, with the authority of Parliament, are not able to make laws and statutes, to bind the crown and the descent thereof.—6 Anne, c. 7.

By 36 Geo. 3, c. 7, made perpetual by 57 Geo. 3, c. 6, compassing the death or injury of the king, and expressing the same in writing or by any overt act, is made treason.

Treason must be prosecuted within three years from its commission, if committed within the realm, except in the case of a designed assassination of the sovereign.—7 & 8 Wm. 3, c. 3.

Treason committed out of the king's Dominions is, by 35 Hen. 8, c. 2, triable in the K. B. D., and the Act is one of the enactments by virtue of which a Bill of Indictment may still be preferred before a grand jury of the County of London and

Middlesex; see Administration of Justice (Misc. Prov.) Act, 1933 (23 & 24 Geo. 5, c. 36), s. 1 (4), and Sched. I.

The punishment of a convicted traitor is death by hanging, the ignominious adjuncts of drawing on a hurdle and quartering, etc. (as to which see 54 Geo. 3, c. 146), having been abolished, along with forfeiture and attainder, by the Forfeiture Act, 1870. By the Treason Act, 1842, as read with s. 30 of the Interpretation Act, 1889, treason consisting in the imagining bodily harm to the king in that kind is triable just as murder is. By the same Act firing at the king or striking him is punishable with whipping. The Crown can, however, direct that the traitor be beheaded: see Treason Act, 1814, ss. 1 and 2.

Treason-Felony. Treason-felony is, like treason, a purely statutory offence. By the Treason-Felony Act, 1848, s. 3, as read with s. 30 of the Interpretation Act, 1889, 'If any person shall, within the United Kingdom or without, compass to depose the King, or to levy war against him, within any part of the United Kingdom, in order to compel him to change his counsels, or in order to intimidate or overawe Parliament, or to stir any foreigner with force to invade the United Kingdom, or any other His Majesty's dominions, and such compassings shall express by writing, or by open or advised speaking, or by any overt act, he shall be guilty of felony.'

Treasurer, one who has the care of money or treasure. See TREASURY.

There was a Lord High Treasurer of England, but the duties are now executed by commissioners. The Prime Minister generally fills the office of First Lord of the Treasury.

Treasurer of a County, he that keeps the county stock. As to his duties to receive and make payments, and keep books and accounts, see 12 Geo. 2, c. 29, and 15 & 16 Vict. c. 81, s. 50, *Chit. Stat.*, tit. '*County*'; Local Government Act, 1888, s. 80; and Local Government Act, 1933, ss. 86, 102, 184.

Treasurer's Remembrancer, he whose charge was to put the Lord Treasurer and the rest of the Judges of the Exchequer in remembrance of such things as were called on and dealt in for the sovereign's behoof. There is still one in Scotland.

Treasure-trove [*thesaurus inventus*, Lat.], money or coin, gold, silver, plate, or bullion found hidden in the earth or other private place, the owner thereof being unknown or unfound, in which case it belongs to the Crown: see *Jervis on Coroners*, p. 42. Bracton defines it, *vetus depositio pecuniæ*. Concealing treasure-trove is punishable by fine or imprisonment.

Coroners have jurisdiction to inquire of treasure-trove, under s. 36 of the Coroners Act, 1887, as theretofore, but not to inquire into any question of title as between the Crown and any other claimant (*Attorney-General* v. *Moore*, 1893, 1 Ch. 676).

As to the Roman law on this subject, see *Sand. Just.*

Treasury. (1) The place where treasure is deposited. (2) The department of state which manages the Public Revenue. The Lord High Treasurer is properly the head of this department; but, in practice, the functions of this great official are discharged by several commissioners. The chief of these is called First Lord; and he is, by custom, the head of the Cabinet (see CABINET COUNCIL), and of the whole executive, for which he is responsible in every department. The Chancellor of the Exchequer is the second commissioner, and there are three others. There are also three secretaries to the Treasury.

Treasury Bills are bills issued by the Treasury payable not later than twelve months after date. Treasury Bills Act, 1877. See FUNDS; EXCHEQUER BILLS.

Treasury Chest Fund. A fund originating in the usual balances of certain grants of public money, and which is used for banking and loan purposes by the Commissioners of the Treasury. See 40 & 41 Vict. c. 45.

Treasury Notes, the popular name of bank notes which were substituted for currency notes, see that title and CURRENCY, and Bank Notes Acts, 1914 and 1928.

Treasury Solicitor. Constituted a Corporation Sole by Treasury Solicitor Act, 1876 (39 & 40 Vict. c. 18). The Treasury Solicitor is no longer Director of Public Prosecutions: see Prosecution of Offences Act, 1908 (8 Edw. 7, c. 3).

Treating. The temporary Corrupt Practices Prevention Act, 1854 (17 & 18 Vict. c. 102), s. 4, amended by the Corrupt Practices Act, 1883 (46 & 47 Vict. c. 51), ss. 1 and 2, extended to municipal, school board, and other elections by the Corrupt Practices Act, 1884, and continued from time to time by Expiring Laws Continuance Acts, enacts that every candidate who corruptly by himself, or by or with any person or otherwise, before, during, or after any parliamentary election, directly or indirectly gives or provides, or causes to be given or pro-

vided, or is accessory to giving or providing, or pays any expenses for meat, drink, entertainment, or provision, for any person, in order to be elected, or for being elected, or for corruptly influencing any person to give or refrain from giving his vote, or on account of having voted or refrained from voting, or being about to vote or refrain from voting, is guilty of treating, and forfeits 50*l.* to any informer with costs. Every voter who corruptly accepts any meat, drink, entertainment, etc., becomes incapable of voting at such election, and his vote is void. As to the origin of treating at elections, see 3 *Hallam's Const. Hist.* c. 21, p. 302, n. (*g*).

Treaty, negotiation, act of treating, a compact between nations. It is the sovereign's prerogative to make treaties, leagues, and alliances with foreign states and princes.

Treble Costs. Treble Damages. See DOUBLE OR TREBLE COSTS; DOUBLE OR TREBLE DAMAGES.

Trebucket, a tumbrel, castigatory, or cucking-stool. See CASTIGATORY.

Tree. Overhanging branches may be cut by an adjoining owner without notice to the owner of the tree, provided that the adjoining owner does not go upon the land of the owner of the tree (*Lemmon* v. *Webb*, 1895, A. C. 1). No right can be acquired by prescription for trees to overhang: per Lord Macnaghten, *ibid.*; and an action lies for damage to crops by overhanging trees (*Smith* v. *Giddy*, 1904, 1 K. B. 448).

By the Highway Act, 1835, ss. 64–66, no tree may be planted within 15 feet of the centre of a highway. See *Stillwell* v. *New Windsor Corpn.*, 1932, 2 Ch. 155 (highway authority removing trees transplanted on ancient highway).

Power to plant trees is given to all highway authorities by the Roads Improvement Act, 1925, and also the removal of trees on adjacent land which obstruct the view at corners.

As to the power to lop trees overhanging any street or public road in order to prevent interference with a telegraphic line, see the Telegraph (Construction) Act, 1908 (8 Edw. 7, c. 33). See TELEGRAPHS; TIMBER.

Treet [fr. *triticum*, Lat.], fine wheat.—51 Hen. 3.

Tremagium, Tremesium, Tremissium, the season or time of sowing summer-corn, being about March, the third month, to which the word may allude.

Tremelium, granary.

Tresayle, an abolished writ sued on ouster by abatement on the death of the grandfather's grandfather.

Trespass [fr. *transgressio*, Lat.], any transgression of the law, less than treason, felony, or misprision of either.

The action of trespass lies where a trespass has been committed either to the plaintiff's person or property. A trespass is an injury committed with violence, and this violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediate kind, and committed on the person or tangible and corporeal property of the plaintiff. Of actual violence an assault and battery is an instance; of implied, a peaceable but wrongful entry upon the plaintiff's lands.—*Steph. Plead.*, 7th ed., 11, 37, 154. As to trespass on the case, see CASE and VI ET ARMIS.

Trespass quare clausum fregit. See QUARE CLAUSUM FREGIT.

Trespass to Land. For trespass by entry or user of land without right or beyond the limits of a right, no damage need be proved (see also AB INITIO and DAMAGE FEASANT). Trespass by occupation of land is a continuing damage which is actionable from day to day so long as the trespassing person or object remains on the land, but see SUPPORT, and cases cited under that title. The plaintiff must show that he was in possession at the time of the alleged trespass, not merely a right of possession or infringement of a licence, but having entered he is entitled to sue for trespass from the date of the accrual of the right or to 'trespass by relation,' e.g., to mesne profits. Jus tertii or the extraneous right of another who is not in possession is no defence to an action of trespass. See also Air Navigation Act, 1920, s. 9.

Trespasser, one who commits a trespass. In general a person owes no duty to a trespasser, the rule being that a man trespasses at his own risk (*Grand Trunk Railway of Canada* v. *Barnett*, 1911, A. C. 370; and see *Latham* v. *R. Johnson & Nephew*, 1913, 1 K. B. 398); but an owner of a field upon which to his knowledge the public habitually trespassed was under the circumstances held liable to a trespasser for injuries done to him by a vicious horse which the owner of the field kept there (*Lowery* v. *Walker*, 1911, A. C. 10). A man may be a trespasser even on a highway if he is using it for an improper purpose; see *Harrison* v. *Duke of Rutland*, 1893, 1 Q. B. 143; and see SPRING GUNS.

Trestonare, to turn or divert another way.

Tret. See ALLOWANCE.

Trethings [fr. *trethu*, Welsh, to tax], taxes, imposts.

Treyts, taken out or withdrawn, as withdrawing or discharging a juror.

Trial, the hearing of a cause, civil or criminal, before a judge who has jurisdiction over it, according to the laws of the land. 'Triall is to finde out by due examination the truth of the point in issue or question betweene the parties, whereupon judgment may be given' (*Co. Litt.* 124 *b*).

At a trial by jury now, as formerly in the Common Law Courts, the cause is called on, or the prisoner arraigned, before the jury is sworn. The parties may then challenge the jury. (See CHALLENGE.) The pleadings are then (in civil causes and misdemeanours) opened by the junior counsel for the plaintiff; and if it appear that the burden of proof is on the plaintiff, his senior counsel states the case to the jury; after which the witnesses for the plaintiff are examined by his counsel, the cross-examination being generally conducted by the senior counsel for the defendant. If the defendant's counsel object to any question or any document, all the defendant's counsel are entitled to be heard on the objection, and all the plaintiff's counsel on the other side, and the senior counsel for the defendant in reply; and so if the plaintiff's counsel object *mutatis mutandis*. If the plaintiff have evidence to rebut the issues of which the burden of proof lies on the defendant, he may either produce it at the same time as his other evidence, or reserve it until after the defendant has given affirmative evidence on the issue. At the end of the plaintiff's evidence, the defendant's counsel declares whether he will call witnesses; and if he does not, the plaintiff's senior counsel sums up his evidence, and the defendant's senior counsel next addresses the jury, and the judge sums up. If the defendant's counsel calls evidence, he immediately opens his case to the jury, and the witnesses are called and examined as in the plaintiff's case. The plaintiff is, in general, entitled to call witnesses to rebut the evidence of the defendant, if he has not already given all his evidence, which is more generally the case. Then the defendant's senior counsel sums up, and the senior counsel for the plaintiff replies upon the whole case. The judge then sums up. By consent of both parties the verdict may be taken by the associate in the absence of the judge; but in a criminal trial he must be present.

In a criminal trial the effect of the pleadings is stated to the jury by the clerk of the court, except in a case of misdemeanour, where that is done by counsel as in a civil cause. In other respects the order of proceeding is the same. After a conviction for misdemeanour the counsel for the defendant may address the court in mitigation, and the counsel for the prosecution in aggravation, of his sentence. Sentence may be deferred to a future day.

Right to Trial by Jury. In criminal cases, where the accused is charged on indictment, the trial is always by a jury. In civil cases in the High Court, trial is without a jury, unless the court otherwise orders; but where fraud is alleged, or in cases of libel, slander, malicious prosecution, false imprisonment, seduction, or breach of promise of marriage, an order is made for trial by a jury on the application of either party 'unless the Court or judge is of opinion that the trial thereof requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury.' Under the Administration of Justice (Miscellaneous Provisions) Act, 1933 (23 & 24 Geo. 5, c. 36), s. 6, trial by jury is entirely at the discretion of the Court or judge, and see R. S. C. Ord. XXXVI., rr. 2–6; also *Keeling* v. *Cook*, (1934) 78 L. J. N. C. 306, and JURY. In county courts parties are entitled to trial by jury unless the judge, on the application of a party, decides that the action or matter cannot as conveniently be tried with a jury as without one. The judge, however, cannot order a trial without a jury where the High Court would not be able to do so. Admiralty proceedings; cases under the Increase of Rent and Mortgage Interest (Restrictions) Acts are not tried by juries. See *A. P.*, R. S. C. Ords. XXXVIII.A and XXXIX., and County Courts Act, 1934, s. 91, and the *Annual County Courts Practice*.

In the Chancery Division of the High Court, when the trial is by affidavit it is commonly called a hearing, and all the counsel on both sides are heard in order, the senior counsel for the party first heard (plaintiff or petitioner) being heard in reply. When an issue is tried by oral evidence before the Court itself, the Common Law practice is followed. In the Chancery Division actions are almost invariably tried by a judge alone, actions where a jury is thought desirable being usually transferred to the King's Bench Division. The trial in the Ecclesiastical Courts mostly resembles the

former course of an ordinary trial in Chancery.

Consult the *Annual Practice* as to trial in civil causes; and *Arch. Crim. Prac.* as to trial in criminal cases.

Trial at Bar. See BAR.

Tribunal, the seat of a judge; a court of justice.

Tribute, a payment made in acknowledgment; subjection.

Tricesima, an ancient custom in a borough in the county of Hereford, so called because thirty burgesses paid 1*d.* rent for their houses to the bishop, who was lord of the manor.—*Lib. Nik. Heref.*

Tridingmote, the court held for a triding or trithing.

Triennial Act (6 W. & M. c. 2), which in 1694, after reciting that 'by the ancient laws and customs of this realm, frequent Parliaments ought to be held,' and that 'frequent and new Parliaments tend very much to the happy union and good agreement of the King and people,' provided that 'a Parliament shall be holden once in three years at the least,' and limited the duration of Parliament to three years, enlarged to seven by the Septennial Act (see that title) of 1715, and reduced to five by the Parliament Act, 1911.

An earlier Triennial Act of 1641 (16 Car. 1, c. 1), limiting duration, was repealed in 1664 by 16 Car. 2, c. 1.

Triens, a third part; also dower.

Triers. See TRIORS.

Trinepos, the male descendant in the sixth degree in direct line.—*Civ. Law*

Trinidad and Tobago. Islands in the West Indies form one colony under the Act 50 & 51 Vict. c. 44. Under 9 & 10 Geo. 5, c. 47, a West Indian Court of Appeal was created for Trinidad and Tobago, British Guiana, Barbados and Leeward and Windward Isles with power to reduce or increase jurisdiction of the Court.

Trinity House, a society at Deptford Strond, incorporated by Henry VIII. in 1515, for the promotion of commerce and navigation by licensing and regulating pilots, and ordering and erecting beacons, lighthouses, buoys, etc., and stated in the preamble of 8 Eliz. c. 13 to be 'charged with the conduction of the Queen's Majesty's Navy Royal, and bound to foresee the good increase and maintenance of ships, and of all kinds of men trained and brought up to watercraft most meet for Her Majesty's marine service.' Under the Harbours, Docks and Piers Clauses Act, 1847 (*q.v.*), buoys are to be laid down as may be directed by, and lighthouses, beacons are not to be erected, nor are lights to be exhibited, without permission of Trinity House.

The Trinity House, by the Merchant Shipping Act, 1894, repealing and re-enacting the Merchant Shipping Act, 1854, is the chief lighthouse and pilotage authority for England, and the Scots and Irish Boards are to some extent under its control.—*Pulling's Shipping Code, Introd.* xii. As to pilotage, see Pilotage Act, 1913 (2 & 3 Geo. 5, c. 31), ss. 52–55.

Trinity Masters, Elder Brethren of Trinity House. Two sit as assessors in Admiralty and Prize Courts to assist the judge in cases in which technical questions of navigation arise.

Trinity Sittings of the Court of Appeal and of the High Court of Justice in Middlesex commence on the Tuesday after Whitsun week and terminate on the 31st of July. See R. S. C. Ord. LXIII., r. 1, and SITTINGS.

Trinity Term, one of the four legal terms, beginning on the 22nd May, and ending on the 12th June. See TERMS, and last title.

Trinobantes, Trinonantes, or **Trinovantes,** inhabitants of Britain, situated next to the Cantii northward, who occupied, according to Camden and Baxter, that country which now comprises the counties of Essex and Middlesex, and some part of Surrey. But if Ptolemy be not mistaken, their territories were not so extensive in his time, as London did not then belong to them. The name seems to be derived from ths three following British words:—*Trie, now, hant,* i.e., inhabitants of the new city (London).—*Encyc. Londin.*

Trinoda necessitas. Under this denomination are comprised three distinct imposts, to which all landed possessions, not excepting those of the church, were subject, viz.:—(1) Bryge-bót, for keeping the bridges and high roads in repair.—(*Pontis constructio.*) (2) Burg-bót, for keeping the burgs or fortresses in an efficient state of defence.—(*Arcis constructio.*) (3) Fyrd, or contribution for maintaining the military and naval forces of the kingdom.—*Anc. Inst. Eng.*

Triors or **Triers,** such as were chosen by the court to examine whether a challenge made to the panel of jurors, or to any of them, be just or not.—*Bro. Abridg.* 122.

Tripartite, divided into three parts, having three corresponding copies; a deed to which there are three distinct parties.

Triplicatio, a rebutter.

Tristia, a forest immunity.—*Manw.* 1, 86.

Tritavia, a great-grandmother's great-grandmother; the female ascendant in the sixth degree.—*Civ. Law.*

Tritavus, a great-grandfather's great-grandfather; the male ascendant in the sixth degree.—*Ibid.*

Trithing, the third part of a shire or province; a riding. The county of York is divided into three ridings—East, West, and North.

Trithing-reeve, a governor of a trithing.

Triumvir, a trithing man or constable of three hundreds. A member of a Government consisting of three.

Triverbial Days [*dies fasti*, Lat.], judicial days, when the courts are open for business; so called from the three words, *do*, *dico*, and *addico*.

Tronage, a customary duty, or toll for weighing wool.

Tronator, a weigher of wool.

Trophy Money, money formerly collected and raised in London, and the several counties of England, towards providing harness and maintenance for the militia, etc.

Trout. The Salmon and Freshwater Fisheries Act, 1923, consolidates and amends the enactments relating to salmon and trout and freshwater fisheries in England and Wales. Sects. 1 and 2 prohibit the use of a light, otter lath, or jack, wire or snare, spear, gaff, strokehaul, snatch or the like, or stone or other missile, or roe for catching or killing salmon, trout, or freshwater fish. A gaff or tailer may, however, be used as an auxiliary to angling with a rod and line. No explosive or noxious material must be used with intent to take or destroy fish in any waters (s. 9). Sect. 31 provides that—

31.—(1) No person shall fish for, take, kill or attempt to take or kill trout—

(*a*) Except with a rod and line, during the annual close season for trout; or

(*b*) with a rod and line during the annual trout close season for rod and line; or

(*c*) except with a rod and line, during the weekly close time for trout.

. . . . . .

(3) The annual close season for trout shall in any place in which a period has been fixed in that behalf by a bye-law under this or any other Act be that period, or, if there is no such bye-law, be the period between the thirty-first day of August and the first day of March following.

(4) The annual trout close season for rod and line shall be in any place the period which has been fixed in that behalf by a bye-law under this or any other Act, or, if there is no such bye-law, the period between the thirtieth day of September and the first day of March following.

(5) The weekly close time for trout shall be in any place the period which has been fixed in that behalf by a bye-law under this or any other Act, or, if there is no such bye-law, the period between the hour of six on Saturday morning and the hour of six on the following Monday morning.

. . . . . .

(7) This section shall not apply to rainbow trout.

By s. 32, buying and selling of trout is prohibited between 31st August and 1st March, but by the Amendment Act, 1929, makes certain exemptions, the most important of which is canned, frozen, or otherwise preserved, trout.

Trover [fr. *trouver*, Fr., to find]. This was a special action upon the case, properly called the action of trover and conversion (see that title), which might be maintained by any person who had either an absolute or special property in goods, for recovering the value of such goods against another, who, having or being supposed to have obtained possession of such goods by lawful means, had wrongfully converted them to his own use. It originally lay only where the goods had been lost by the plaintiff and 'found' (whence the name) by the defendant, but it was in course of time allowed to be brought as above upon a fictitious allegation of the finding not required to be proved, but not formally abolished until 1852, by the C. L. P. Act, 1852, s. 49.

The action was also termed one of conversion, but 'wrongfully depriving' is the term now more frequently used. Under the old common law there were four different remedies for the wrongful deprivation of goods—viz., the actions of trespass to goods, detinue, replevin, and trover, which was the old name for an action of conversion. Trespass and trover were actions to recover damages merely; the first for the injury to the possession, the second for the loss of the property; but the actions of detinue and replevin were both brought for the return of the goods. The actions of trespass and replevin could be maintained against any one who forcibly took the goods out of the possession of the plaintiff; the actions of detinue and trover lay also against any person who subsequently came into possession of the goods by any means and wrongfully withheld them from the plaintiff. In trespass and replevin the plaintiff was always in possession of the goods and the defendant out of possession at the time when he commenced his wrongful acts. In detinue and trover, on the other hand, the plaintiff was always out of possession and the defendant in possession of the goods when the tort was committed.—*Odgers on the Common Law*, and see *Salmond on Torts*.

Troy Weight [*pondus Trojæ*, Lat.], a weight of twelve Troy ounces to the pound, having its name from Troyes, a city in Aube, France.

Under the Weights and Measures Act, 1878 (41 & 42 Vict. c. 49), s. 20, precious metals (gold, silver, platinum and other precious metals), and gold and silver lace and precious stones may be sold by the ounce Troy of 480 grains (see Third Sched.); and all other articles must be sold by avoirdupois weight of 437·5 grains to the ounce avoirdupois, the metric equivalents for the respective ounces being 31·103496 grams (Troy), and 28·34954 grams (avoirdupois). The pound Troy does not seem to be referred to by statute. Drugs may be sold by apothecaries weight.

Truchman, an interpreter.

Truck Acts (1831 to 1896 (1 & 2 Wm. 4, c. 37; 50 & 51 Vict. c. 46, and 59 & 60 Vict. c. 43), the Truck Act, 1831, the Truck Amendment Act, 1887, and the Truck Act, 1896, passed to prevent the payment of wages in goods instead of in money. The plan had been for masters to establish warehouses or shops, and the workmen in their employ have either had their wages accounted for to them by supplies of goods from such depôts, without receiving any money, or they have had the money given to them with an express understanding that they were to resort to the warehouses or shops of their masters for the articles of which they stood in need. This system is made illegal by the Truck Acts. A deduction from wages in respect of damages awarded to an employer in an action is a violation of these Acts (*Williams* v. *North's Navigation Collieries*, 1906, A. C. 136).

True Bill [*billa vera*, Lat.], the indorsement which the grand jury makes upon a bill of indictment when, having heard the evidence, they are satisfied of the truth of the accusation.

True, Public, and Notorious. These three qualities used to be formerly predicated in the libel in the Ecclesiastical Courts, of the charges which it contained, at the end of each article severally.

Trunk Roads Act, 1936 (1 Edw. 8 & 1 Geo. 6, c. 5), provides that the Minister of Transport shall be the highway authority for the principal roads in Great Britain which constitute the national system of routes for through traffic. Such roads which become Trunk Roads are set out in the Schedule.

By s. 13 road means a highway and includes any part of a highway and any prepared road and any bridge over which a highway passes or a proposed road is intended to pass, and 'trunk road' shall be construed accordingly.

Trust. A trust is simply a confidence, reposed either expressly or impliedly in a person (hence called the trustee), for the benefit of another (hence called the *cestui que trust*, or beneficiary), not, however, issuing out of real or personal property, but as a collateral incident accompanying it, annexed in privity to (i.e., commensurate with) the interest in such property, and also to the person touching such interest, for the accomplishment of which confidence the *cestui que trust* or beneficiary has his remedy in equity only; the trustee himself likewise being aided and protected in the proper performance of his trust when he seeks the Court's direction as to its management.

Every kind of property in which a legal interest may be given, whatever may be its quantity or quality, may be impressed with a trust, which equity will carry out without regard to form, provided its purpose do not contravene the policy of the law, or the principles governing the rights of property: for *qui hæret in literâ hæret in cortice.*

Trusts may be classed thus:—

(I.) Express, or defined by words; divided into—

(*a*) Trusts executed, perfect, complete, or constituted.

(*b*) Trusts executory, imperfect, incomplete, or directory.

(II.) Arising by operation of law, such as (*a*) Constructive, which arise when property which has been acquired in right of another is being retained by the trustee for his own benefit, or when the person obtaining the same knows or should know that another person has a prior right to the property or some part or interest in it in equity. (*b*) Implied trusts which arise under similar conditions, out of some special relationship between the parties by contract or otherwise. (*c*) Resulting trusts, when the whole or any part of the property or part or interest in it is granted without any indication that it or such part or interest was intended for the benefit of the grantee or any person other than the grantor himself. See CONSIDERATION (*last paragraph*).

Trusts are also divisible into: (1) permanent, when there is a continuing duty to be performed for the benefit of several persons in succession: and (2) temporary, when there is one particular duty only to perform. Again, trusts may be passive or active.

A trust being, in contemplation of equity,

the substantial ownership of or control over property, the person having the ownership or power can create a trust in favour of another person or in his own favour (Law of Property Act, 1925, s. 72 (3), as to conveyance) in relation thereto co-extensive with his ability to dispose of it at law.

The Statute of Frauds, 29 Car. 2, c. 3, s. 7 (reproduced by s. 53 (1) (*b*) of the Law of Property Act, 1925), requires that 'all declarations or creations of trusts or confidences of any lands, tenements, or hereditaments shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust, or by his will, or else they shall be utterly void and of none effect.' This provision does not affect the creation or operation of resulting, implied or constructive trusts, and does not include declarations of trust affecting chattels personal, which may be created by parol, provided they are to take effect during the life of their creator.

Since it is not necessary that a trust be declared in writing, but only so manifested and proved, no form is requisite either as regards the nature of the instrument or the language; the statute will be satisfied if the trust can be established by any subsequent acknowledgment of the trustee, however informally or indirectly made, as by a letter under his hand, by his statement of defence in an action, or by a recital in a deed, provided it relate to the subject-matter, and the precise nature and object of the trust can be ascertained. A trust cannot be engrafted upon a will unless by a testamentary or codicillary paper executed with the statutory formalities, but if a devise or bequest of the legal estate be accompanied with any *mala fides* in the devisee or legatee, as if there be an express or implied undertaking to execute the intent of making a provision for third persons, the Court will certainly establish such a trust.

A trust may be declared either directly or indirectly:—

To create a trust by a direct or formal declaration, a person need only make his meaning clear as to the interest he intends to give, having regard as a rule to the technical terms of the Common or Statutory Law in the limitations of legal estate. Before 1926 an equitable entail would in the case of an executory document or a bequest or devise by will pass without the words 'heirs of the body' or 'in tail'; in the case of an executed document, apt words of limitation were necessary (see *Re Moncton's Settlement*, 1913, 2 Ch. 636; and *Re Arden, Short* v. *Cam*, 1935, 1 Ch. 326). See now the L. P. Act, 1925, s. 60, by which, after 1925, the fee-simple or other interest which the grantor had power to convey will pass without words of limitation unless a contrary intention appears in the conveyance, but as regards the creation of equitable interests corresponding to an estate-tail in either realty or personalty (see s. 130 of that Act), s. 130 (2) assimilates informal limitations in tail in executory instruments or wills to limitations of personalty, and s. 130 (1), which apparently directs that limitations in tail (without any reservation or qualification for the case of executory instruments or wills) must follow the precise form of legal limitations formerly necessary for the creation of such estates by deed (not being an executory instrument).

A precatory trust is properly a trust declared by a person by inference and not imperatively, and construed by the Court in favour of the intention. Thus when property is given absolutely to any person, and he is recommended, or entreated, or wished, by the donor having power to command, to dispose of such property in favour of another, the recommendation, entreaty, or wish creates a trust, provided the words are so used that upon the whole they ought to be construed as imperative; and also provided that the subject of the recommendation or wish, as well as the objects or persons intended to have the benefit of such recommendation or wish, be certain and definite. There is not any inclination to extend the rule of construction, which gives an imperative effect to precatory or recommendatory words.

Where, from the different parts of the instrument, it appears that the words are expressive of a mere expectation or wish, no trust will arise; as where the words are, that the donee will be kind to, or remember, certain objects or classes, or the like; or where the donor uses such expressions as, 'trusting to the justice of his successors,' and it is to be inferred that it is their own sense of justice on which he relies. When the testator recommends, but adds that he does not absolutely enjoin, it is clear that the expressions are to be taken as precatory only, and not imperative. If it appear from the context that the first taker was intended to have a discretionary power to withdraw the whole or any part of the subject from the objects of the wish or request, or if there are any words by which it is expressed

or from which it can be implied, that the first taker may apply any part of the subject to his own use, it will not be held that a trust is created.

In recommendatory trusts, if the words for any reason do not amount to a trust, or the intended trust fail in the whole or in part, the absolute interest remains in the donee; or if the trust established do not exhaust the property given, the donee retains, in virtue of the gift, so much of the property as is not affected with the trust; but if property be given to a person as trustee only, if no trust be declared, or the trust declared or purporting to be declared should fail, then there is a resulting trust for the donor or those claiming under him, and the donee can claim nothing beneficially, nothing being given to him but as trustee.

Any person may be appointed a trustee except an infant (L. P. Act, 1925, s. 19), person of unsound mind or convicted of felony, or bankrupt or a corporation which has been dissolved (see Trustee Act, 1925, s. 36). As to the discretion of the Court, see s. 41 (*ibid.*) and notes to the sections in *Wolst. and Ch. Conveyancing Statutes*, Vol. II. Formerly an alien could not be a trustee of realty; but see now ALIEN. A corporation may be constituted a trustee of personalty, and also of realty upon charitable trusts; but not upon private trusts, by reason of the Statutes of Mortmain, unless the trustee is a Trust Corporation or the Public Trustee (see those titles). Equity will, however, supply a trustee where realty is devised to a corporation which is not capable of holding land as a trustee. It was formerly never advisable to select a married woman to be a trustee, on account of her inability to join in the requisite assurances without her husband's concurrence; but this difficulty has been removed by modern statutes; see especially Married Women's Property Act, 1907, s. 1, replaced by the Law of Property Act, 1925, s. 170. Nor should an infant be appointed a trustee, on account of his legal disability. If a trust involve the receipt and custody of money, the safeguard of at least two trustees ought rarely to be dispensed with, and in the case of receipts after 1925 of capital money by trustees for sale of land or upon sale by tenants for life or statutory owners of settled land, the receipt must be by two trustees or a trust corporation (see Law of Property Act, 1925, and Settled Land Act, 1925). A personal representative selling for the purpose of administration can give a valid receipt (Law of Property Act, 1925, s. 27 (2), and Administration of Estates Act, 1925, s. 39), but during a minority or if there is a life interest upon an intestacy or administration of a will, administration will only be granted to two individuals (see Judicature Act, 1925, s. 160 (1)).

On the death of a sole trustee, or the last of several trustees, the legal estate vests in his personal representative as if it were a chattel real (Conveyancing Act, 1881, s. 30), replaced by Administration of Estates Act, 1925, s. 1.

A trust will be enforced wherever there is a valuable consideration; but, if it be merely voluntary, the equitable interest will not be enforced, unless an actual trust be created, and no act remains to be done to complete the title of the trustees, for then a consideration is not essential. An agreement founded on a meritorious consideration (i.e., a secondary valuable consideration, as in favour of a wife or children) will not be executed as against the settlor himself, but as between parties claiming under the settlor, if the Court can act in favour of the meritorious consideration without inflicting a hardship on persons peculiarly entitled to protection, the voluntary agreement will in such a case be specifically executed, and see Law of Property Act, 1925, s. 172 (3).

The rule is to carry into effect the object proposed by the trust, unless it is in contravention of the public policy of the law, as, for instance, seeking to create a perpetuity, or accumulating annual income beyond the statutory limits.

By the Trustee Act, 1888 (51 & 52 Vict. c. 59), s. 8, a trustee may under certain circumstances plead the Statute of Limitations in answer to a claim against him for a breach of trust: see *Re Somerset*, 1894, 1 Ch. 231; *Howe* v. *Earl Winterton*, 1896, 2 Ch. 626. See LIMITATIONS.

The Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), provides for the appointment of remunerated 'judicial trustees' by the Court on the application of either trustee or beneficiary. See JUDICIAL TRUSTEE.

By the Judicature Act, 1873, s. 34, the execution of trusts, charitable or private, is assigned to the Chancery Division of the High Court of Justice. For the special provisions made for the execution of trusts during the war with Germany, see the Execution of Trusts (War Facilities) Acts, 1914 and 1915.

The Trustee Act, 1925, replaced and con-

solidated the various Trustee Acts and other statutes which regulated and guided the conduct of trustees in the administration of their trusts, with the exception of the unrepealed s. 8 of the Trustee Act, 1888, by which trustees, as a general rule, are allowed (see *Re Somerset*, 1894, 1 Ch. 231 ; *Howe* v. *Earl Winterton*, 1896, 2 Ch. 626), except in case of fraud or retention of trust property, to plead the Statutes of Limitation. Part I. of the Trustee Act, 1925, ss. 1 to 11, relates to the investments which trustees are allowed to make with trust funds if no directions are given by the grantor or settlor or in addition to and subject to such directions. This part is important from a practical point of view because trustees are liable to make good any loss on unauthorised investments in the absence of any relief provided by the Act—see ss. 4, 8, 61 (power of Court to relieve a trustee from liability for breach of trust), reproducing s. 3 (1) of the Judicial Trustees Act, 1896 (59 & 60 Vict. c. 35), and s. 62 (breach instigated by the *cestui que trust*). Part II. relates to the powers of trustees ; Part III., appointment and discharge of trustees ; Part IV., powers of the Court, appointment of new trustees (*q.v.*), and vesting and other orders (s. 57 gives power to the Court to authorize an extension of the trustees' powers, but this does not extend to trustees for the purposes of the Settled Land Act, 1925) ; and Part V., general provisions.

In Scotland, see Trust (Scotland) Act, 1921.

Trust for Sale. Trusts for sale of land were commonly created in settlements and well-drawn wills. The effect was to convert realty into personalty so that the proceeds devolved upon the beneficiaries as personalty unless they elected to take the property as realty (see CONVERSION), except that upon a lapse of the devise of realty in the testator's lifetime the property resulted to the heir-at-law (*Ackroyd* v. *Smithson*, 1780, 1 Bro. C. C. 503). Another and more practical consequence was that the whole estate was vested as a rule in the trustees so that with or without consent of any other person as directed by the donor or testator they could vest the whole estate in a purchaser without his seeing to the application of the purchase money (Trustee Act, 1893, s. 14), and without participation of beneficiaries whose consent was not required, thus providing an expedient, which, together with the Settled Land Acts and other statutes giving analogous powers to mortgagees, personal representatives and trustees in bankruptcy, provided a model for much of the land legislation of 1925. Beneficiaries under a trust for sale had no estate in the land but only in the proceeds (see EQUITABLE ESTATES) so long as the trust continued. A testamentary trust for sale of leasehold land was subject to the rule in *Howe* v. *Lord Dartmouth*, (1802) 7 Ves. 137, applying to all cases in the absence of directions, express or implied, to the contrary, that where a residue was settled by will upon legatees in succession, wasting property must be sold and the proceeds invested in trustee or authorized investments with consequential attribution of capital and income among the beneficiaries according to their rights. Trusts for sale are to be distinguished from powers of sale, e.g., a mere power did not effect conversion (*Curling* v. *May*, (1734) 3 Atk. 255 ; and see *Re Thursby*, 1910, 2 Ch. 181).

The Law of Property Act, 1925, provides, in regard to all trusts for sale created or arising before or after 1926, for the duration or prolongation of the powers of sale until sale in favour of purchasers (s. 23) ; confers a power to postpone sale in the absence of a contrary intention (s. 25) ; consents, if requisite, are restricted to two in favour of a purchaser, and the wishes of beneficiaries are to be consulted (s. 26). Proceeds of sale or capital money must be paid to not less than two trustees, whatever may be declared by the instrument creating the trust, or to a trust corporation, or to a sole personal representative acting under his powers as such. Receipts by these discharge the purchaser of a legal estate from seeing to the application of the purchase money, but one trustee may act alone in all matters except where capital money arises on the transaction (s. 27) ; the trustees are to have all the relative powers of a tenant for life under the Settled Land Act, 1925, and land conveyed to them in exercise of those powers must be conveyed to them on trust for sale (s. 28 (1)). Sub-s. (2) (*ibid.*) provides for the destination of rents and profits until sale, incidentally overruling *Howe* v. *Lord Dartmouth*, *ubi sup.*, where that case would be applicable but without affecting the rule in cases of trusts for sale of pure personalty (*Re Trollope*, 1927, 1 Ch. 596, s. 28 (2)). Sect. 28 (3) gives power to the trustees to partition the land subject to the conditions and provisions of the sub-section. Sect. 29 provides for delegation of powers ; s. 30 for applications to the Court ; s. 31 relates to mortgaged property. For other pro-

visions see also ss. 32 to 39, and UNDIVIDED SHARES. As to the over-reaching equitable interests upon sale by properly appointed trustees for sale, see ss. 2 (2) and 28 of the Law of Property Act, 1925, and LAW OF PROPERTY ACT (*curtain*).

A settlement of land upon trust for sale, even if the proceeds are settled, is not a settlement within the meaning of the Settled Land Act, 1926, s. 1 (7). See L. P. Amendment Act, 1926, Sched., and S. L. Act, 1925, ss. 3 and 36.

Trusts for sale are conveniently created by two instruments: (1) the conveyance of the land upon trust for sale and (2) the instrument declaring the trusts of the proceeds, and see s. 35, Trustee Act, 1925, which requires two instruments on appointment of new trustees for sale (see APPOINTMENT OF NEW TRUSTEES), but trusts for sale arise by implication of law in many cases (see *Wolst. and Ch. Conv. Stat., Notes to Law of Property Act*, 1925, s. 23). A will of a person dying after 1925 is not a conveyance of the legal estate, which now devolves upon the personal representatives by Act of law; it is a trust instrument only.

Sect. 205 (1) (xxix.) of the L. P. Act, 1925, defines 'trust for sale' *unless the context otherwise requires*, in relation to land, as an immediate binding trust for sale whether or not exercisable at the request or with the consent of any person and with or without a power at discretion to postpone the sale, but in its general legal sense the term is not restricted to that meaning.

Trust Corporation is defined by the Settled Land Act, 1925, s. 117 (1) (xxx.), to mean the Public Trustee or a corporation appointed by the Court or entitled under Public Trustee Act Rules (see the Public Trustee (Custodian Trustee) Rules, 1926, S. R. & O., 1926, No. 1423/L.37). Trust corporations may exercise solely or jointly all the powers for the exercise of which the Land Legislation Acts of 1925 require two trustees at least (see TRUST; TRUST FOR SALE; SETTLED LAND; ADMINISTRATOR). These corporations include any company incorporated by Special Act or Royal Charter or Companies under the Companies Act, 1929, with an issued capital of not less than 250,000*l.*, of which at least 100,000*l.* has been paid up in cash, or any company undertaking trust business for his Majesty's Navy, Army, Air Force or Civil Service having as director or member any person nominated by one of the Government Departments referred to in the Rules or any company authorized by the Lord Chancellor in relation to any charitable, ecclesiastical or public trusts.

By s. 3 of the L. P. (Amendment) Act, 1926, 'Trust Corporation' includes the Treasury Solicitor, Official Solicitor and any person holding an official position prescribed by the Lord Chancellor, also trustees in bankruptcy, and under deeds of arrangement and certain corporations administering charitable, ecclesiastical or public trusts.

Trust Funds. In addition to the securities mentioned in the instrument creating the trust, trustees may invest trust funds in securities specified in the Trustee Act, 1925, unless expressly forbidden by the trust deed. The effect of the Trusts (Scotland) Act, 1921, on Scots trusts should be noted. With regard to funds in Court, see R. S. C., Ord. XXII., r. 17, and County Courts Act, 1934, ss. 52 (3), 158.

Trust Instrument. Under the Settled Land Act, 1925, s. 117 (1) (xxxi.) and s. 9, includes in relation to settled land, any instruments whereby the trusts of the settled land are declared other than a vesting instrument or vesting conveyance. By s. 4 (*ibid.*), the trust instrument constituting a settlement must, if made after 1925:

(*a*) declare the trusts affecting the settled land;

(*b*) appoint or constitute trustees of the settlement;

(*c*) contain the power (if any) to appoint new trustees;

(*d*) set out any intended addition to or enlargement of the statutory powers;

(*e*) bear the proper *ad valorem* stamp which may be payable by virtue of the vesting deed or otherwise in respect of the settlement.

And see also s. 9 as to settlements or instruments which are to be deemed to be trust instruments for the purposes of the Act, although not complying in form with the above-mentioned requirements.

A purchaser for value in good faith is not affected by the contents of the trust instrument and is not entitled to information in regard to it (s. 110), except as there provided, e.g., a purchaser taking title under the first vesting instrument; and see s. 5 (2). Under the same s. 117 (*ubi sup.*), a trust instrument presumably includes an instrument containing the settlement of proceeds under a trust for sale (see s. 36 (*ibid.*)), but there is no express statutory definition of a trust instrument declaring the trusts under a trust for sale.

Trustee, one entrusted with property for the benefit of another, called beneficiary, or *cestui que trust*. See also PUBLIC TRUSTEE; BREACH OF TRUST.

Consult *Lewin* or *Godefroi on Trusts*.

Trustee in Bankruptcy. A person appointed in a bankruptcy to collect and realize the property of the debtor and to distribute the proceeds among the creditors. The property of the debtor vests in the trustee on his appointment. See Bankruptcy Acts, 1914 and 1926.

Trustee Savings Banks Acts, 1863 to 1920. See SAVINGS BANKS.

Trustees, Fraudulent, Punishment of. By the Larceny Act, 1916, s. 21, the appropriation of the trust fund by the trustee to his own use is punishable by penal servitude for seven years, but the sanction of the Attorney-General is necessary for a prosecution by a person other than one who has taken civil proceedings against the trustee and has obtained the sanction of the Court.

Tub, 60 lbs. of tea.

Tub-man, a barrister who had a preaudience in the Court of Exchequer, and also in the Exchequer Division of the High Court, and also a particular place in court.

Tulchan Bishops, a name derisively applied to the persons appointed as titular bishops to the Scottish sees immediately after the Reformation, in whose names the revenues of the sees were drawn by the lay barons who had impropriated them.—*Ogilvie's Imp. Dict.*

Tumbrel, a ducking-stool used for the punishment of scolds; a dung-cart.

Tulmultuous Petitioning. See PETITION; RIOT.

Tun, four hogsheads.

Tuncaw, Tunkha, an assistant of the revenue for personal support or other purposes.—*Indian.*

Tungreve, a town-reeve or bailiff.

Turbary [fr. *turbus* or *turva*, obs. Lat. turf, or Saxon, meaning either the right of taking turf, or the ground whence it is taken], the liberty of digging turf upon another man's ground. It may be either by grant or prescription, and either appurtenant or in gross. It can be appurtenant only to a house, and can only be a right to take turf for fuel for such house.—1 *Steph. Com.* There can be no approver (see APPROVEMENT) against common of turbary: see *Williams on Rights of Common*.

Turn, or **Tourn,** the great court-leet of the county, as the old county court was the court-baron; of this the sheriff was judge, and the court was incident to his office, wherefore it was called the sheriff's tourn, and it had its name originally from the sheriff making a turn of circuit about his shire, and holding this court in each respective hundred.—2 *Hawk. P. C.* c. 10. The tourn, which had long been obsolete, is formally abolished by s. 18 of the Sheriffs Act, 1887.

Turner's (Sir George) Act (13 & 14 Vict. c. 35), providing for the statement of a special case in equitable matters, abolished by Rule of Court in 1880. See SPECIAL CASE.

Turnkey, a gaoler.

Turnpike-roads, ways maintained out of tolls not paid by passengers. These did not fall within the operation of the Highway Act (5 & 6 Wm. 4, c. 50), but were regulated primarily by the local Acts relative to each particular road, which, though temporary, were, until about the middle of the present century, almost invariably renewed by the legislature from time to time as they were about to expire; and in the next place by statutes of a general description, of which the principal was the consolidating 3 Geo. 4, c. 126, applicable (with very few exceptions) to all turnpike-roads—that is, all roads maintained by tolls, and placed under the management of trustees or commissioners for a limited period of time. This Act, however, is repealed by the Statute Law Revision Act, 1890, with the exception of such provisions as are applied to dis-turnpiked roads by the Annual Turnpike Acts Continuance Acts of 1865 and 1870. There were at one time many thousand turnpike trusts. In 1864 they numbered above a thousand, but in 1879 they had been reduced to little more than two hundred, by expiration in accordance with 'Annual Turnpike Continuance' Acts; and they had before the end of the nineteenth century practically ceased to exist.

Turpis causa, a base or vile consideration on which no action can be founded, the maxim being *Ex turpi causâ non oritur actio*. See *Collins* v. *Blantern*, (1766) 2 Wils. 341; 1 *Smith, L. C.*

Tutelage, guardianship; the state of being under a guardian.—*Sand. Just.*.

Tutor, a guardian; a protector; an instructor.

Tutorship, the office and power of a tutor.

Tutrix, a female tutor.

Twaite, a wood grubbed up and turned to arable (*Co. Litt.* 4 *b.*)

Twanight geste, a guest at an inn a second night. See THIRD-NIGHT-AWN-HINDE.

Twelfhindi, the highest rank of men in

the Saxon government, who were valued at 1200*s*. If any injury were done to such persons, satisfaction was to be made according to their worth.

Twelve-day Writ, a writ issued under the repealed Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67) ('Keating's Act'), for summary procedure on bills of exchange and promissory notes, abolished by Rule of Court in 1880.

Twelvemonth (sing.), a year; but twelve months (plur.) are computed according to twenty-eight days for each month.—6 *Rep.* 62.

Twyhindi, an intermediate order of Saxons, valued at 200*s*. in the scale of pecuniary mulcts inflicted for crimes. See TWELFHINDI.

Tyburn, the place where executions took place in former times; it was situate on the Oxford Road, not far from where the Marble Arch now stands. The execution was preceded by a procession from Newgate to Tyburn, the criminal being drawn in a cart, but this practice was abolished in 1783, and the sentences thenceforward carried out in front of Newgate. See *Gent. Mag.* 1783, pp. 974, 1060; *Croker Papers*, vol. iii. pp. 15, 16; *Boswell's Johnson*, ed. by *Birkbeck Hill*, vol. iv., p. 188.

Tyburn Ticket, a certificate which was given to the prosecutor of a felon to conviction.

Tyhtlan, an accusation, impeachment, or charge.

Tylwith, a tribe, house, or family.

Tyth, tithe, or tenth part.

Tything, a company of ten; a district; a tenth part. See TITHING.

Tzar, Tzarina, the title of the former Emperors and Empresses of Russia.

U.

Uberrima fides [Lat.] (most abundant good faith). Contracts said to require *uberrima fides* are those entered into between persons in a particular relationship, as guardian and ward, solicitor and client, insurer and insured (as to which last, see *London Assurance Co.* v. *Mansel*, (1879) 11 Ch. D. 363; *Joel* v. *Law Union, etc., Insurance Co.*, 1908, 2 K. B. 863); and contracts of suretyship and partnership, though not strictly contracts *uberrimæ fidei*, are, when once entered into, such as to require full disclosure and the utmost good faith: see *Phillips* v. *Foxall*, (1872) L. R. 7 Q. B. 666; *Blisset* v. *Daniel*, (1853) 10 Ha. 522.

A contract for sale of land (*q.v.*) is not in every respect *uberrimæ fidei*, but see s. 183 of the Law of Property Act, 1925, and that title.

Ubication, or **Ubiety** [fr. *ubi*, Lat., where], local position.

Ubi jus, ibi remedium. *Co. Litt.* 197 *b*.—(Where there is a right there is a remedy.) See *Broom's Leg. Max.*; CASE; also DAMNUM ABSQUE INJURIÂ.

Udal, a form of tenure in Scotland contrary to the normal 'feudal' tenure and peculiar to the Orkneys and Shetland. There is no obligation of services or periodical payments.

Ukaas, or **Ukase,** a Russian law or ordinance.

Ullage [fr. *uligo*, Lat., ooziness], the quantity of fluid which a cask wants of being full, in consequence of the oozing of the liquor.—*Malone.*

Ulna ferrea, the standard ell of iron, which was kept in the Exchequer for the rule of measure.—*Dugd. Mon.* ii. 383.

Ulnage, alnage, which see.

Ulpian, a great Roman jurist. He flourished in the time of Alexander Severus, about A.D. 222. The Code of Justinian is in great part founded on his works.

Ultimatum, or **Ultimation,** the last offer, concession, or condition.

Ultimum supplicium, the last or extreme punishment: death.

Ultimus hæres, the last or remote heir, that is, the sovereign who succeeds failing all relations.—*Scots Law.*

Ultra; damages ultra, damages beyond a sum paid into court.

Ultra vires [Lat.] (beyond the powers), said of a corporation or company when exceeding its authority. If the powers are given or acquired at common law or by custom or by charter, the corporation is a person at common law and may do anything which an ordinary person can do (*Wenlock (Baroness)* v. *River Dee Co.*, (1885) 10 A. C. 354; *British South Africa Co.* v. *De Beers Consolidated Mines Ltd.*, 1910, 1 Ch. 354), subject to the consequences if the act is prohibited by the Charter or Act of Parliament, or by law directly or indirectly (*Jenkins* v. *Pharmaceutical Society of Great Britain*, 1921, 1 Ch. 392). On the other hand, a corporation or company which is created by or under statute cannot do anything at all unless authorized expressly or impliedly by the statute or instrument defining its powers. An act done *ultra vires* a corporation means

that it is 'an act which the company in general meeting could not authorize, and an act which, if every individual corporator assented to it, would still remain illegitimate.' See *Ashbury Railway Carriage and Iron Co.* v. *Riche*, (1875) L. R. 7 H. L. 653, where the House of Lords held that a contract by the directors of a company incorporated under the Companies Act, 1862, if it be outside the Memorandum of Association, neither binds the company nor can be made binding upon it by ratification. See also *Att.-Gen.* v. *Mersey Ry.*, 1907, A. C. 415; *Baroness Wenlock* v. *River Dee Co.*, *ubi supra*; *Sinclair* v. *Brougham*, 1914, A. C. 398. Consult *Brice*, *Street* or *Beattie* on *Ultra Vires*.

Umpirage, friendly decision of a controversy; arbitration.

Umpire [fr. *imperator* or *impar*, Lat.]. A submission to arbitration usually provides that in case of arbitrators not agreeing in an award, the matters in dispute shall be decided by a third person, who is called an umpire. The umpire's authority commences when arbitrators are unable to agree, but if there be a time limited for the award, his authority absolutely commences from such time. The umpire, when called upon to act, is generally invested with the same powers as the arbitrators, and bound by the same rules, and has to perform the same duties. See ARBITRATION and ARBITRATOR, and consult *Russell on Arbitration*.

Also an officer appointed by the Crown who may also appoint one or more deputy umpires to hear appeals from Courts of Referees in connection with claims under the Unemployment Insurance Acts; see U. I. Act, 1935 (25 & 26 Geo. 5, c. 8), ss. 40, 44 and 45. See *Selected Decisions of Umpire*.

Uncertainty. Where the words of a deed or will are so vague that no meaning with definite limits can be assigned to them, the grant or gift is void for uncertainty: as if one bequeath '*some* of his property' to A., or all his property, 'to *one* of his sons.'

Unclaimed Property. This devolves on the Crown at Common Law. Unclaimed property may be dealt with under the heads of (1) Government Stock, (2) Chancery Funds, (3) Stock in Public Companies, (4) Bankers' Balances, (5) Deposits with Bankers for Safe Custody, and (6) Found Property.

(1) *Government Stock.*—The National Debt Act, 1870 (33 & 34 Vict. c. 71), ss. 51 *et seq.*, as extended by 20 & 21 Geo. 5, c. 28, s. 49, provides that stock on which no dividend has been claimed for ten years must be transferred to the National Debt Commissioners. Lists of names in which the stock stood, with residence, description and amount of stock and date of transfer, are to be kept at the Bank of England (or Ireland, but see 13 Geo. 5, c. 2, s. 6 (*d*)) and at the National Debt Office, open to inspection, and also kept in duplicate at the National Debt Office. The stock may be re-transferred to persons showing title after, in the case of stock exceeding 20*l.*, three months' public notice by advertisement. A second claimant showing better title may recover the stock from the re-transferee, and if unable to recover it may obtain an order in his favour from the Chancery Division of the High Court, which 'shall, on application by petition by the new claimant, verified as the Court requires, order the National Debt Commissioners to transfer to him such sum in stock, and to pay to him such sum in money for dividend, as the Court thinks just' (s. 60).

(2) *Chancery Funds.*—These are regulated by the Chancery Funds Act, 1872, and the Judicature Funds Act, 1883. They consist of money paid into court by trustees, or in administration actions, or by defendants in actions. From a parliamentary return in 1900 it appears that they then amounted to 56 millions, their ultimate destination, except as to 'dormant funds'—i.e., funds not dealt with for fifteen years or upwards—being in most cases well known. A list of 'dormant funds' upwards of 50*l.* in amount is published, in accordance with Rule 96 of the Supreme Court Funds Rules, 1927 (see the *Annual Practice*), quintennially in the *London Gazette*. See *Gazette* of March 10, 1933, and from an earlier *London Gazette* (*Supplement*, March 5, 1923) (going back to 1726), it appears that their amount was then more than 1,050,000*l.*, distributed over upwards of 3,000 separate accounts, one-half not exceeding 150*l.* in value, and only about one-twentieth exceeding 1000*l.*

(3) *Stock in Public Companies.*—By Art. 72 of Table A in Sched. I. of the Companies Act, 1862 (now repealed), 'all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of' a company under that Act; but the Act is silent as to capital stock. There is no similar provision in Table A to the Acts of 1908 and 1929. Dividends are barred by the Statute of Limitations at the end of twenty years (*Re Artisans, etc., Corporation*, 1904, 1 Ch. 796). No period of

limitation necessarily applies to capital stock (but see *Re Artisans, etc., Corporation*), and in 1884, in *Crawford* v. *Royal Exchange Insurance Corporation* (see *Times* of April 29, 1884), stock on which no dividend had been paid since 1749 was handed over to the representative of a holder, who had taken out administration *de bonis non*, the amount recovered on 100*l.* stock being about 3000*l.*, 6600*l.* having been previously recovered by another plaintiff against the same defendants (see *Times* of Dec. 11, 1883) in respect of 200*l.* stock on which no dividend had been paid since 1720. As to the mode of dealing with unclaimed funds in the hands of a liquidator, see Companies (Winding-up) Rules, 1909, r. 191 ; and as to unclaimed funds or dividends in bankruptcy, see Bankruptcy Act, 1914, s. 153.

(4) *Bankers' Balances.*—Money at a bank on an ordinary current or drawing account is money lent to the banker by the customer, repayable upon and not until demand without which there is no cause of action : see the judgment of Bankes, L.J., in *Joachimson* v. *Swiss Bank Corporation*, 1921, 3 K. B. 110, explaining : *Pott* v. *Clegg*, (1849) 16 M. & W. 321 ; *Foley* v. *Hill*, (1851) 2 H. L. C. 28. It follows from this that the Statute of Limitations will not run for such money until six years after demand.

(5) *Deposits with Bankers for Safe Custody.*—It does not appear to have been judicially decided for what length of time bankers are bound to keep these, but it would seem that the liability of the banker, if he retains custody, is a perpetual liability limited only by six years after demand and refusal. See the judgment of Lord Hatherley, L.C., in *Burdick* v. *Garrick*, (1870) L. R. 5 Ch. pp. 239, 240.

(6) *Found Property.*—A finder has a title against all the world except the owner of it (see title FINDER OF GOODS), but within what time, if any, he may convert it to his own use is doubtful. The practice of the Metropolitan Police Authorities appears to be that after a reasonable time and efforts to find the owner, the property will be returned to the finder, subject to conditions in case of property of value, and such property, of course, remains the property of the owner until his claim is barred by lapse of time. See LIMITATIONS.

Special provisions are to be found in s. 9 (5) of the Metropolitan Public Carriages Act, 1869 (32 & 33 Vict. c. 115), by which the Secretary of State may make regulations (*inter alia*) 'for securing the safe custody and re-delivery of any property accidentally left in hackney or stage carriages, and fixing the charges to be paid in respect thereof, with power to cause such property to be sold or to be given to the finder in event of its not being claimed within a certain time.'

As to property which has come into possession of the police in connection with a criminal matter, see the general Police (Property) Act, 1897 (60 & 61 Vict. c. 30). See RESTITUTION OF STOLEN GOODS.

Uncle and Nephew. A nephew, the son of a deceased elder brother, was by the general law in force immediately before the 1st January, 1926, preferred in the inheritance to his uncle, a younger brother of the deceased. And see NEPHEW. See DISTRIBUTION OF ESTATES.

Uncore prist, the plea of a defendant in the nature of a plea in bar, where being sued for a debt due on bond at a day past, to save the forfeiture of the bond, he says that he tendered the money at the day and place, and that there was none there to receive it and that he is also 'still ready' to pay the same.

Uncuth [Sax.], unknown.

Unde nihil habet. See DOWER.

Under Chamberlains of the Exchequer, two officers who cleaved the tallies and read them. See TALLY. They also made searches for records in the treasury, and had the custody of Domesday Book. Abolished.—*Jac. Law Dict.*

Under-lease, a grant by a lessee to another, called under-lessee, or under-tenant, or sub-lessee, or sub-tenant, of a part of his whole interest under the original lease, reserving to himself a reversion ; it differs from an assignment, which conveys the lessee's whole interest, and passes to the assignee the right and liability to sue and be sued upon the covenants in the original lease.

An under-lease for the whole term of the original lease amounts to an assignment (*Beardman* v. *Wilson*, (1868) L. R. 4 C. P. 57).

Between the original lessor and an under-tenant there is neither privity of estate nor privity of contract, so that these parties cannot take advantage, the one against the other, of the covenants, either in law or in deed, which exist between the original lessor and lessee (*Holford* v. *Hatch*, (1779) 1 Dougl. 183 ; *Johnson* v. *Wild*, (1890) 44 Ch. D. 146) ; but the lessor can distrain on the sub-lessee or take advantage of a condition of forfeiture (*G. W. Ry.* v. *Smith*, (1876) 2 Ch. D. p. 253). By s. 4 of the Conveyancing Act, 1892, replaced by the Law of Property

Act, 1925, s. 146 (4), as amended by the L. P. (Amendment) Act, 1929 (19 Geo. 5, c. 9), a sub-lessee can obtain relief from the forfeiture of the superior lease. But the terms upon which the relief will be granted are in the absolute discretion of the Court, and in certain cases the rent may be raised. See *Ewart* v. *Fryer*, 1910, 1 Ch. 499, and FORFEITURE. A surrender by the lessee cannot prejudice the estate of the under-lessee (*G. W. Ry.* v. *Smith*).

Mortgages of leaseholds, where the covenants are onerous, are almost invariably made by sub-demise, so as to avoid bringing the mortgagee into direct relation with the lessor and so rendering him liable to be sued on the covenants; but the mortgagee may often be in fact compelled to perform them in order to save his security from forfeiture under the proviso for re-entry in the lease. As to realization, foreclosure, and retention by mortgagees under the Statutes of Limitations, see s. 89 of the Law of Property Act, 1925, as amended by the L. P. (Amendment) Act, 1926, Sched.

For purposes of the Law of Property Act, 1925, the term 'lease' includes an under-lease unless the context otherwise requires; s. 205. To describe an under-lease as a lease in contracts and conditions of sale is generally a misdescription (*Re Beyfus and Masters' Contract*, (1888) 39 Ch. D. 110). Consult *Elph. Introd. to Conv.*

Under-sheriff [*sub vieccomes*, Lat.], the sheriff's deputy. See SHERIFF.

Undertaking to Appear by a solicitor for a defendant in an action. A solicitor not entering an appearance in pursuance of his written undertaking to do so is liable to an attachment (R. S. C. 1883, Ord. XII., r. 18).

Under-tenant. See UNDER-LEASE.

Under Treasurer of England [*vice-thesaurarius Angliæ*, Lat.], he who transacted the business of the Lord High Treasurer.

Underwriter, an insurer of ships, so called from his writing his name under the policy of insurance. See INSURANCE.

Also subscribers (generally before a public issue by the company) offering to take all or a stated amount of the shares offered to and not taken up by the public. The sole consideration allowed is a commission at a rate which must be disclosed in the prospectus and not exceeding the rate authorized by the Articles of Association. This commission must not be confused with brokerage which companies are allowed to pay for placing their shares (see Companies Act, 1929, ss. 35 and 355, 4th Sched. (10)).

A *bonâ fide* invitation to enter into an underwriting agreement does not require a prospectus within the meaning of s. 35 (*ibid.*). See PROSPECTUS.

Undeveloped Land. A duty on the site value, if over 50*l.*, of undeveloped land was imposed by the Finance Act, 1910. It was discontinued together with the other land value duties by s. 57 of the Finance Act, 1920 (10 & 11 Geo. 5, c. 18).

Undischarged Bankrupt. Transactions by an undischarged bankrupt with any person dealing with him *bonâ fide* and for value in respect of any property, real or personal, acquired by the bankrupt after adjudication, are valid against the trustee if completed before he intervenes (Bankruptcy Act, 1914, s. 47. If an undischarged bankrupt, (*a*) obtains credit to the extent of ten pounds or upwards without giving notice that he is an undischarged bankrupt, or (*b*) engages in any trade or business under a name different from that under which he was adjudicated bankrupt without disclosing the latter name, he is guilty of a misdemeanour (*ibid.*, s. 155).

Undivided Shares in Land. Before 1926 a legal estate in undivided shares in land was held by joint tenants, tenants in common, coparceners, and by husband and wife as tenants by entireties (see those titles), but now by the Law of Property Act, 1925, s. 1 (6), a legal estate is not capable of subsisting or of being created in an undivided share in land, and by the same s. 1 (3) and ss. 34 (4), 205, and 1st Sched., Part IV., and cf. TRUST FOR SALE, such shares are to take effect as equitable interests only in the net proceeds of sale and of the rents and profits of the entirety of the land until sale, while the legal estate must be held by trustees for sale of the entire undivided property. It should be noticed that *shares* only are affected by these provisions. The legal estate in the joint tenancy in the entirety of the trustees for sale persists *ex necessitate rei*, and this is given effect to by s. 36, as amended, prohibiting severance of the legal estate in joint tenancy and providing for the disposal of the equitable interest in any shares while preserving the incidents of a release of the legal estate by a joint tenant to the other joint tenants, and (by implication) the *jus accrescendi* (*q.v.*). Undivided shares can only be created by way of trust for sale under a trust instrument (s. 34 (1), L. P. Act, 1925, and ss. 36 and 117 (1) (xxxi.) of the Settled Land Act, 1925), or (s. 34, L. P. Act, 1925) by a conveyance of the land to persons of full age in undivided shares having the effect

of making the grantees, or if there are more than four, the first four named in the conveyance joint tenants upon the statutory trusts (*q.v.*).

A trust for sale does not arise in the case of joint tenants for life who are constituted together as 'tenant for life' by s. 19 (2) of the Settled Land Act, 1925.

For the transitional provisions relating to land held in undivided shares at the commencement of the L. P. Act, 1925 (1st January, 1926), see 1st Sched., Part IV. As to testamentary dispositions in undivided shares, see s. 34 (3). As to settlements of land in undivided shares, see s. 36, and Settled Land Act, 1925. By s. 36, L. P. Act, 1925, where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held on trust for sale in like manner as if the persons beneficially entitled were tenants in common (see s. 34, *supra*), but not so as to sever their joint tenancy in equity. Sect. 37 declares that a husband and wife shall for all purposes of acquisition of property made or coming into operation after 1st January, 1926, be treated as two persons, and see TENANCY BY ENTIRETIES. For the equitable rights of persons entitled to undivided shares in the proceeds of land and the duties of trustees for sale, see L. P. Act, 1925, s. 3, and (generally), ss. 23 to 33, and s. 42 (6) as to the effect of contracts to convey undivided shares. See TRUST FOR SALE.

Undres, minors or persons under age not capable of bearing arms.—*Fleta*, l. 1, c. 2.

Undue Influence. As to gifts, see title SPIRITUALISM and *Lyon* v. *Home*, (1868) L. R. 6 Eq. 655, and as to wills, see *Parfitt* v. *Lawless*, (1872) L. R. 2 P. & M. 462.

Any influence, pressure, or domination in such circumstances that the person acting under that influence may be held not to have exercised his free and independent volition in regard to the act.

In the case of benefits or advantages obtained in certain relationships, the existence of this influence is presumed, e.g., guardian and ward, a parent over a child upon or soon after attaining age and the possession of property, a guide or instructor, medical advisers, ministers or professors of religion, managers of business (*Coomber* v. *Coomber*, 1911, 1 Ch. 174), attendants upon or advisers of aged and infirm people. In such cases, in regard to transactions *inter vivos*, the onus of proving absence of undue influence lies on the person claiming the benefit of the disposition or act, and in some cases, e.g., gifts by clients to their solicitors (*inter vivos*), the onus can only be discharged by showing not only that the relationship has ceased, but that the donor was acting under independent advice. In the case of wills, the onus is shifted and the person alleging undue influence is called upon for proof of the allegation. For the general law on the subject, see *Allcard* v. *Skinner*, (1881) 36 Ch. D. 145; *Low* v. *Guthrie*, 1909, A. C. 278; *Huguenin* v. *Baseley*, (1807) 14 Ves. 273; 1 *W. & T. L. C.*

In election matters, undue influence is any force, violence, or restraint, or the infliction, or threat to inflict, any injury, or the practice of any intimidation, in order to induce any person to vote, or refrain from voting, or on account of his having done so. See *Chitty's Statutes*, tit. '*Parliament*.'

Undue Preference, the improper preferring of one customer over another by a railway or canal company, prohibited by the Railway and Canal Traffic Act, 1854 (17 & 18 Vict. c. 31), s. 2. See RAILWAY AND CANAL COMMISSION.

As to avoidance of preference of creditor within three months of bankruptcy of debtor, see FRAUDULENT PREFERENCES.

Unemployed Workmen Act, 1905 (5 Edw. 7, c. 18). See WORKMEN (UNEMPLOYED).

Unemployment Insurance. A scheme of national insurance administered by the Ministry of Labour with power to refer questions to and obtain advice from the Unemployment Insurance Statutory Committee. This committee is appointed after consultation with representative organizations of employers and workers: see the Unemployment Insurance Acts, 1935 and 1936 (25 & 26 Geo. 5, c. 8, and 26 Geo. 5 & 1 Edw. 8, c. 13), and NATIONAL INSURANCE.

Unfrid [Sax.], one who has neither peace nor quiet.

Ungeld, an outlaw.

Unica taxatio, the obsolete language of a special award of *venire*, where, of several defendants, one pleads, and one lets judgment go by default, whereby the jury, who are to try and assess damages on the issue, are also to assess damages against the defendant suffering judgment by default.

Uniformity, Act of, 14 Car. 2, c. 4, 'for the Uniformity of Public Prayers and Administration of Sacraments and other Rites and Ceremonies and for establishing the Form of making, ordaining, and consecrating Bishops, Priests, and Deacons of the Church of England' (now partly repealed), received

the Royal Assent on May 19, 1662, and came into operation on August 24 (the feast of St. Bartholomew) following (see *Lane's Notes on English Church History*).

After a long preamble setting forth the preparation of the Prayer Book by several Bishops and other Divines appointed by the King, its approval by the two Convocations, and stating that 'nothing more conduceth to the peace of this nation, nor to the honour of our religion and the propagation thereof, than an universal agreement in the public worship of Almighty God,' the Act directs that—

> All and singular ministers in any cathedral, collegiate or parish church or chapel or other place of public worship within this realm of England, dominion of Wales and town of Berwick upon Tweed shall be bound to say and use the morning prayer, evening prayer, celebration and administration of both the sacraments and all other the public and common prayer in such order and form as is mentioned in the said book annexed and joined to this present Act. . . . And that the morning and evening prayers therein contained shall upon every Lord's day and upon all other days and occasions and at the times therein appointed be openly and solemnly read by all and every minister or curate in every church, chapel or other place of public worship within this realm of England and places aforesaid.

There followed a direction to every beneficed minister to read in his church on some Sunday before August 24, 1662, a declaration of assent to the Book and all its contents on pain of deprivation, and it is still enacted, that resident incumbents keeping curates shall personally and at least once monthly read the Prayer Book service in their churches, on pain of a 5*l.* penalty, and that no person except an ordained priest shall be beneficed or administer the Sacrament on pain of 100*l.* penalty. There are savings for Latin prayers in the college chapels of Oxford and Cambridge Universities and in the convocations of either province.

Earlier Acts of Uniformity.—The Act of 1662 is the Act of Uniformity *par excellence*, but it had been preceded by three other Acts of Uniformity, each prescribing its own Prayer Book (2 & 3 Edw. 6, c. 1, 5 & 6 Edw. 6, c. 1, and 1 Eliz. c. 2), all expressly confirmed by s. 20 of the Act of 1662, which directs that they 'shall be applied, practised and put in use for the punishing of all offences contrary to the said laws with relation to the book aforesaid and no other,' and also included (though not by name) in the definition of 'Act of Uniformity' contained in s. 1 of the Act of Uniformity Amendment Act, 1872 (45 & 36 Vict. c. 35). These earlier Acts allow offences against them to be tried at assizes by judge and jury with diocesan assessorship, and impose very severe punishments on convicted offenders—imprisonment for life being the punishment on a third conviction.

Later Acts.—The Prayer Book (Table of Lessons) Act, 1871 (34 & 35 Vict. c. 37), has established a new lectionary; and the Act of Uniformity Amendment Act, 1872, above referred to, has authorized (1) shortened, (2) special, and (3) additional services, 'so that there be not introduced into such additional service' any portion of the Communion Service, 'or anything, except anthems or hymns, which does not form part of the holy scriptures, or book of Common Prayer,' and so that the form and mode of use is approved by the ordinary. The Public Worship Regulation Act, 1874, has also added to the remedies for clerical deviations from uniformity. An alternative lectionary has been provided by the Revised Table of Lessons Measure, 1922 (12 & 13 Geo. 5, No. 3).

See *Chitty's Statutes*, tit. '*Church and Clergy*,' for the later Acts; and for the earlier Acts, see the *Statutes Revised*, 2nd ed. vol. i., and *Lely's Church of England Position*, and see also PUBLIC WORSHIP REGULATION ACT, 1874.

Uniformity of Process Act (2 Wm. 4, c. 39), by which personal actions, theretofore commenced by different processes in the Courts of King's Bench, Exchequer, and Common Pleas were first commenced by one process applicable to all three courts alike. See LATITAT; QUO MINUS.

Unigeniture, the state of being the only begotten.

Unilateral, one-sided.

Unilateral Contract. When the party to whom an engagement is made makes no express agreement on his part, the contract is called unilateral, even in cases where the civil law attached certain obligations to his acceptance. A loan of money and a loan for use were of this kind.—*Civ. Law.*

A promise without consideration is of this nature if by deed it is *primâ facie* enforceable. See CONSIDERATION.

Union of parishes for the purpose of administering the laws for the relief of the poor, first effected under 22 Geo. 3, c. 83 ('Gilbert's Act'), and afterwards under the Poor Law Amendment Act, 1834. See *Chitty's Statutes*, tit. '*Poor*.' Poor Law Unions were abolished by the Poor Law Acts, 1930 and 1934 (20 & 21 Geo. 5, c. 17 and 24 & 25 Geo. 5, c. 59), and the powers of guardians

transferred to the county and borough councils by the same Acts.

Union Assessment Committee. A committee of the board of guardians of every union, consisting of not less than six nor more than twelve, having jurisdiction to revise the valuation lists framed by the overseers of each parish for the purpose of rating to the poor rate. See Union Assessment Committee Acts of 1862 and 1864 (25 & 26 Vict. c. 103, and 27 & 28 Vict. c. 39), by the latter of which there can be no appeal against a poor rate to quarter sessions without previous notice of the objection of the appellant to the assessment committee, and failure to obtain relief from such committee. As to time of giving notice of appeal, see *Denaby Overseers* v. *Denaby Collieries*, 1909, A. C. 247. The Act of 1864 (27 & 28 Vict. c. 38), has been repealed by the Rating and Valuation Act, 1925 (15 & 16 Geo. 5, c. 90), except s. 6 and in part as to London. See RATES.

Unitarians, Protestant Dissenters who do not hold the doctrine of the Trinity. They were excepted from the benefit of the Toleration Act until 1813, when the Act 53 Geo. 3, c. 160, repealed the incapacities and penalties imposed by earlier statutes. The holding of Unitarian opinions was no offence at Common Law: see *Shore* v. *Wilson*, (1842) 9 Cl. & Fin. 355 (*Lady Hewley's Charities*). Trusts for the benefit of Unitarians are accordingly enforceable (*Shrewsbury* v. *Hornby*, (1846) 5 Ha. 406; *Re Barnett*, (1860) 29 L. J. Ch. 871; *Re Wall*, (1889) 42 Ch. D. 510). See DISSENTERS.

Unitas personarum, the unity of persons as that between husband and wife, or ancestor and heir.

United States of America, declared their independence on July 4, 1766, and were acknowledged by England on September 3, 1783.

Unity of Possession. Where one has a right to two estates, and holds them together in his own hands, as if a person takes a lease of lands from another at a certain rent, and afterwards buys the fee-simple, this is an unity of possession by which the lease is extinguished, because that he who had before the occupation only for his rent, is now become lord and owner of the land.—*Termes de la Ley.* See JOINT TENANCY; TENANCY IN COMMON.

Universal Agent, one who is appointed to do all the acts which the principal can personally do, and which he may lawfully delegate the power to another to do. Such an universal agency may potentially exist, but it must be of the rarest occurrence. And indeed it is difficult to conceive of the existence of such an agency practically, inasmuch as it would be to make such an agent the complete master, not merely *dux facti* but *dominus rerum*, the complete disposer of all the rights and property of the principal. The law will not from general expressions, however broad, infer the existence of any such universal agency; but it will rather construe them as restrained by the principal business of the party in respect to which it is presumed his intention to delegate the authority was principally directed.—*Story's Agency*, 18.

Universal Legacy, a testamentary disposition by which the testator gives to one or more persons the whole of the property which he leaves at his decease.—*Civ. Law.*

Universal Partnership, a species of partnership by which all the partners agree to put in common all their property, *universorum bonorum*, not only what they then have, but also what they shall acquire.—*Civ. Law.*

Universitas vel corporatio non dicitur aliquid facere nisi id sit collegialiter deliberatum, etiam si major pars id faciat. *Dav.* 48.—(An university or corporation is not said to do anything unless it be deliberated upon collegiately, even though the majority of them do it.)

Universities and College Estates Act, 1858, 1860 and **1898** (21 & 22 Vict. c. 44; 23 & 24 Vict. c. 59; 61 & 62 Vict. c. 55), the last of which Acts applied the Settled Land Acts, with modifications, to the sale and letting of the estates of the Universities of Oxford and Cambridge and Durham, and of the colleges therein.

These Acts have been repealed and replaced by the University and College Estates Act, 1925 (15 & 16 Geo. 5, c. 24), and the Law of Property (Amendment) Act, 1926, Sched., to bring the law into line with the property legislation of 1925.

University, an association of learners, and of teachers and examiners of the learners, upon whose report the association grants titles called 'degrees' (such as 'Master of Arts,' 'Doctor of Divinity'), showing that the holders have attained some definite proficiency.

The English Universities are those of Oxford, Cambridge (incorporated by 13 Eliz. c. 29, by the two names of the Chancellor, Masters and Scholars of the University of Oxford and Cambridge respectively, with

the direction that they shall be called and named by none other name for evermore), Durham, London, Victoria of Manchester, Birmingham, Liverpool, Leeds, Sheffield, Bristol, and East Midland University, Nottingham, the graduates of which (see University of Liverpool Act, 1904; University of Leeds Act, 1904; and Sheffield University Act, 1914) have equal statutory privileges and exemptions; and Reading University (see 18 & 19 Geo. 5, c. 25). There is also the University of Wales (see University of Wales Act, 1902). The Scottish Universitites are those of Aberdeen, St. Andrews, Edinburgh, and Glasgow. In Northern Ireland, the Queen's University of Belfast; in the Irish Free State, the University of Dublin (and Trinity College), and the National University of Ireland.

Abolition of Tests.—The Universities Tests Act, 1871 (34 & 35 Vict. c. 26), proceeding on the preamble 'that it is expedient that the benefits of the Universities of Oxford, Cambridge, and Durham, and of the Colleges and halls now subsisting therein as places of religion and learning, should be rendered freely accessible to the nation, and that by means of divers restrictions, tests, and disabilities many of her Majesty's subjects are debarred from the full enjoyment of the same,' makes various provisions for the removal of religious tests. See *Reg.* v. *Hertford College*, (1878) 3 Q. B. D. 693, in which it was held that the Act applies only to colleges subsisting before it was passed. The 36 & 37 Vict. c. 21 has made similar alterations in the law with regard to the University of Dublin and Trinity College. The College Charter Act, 1871 (34 & 35 Vict. c. 63), provides that a copy of any application for a charter for a new college or university shall be submitted to Parliament as well as to the Sovereign in Council.

Reforms.—In 1854, by 17 & 18 Vict. c. 81, commissioners were appointed with powers to frame statutes for the better government, etc., of Oxford University, and the colleges therein; and in 1856, by 19 & 20 Vict. c. 88, other commissioners with the like powers as to Cambridge. In 1877, by 40 & 41 Vict. c. 48, commissioners were appointed with the like powers as to both Oxford and Cambridge. See also Universities of Oxford and Cambridge Act, 1923, which established two bodies of commissioners, one for Oxford, and the other for Cambridge University, with powers to make statutes and regulations for the University, its colleges and halls, emoluments, endowments, trusts, foundations, institutions, etc., in general accordance with the recommendations contained in the Report of the Royal Commission appointed in 1919 to consider the applications made by the universities for financial assistance from the State.

As to the jurisdiction over undergraduates, see CHANCELLORS OF THE TWO UNIVERSITIES. The Sex Disqualification (Removal) Act, 1919 (9 & 10 Geo. 5, c. 71), empowered universities to admit women to membership, degrees, and see *infra*.

Parliamentary Franchise.—Oxford and Cambridge had the franchise for two members each from the earliest times; London acquired it by ss. 24 and 41–45 of the Representation of the People Act, 1867, for one member, and the Scottish Universities by s. 39 of the Scots Act of 1868. The Representation of the People Act, 1918, provides the following University constituencies:—

Oxford	2	Number of members.
Cambridge	2	
London	1	
Other English Universities (together)	2	
Wales	1	
Scotland (together)	3	

Men and women of full age and capacity who have received a degree (other than an honorary degree) at any University forming, or forming part of, the constituency, or in the case of Scottish Universities qualified under 31 & 32 Vict. c. 48, s. 37, are entitled to be registered as parliamentary electors for a University constituency, or if a woman, if she has been admitted to and passed the final examination and kept under the conditions required of women the period of residence necessary for a man to obtain a degree at any University forming or forming part of a University constituency which did not at the time the examination was passed admit women to degrees (see the Repr. of People (Equal Franchise) Act, 1928). See *Chitty's Statutes*, tit. '*Parliament*.'

As to Cambridge, see also SPINNING-HOUSE.

University Court. See CHANCELLORS OF THE TWO UNIVERSITIES; COGNIZANCE.

University Press. At Oxford, the public press of the University is called the 'Clarendon Press'; at Cambridge, the 'Pitt Press.'

Unlage [Sax.], an unjust law.

Unlawful Assembly. At Common Law is an assembly of three or more persons (*a*) for purposes forbidden by law, such as that of

committing a crime by open force, or (*b*) with intent to carry out any common purpose, lawful or unlawful, in such a manner as to endanger the public peace, or to give firm and courageous persons in the neighbourhood of such assembly reasonable grounds to apprehend a breach of the peace in consequence of it. See *Stephen's Digest of Criminal Law*, 6th ed., p. 55, and compare RIOT ; ROUT ; PUBLIC MEETING ; PUBLIC ORDER.

Unliquidated Damages. When the amount to be recovered depends on all the circumstances of the case, and on the conduct of the parties, or is fixed by opinion or by an estimate, the damages are said to be 'unliquidated.' See LIQUIDATED DAMAGES.

Unmarried, is a term of flexible meaning ; *primâ facie* it means 'never having been married,' but the context may show that it means 'not having a husband or wife' (*Re Seigcant*, (1884) 26 Ch. D. 575 ; *Blundell* v. *De Falbe*, (1888) 57 L. J. Ch. 576).

Unnatural Offence, the infamous crime against nature, either with man or beast, punishable by the Offences against the Person Act, 1861, by penal servitude for life or any term not less than ten years, but this minimum punishment was abolished by the Penal Servitude Act, 1891.

Uno flatu, with the same breath and the same intent.

Unques [Nor.-Fr.] (yet).

Unques prist. See UNCORE PRIST.

Unseaworthy Ships. Sending an unseaworthy (see *Hedley* v. *Pinkney Steamship Co.*, 1892, 1 Q. B. 58—C. A.) ship to sea in such a state that the life of any person is likely to be endangered is a misdemeanour by s. 47 of the Merchant Shipping Act, 1894, reproducing s. 4 of the repealed Merchant Shipping Act, 1876, unless the person charged proves either that he used all reasonable means to insure the ship being sent to sea in a seaworthy state, or that her going to sea in such an unseaworthy state was under the circumstances reasonable and justifiable.

As to the meaning of unseaworthiness in a bill of lading, see *The Schwan*, 1909, A. C. 450.

Unsound Food. Extensive powers for the inspection and seizure of unsound food are given by the Public Health Act, 1875, ss. 116–119, and the Public Health (London) Act, 1891, s. 47. By sub-s. 4 of the latter Act the seller of unsound food may be ordered, upon a second conviction, to affix a notice of the facts upon his premises ; and under this section proceedings may be taken by a private individual (*Giebler* v. *Manning*, 1906, 1 K. B. 709). As to the position of a *wholesale* butcher when unsound meat is seized while in the possession of the retailer to whom he sold it, see *Grivell* v. *Malpas*, 1906, 2 K. B. 32, and as to the power of a butcher to obtain compensation when a prosecution results in an acquittal, see *Hobbs* v. *Winchester Corporation*, 1910, 2 K. B. 471. Compare the title ADULTERATION.

Unsound Mind. See PERSON OF UNSOUND MIND.

Unsworn Testimony. As to its admission in certain cases in civil and criminal proceedings in Colonial courts, see 6 & 7 Vict. c. 22 ; and as to unsworn evidence of child on charge of defilement of girl under 13, see Criminal Law Amendment Act, 1885, s. 4. See also as to the evidence of children, Children and Young Persons Act, 1932, s. 37 ; Criminal Justice Administration Act, 1914, s. 28.

Unthrift, a person of outrageous prodigality.

Unus Nullus Rule, The, the rule of evidence which obtains in the Civil Law, that the testimony of *one* witness is equivalent to the testimony of *none*. See *Best on Evidence*, bk. 3, pt. 2, c. 10, and CORROBORATION. In our law corroboration is required in an action for breach of promise of marriage and on a summons for an affiliation order, and two witnesses are required on an indictment for treason or perjury, and for attestation of a will. The unsupported evidence of an accomplice, though legally admissible, is usually rejected by a jury under the direction of the judge (*In re Meunier*, 1894, 2 Q. B. 415) ; the same procedure will usually apply to the uncorroborated testimony of a party in divorce proceedings or the claimant of an estate. With these exceptions, the rule of our law is that witnesses are weighed, not counted,—'*ponderantur testes, non numerantur*.'

Upper Bench [*bancus superior*, Lat.], the style of the King's Bench during the protectorate of Cromwell.

Upset Price, in sales by auction, an amount for which property to be sold is put up, so that the first bidder at that price is declared the buyer, if there is no higher bid.

U. R. (initials of *uti rogas*, be it as you desire), a ballot, thus inscribed, by which the Romans voted in favour of a bill or candidate.—*Tay. C. L.* 191.

Urban Sanitary District. See SANITARY AUTHORITY.

Urban Servitudes, servitudes connected

with houses, such as support, light, stillicide, etc.—*Bell's Scots Law Dict., voce 'Servitude.'*

Ure, custom, practice.—13 Eliz. c. 2, s. 1.

Urgency Order. In cases of urgency, where expedient for the welfare of any person alleged to be of unsound mind or for the public safety, that person can be detained for seven days on an order signed by a relative or other person, as provided, accompanied by a medical certificate.—Lunacy Act, 1890, s. 11, as amended by s. 17 of Mental Treatment Act, 1930.

Usage, practice long continued.—6 *Rep.* 65; but it must always be proved, whereas a custom may in some cases (e.g., the custom of gavelkind) be judicially noticed without proof.

Usance [Fr.], the time which it is the usage of the countries, between which bills are drawn, to appoint for payment of them. If a foreign bill be drawn payable at sight, or at a certain period after sight, the acceptor will be liable to pay according to the course of exchange at the time of acceptance, unless the drawer express that it is payable according to the course of exchange at the time it was drawn, *en espèces de ce jour.* See *Byles on Bills.* As to the usance between London and the various foreign countries, see *ibid.*

Use and Occupation, Action for, an action for damages upon the case for breach of an implied agreement to pay for the use of a landlord's property under the Distress for Rent Act, 1737 (11 Geo. 2, c. 19), s. 14, whereby it is enacted that it shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments held or occupied by the defendant in an action on the case, for the use or occupation of what was so held or enjoyed; and if in evidence on the trial of such action any parole demise, or any agreement (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be non-suited, but may make use thereof as an evidence of the *quantum* of the damages to be recovered. Apparently, the action is not for damages *ex delictu*, because the action is not maintainable against a trespasser or wrong-doer. An action for debt on the demise but not upon covenant for use and occupation was available at common law (*Gibson* v. *Kirk*, (1841) 1 Q. B. 850). Occupation by the defendant must be proved. See *Woodfall, L. and T.; Bullen and Leake's Prec. of Plead.*

User de action, the pursuing or bringing an action in the proper county, etc.—*Brooke,* 64.

Uses (*History*). A use is the intention or purpose, express or implied, upon which property is to be held. The Common Law treated the actual possessor for all purposes as the owner of the property. It was not difficult to find him out, since the possession of his estate was conferred upon him by a formal and notorious ceremony, technically called livery of seisin, which was performed openly and in the presence of the people of the locality.

It soon became evident that the simple rules of the Common Law were stumbling-blocks to the complicated wants of an enterprising people.

Hence ingenuity was sharpened to hit upon a device which should set at nought the rigidity of existing law and formalities.

A system was found by the monastic jurists upon a model furnished by the Civil Law, which, by a nice adaptation, evaded, without overturning, the Common Law. Two methods of transferring realty began to co-exist in this country—the ancient Common Law system, and the later invention, which is denominated USES.

Thus a novel contrivance, which was at first a liberating expedient, became a gigantic system, which superseded the doctrines and practice of feudal law, and laid the foundation of modern conveyancing.

Before the Statute of Uses, a use was in its nature equitable, as such; it may be defined to have been a right in Chancery to the beneficial ownership of property, the possession of which had been confided to another. The Court of Chancery, although without jurisdiction over the property, found a way to make an appeal to the conscience of the apparent or legal owner, backed by its irresistible sanctions. The person enjoying the beneficial right was called the *cestui que use*, or he to whose use the land was conveyed, and the person in possession, the feoffee to uses. Thus A. conveyed an estate to F. to his (A.'s) own use *or* to the use of C.; F. was the feoffee to uses, and A. or C., as the case may be, the *cestui que use.*

Function of Feoffee to Uses.—The use consisted of three parts:—(1) That the feoffee to uses should suffer the *cestui que use* to take the profits; and (2) upon the request of the *cestui que use,* or notice of his will, would convey the estate to the *cestui que use* or his heirs, or any other person by his direction; and (3) that if the feoffee to uses had been dispossessed, and the *cestui*

que use disturbed, the feoffee to uses could re-enter or bring an action to recontinue his possession.

Properties of Uses before the Statute of Uses :—

(1) They were descendible according to the rules of the Common Law relating to the inheritable estates of intestates: and the special customs of gavelkind, borough-English, and copyholds, determined the particular descent of uses. This is an illustration of the well-known maxim, *Æquitas sequitur legem.*

(2) They were devisable even before the Statute of Wills, 32 Hen. 8, c. 1.

(3) They were transferable, although at law they were mere *choses in action.*

(4) A *cestui que use* in possession of the land was deemed a tenant at will only, for he had neither *jus in re*, i.e., an estate, nor *jus ad rem*, i.e., a demand, and therefore he could bring no action, having neither title nor legal estate in the property.

(5) Neither could a widow be endowed, nor could a husband have his curtesy of a use, because the *cestui que use* had no legal seisin of the land. See DOWER.

(6) The *cestui que use* might have been impanelled on a jury.—2 Hen. 5, c. 3.

(7) The feoffee to uses, being complete owner of the land at law, performed the feudal duties, had power to sell, brought actions, his widow became entitled to dower, and his estate was subjected to wardship, relief, and forfeiture for treason or felony. In fact, he was treated at Common Law as the absolute tenant of the fee.

(8) A use, being but the creature of equity, could not have been taken in execution for the debts of the *cestui que use ;* for there was no process at Common Law but against legal estates.

(9) A use, not being an object of tenure, was therefore exempt from the oppressive burdens of the feudal system. It was not forfeitable for treason or felony, because it was not held of any person. This was afterwards broken in upon by statute 12 Ric. 2, c. 3.

(10) At one time a use was not assets for the payment of debts by the heir or executor.

There appears to have been a distinction between a use and a trust, even before the Statute of Uses. A special trust appears to have arisen where the feoffee to uses was not only invested with the possession, rents and profits, but was under an obligation to deal with them in a special manner indicated by the feoffor. The indication might be lawful or it might be a special trust unlawful, which was created for fraudulent purposes, so as to defraud creditors, to defeat the Statute of Mortmain, and the like.

If the two following statutes be compared, it will be manifest that Parliament did not consider the use and special trust to be the same: the 50 Edw. 3, c. 6, subjected the *special trust* to an execution by a creditor of the *cestui que trust ;* while the 19 Hen. 7, c. 15, extended, for the first time, the estate of the *cestui que use.* In general, however, there was but little difference in the terms 'use' and trust. See OFFICIAL USE ; ACTIVE USE ; PASSIVE TRUST, and *infra.*

Uses may be classified as :—

I. Present or executed ; distributable into :—

(*a*) Those arising by act of parties, which were created either—

(1) By express declaration in a feoffment, deed, etc.

(2) By presumed intention in a will ;

(3) By certain considerations.

(*b*) Those arising by act of law, which were either—

(1) Resulting ;

(2) Implied.

II. Future or executory, distributable into :

(*a*) Shifting or secondary ;

(*b*) Springing ;

(*c*) Contingent.

See TRUSTS.

Objections to uses before the Statute :—

'Though these uses' (see *Gilbert, Uses,* c. 1, s. 8) 'had a very equitable beginning, yet, like all new models and general schemes of ordering property, it introduced a great many unforeseen inconveniences, and subverted in many instances the institution and policy of the Common Law.

'Firstly. Estates passed by way of use, from one to another, by bare words only, without any solemn ceremony or permanent record of the transaction, whereby a third person that had right knew not against whom to bring his action.

'Secondly. Heirs were deprived of their Common Law rights since uses were devisable.

'Thirdly. Lords lost their wardships, reliefs, marriages, and escheats, the trustees letting the *cestui que use* continue the possession, whereby the real tenants that held the lands could not be discovered.

'Fourthly. The king lost the estates of aliens and criminals ; for they made their friends trustees, who kept possession, and

secretly gave them the profits, so that their use was undiscovered.

'Fifthly. Purchasers were insecure; for the alienation of the *cestui que use* in the possession was at Common Law a disseisin, and 1 Ric. 3, c. 1, gave him power to alien what he had; yet the feoffees may still enter to re-vest a remainder or contingent use, which was never published by any record or delivery, whereby the purchaser could know of them.

'Sixthly. Uses were not subject to the payment of debts.

'Seventhly. Many lost their rights by perjury in averment of secret uses.

'Eighthly. Uses might be allowed in mortmain.'

These grievances led to the passing of the Statute of Uses.

This Act, 27 Hen. 8, c. 10, is usually called the Statute of Uses; its title on the parliament roll is, 'An Act concerning Uses and Wills,' and in pleading it used to be described as *Statutum de usibus in possessionem transferendis*. It became a pivot of English conveyancing. Its effect was that where any person was seised to the use of another, then the person enjoying the use was to be deemed to have the actual and lawful seisin, estate or possession corresponding to the use, and the statute transferred the (legal) seisin, estate or possession accordingly to the *cestui que use*.

It has been generally said that one object aimed at by this statute was the total destruction of the use, by effecting an amalgamation of the legal and equitable interests; but this object, if it existed, has failed owing to the equitable jurisdiction of the Courts of Chancery and the judicial interpretation by the Common Law judges of the meaning of this celebrated statute.

Requirements of the Statute:—

There are several circumstances necessary to the execution of uses under the statute, viz.:—

(1) A person seised to the use.

(2) A *cestui que use in esse*.

(3) A use *in esse* in possession, reversion, or remainder.

(4) Every species of realty, except copyholds, whether corporeal or incorporeal, in possession, reversion, or remainder, may be conveyed to uses, but it must be *in esse*.

(5) There must be a seisin in the grantee, or feoffee, to uses at the time of the execution of the use.

(6) The use may be raised by a conveyance operating either by transmutation or non-transmutation of possession (see *infra*).

Non-operation of the Statute:—

The Statute of Uses did not operate to vest the legal estate in the *cestui que use* in the following cases:—

(1) Uses limited of copyholds—since no person can be introduced into the estate without the lord's consent; for if use were permitted, there would then be effected a transmutation of the possession by operation of law, which would be contrary to the peculiarity of this kind of tenure.

Yet shifting or springing uses may be limited by copyhold surrenders, so as to have the effect of divesting prior vested estates.

(2) Upon a demise to the grantee to uses of leaseholds and chattel interests. It is said that the statute contemplated *freeholds* only, and therefore employed the word SEISED; now a tenant is only *possessed* of a leasehold for years. But the use declared upon a feoffment, etc., might be of a term of years and there was nothing to prevent the *cestui que use* from having the legal estate in the term to which the legal reversion could be released. See LEASE AND RELEASE.

(3) Active and constructive uses. When the use involves a direction to sell the estate and then divide the proceeds of the sale or to pay debts, or to pay over the profits, or to convey to a child on attaining majority, or to re-convey on the repayment of a mortgage-loan, the statute was precluded from the very nature of the transaction from converting such a use into a legal right to the land, and equity, therefore, compels the trustee, who retains the legal estate notwithstanding the statute, to perform the duty confided in him.

And the trustee had the legal estate (if properly invested in him) in the following cases: A trust to permit a *feme covert* to receive the profits for, or to pay the same to, her separate use; and so of a trust to permit and suffer a party to receive and take the *net* rents and profits.

(4) A second use, or a use upon a use. The Common Law judges determined that the statute could only operate upon one use, and where another use was superadded it was a mere nullity, since it was an interest unknown to the Common Law before the statute. This doctrine and its consequences have been explained thus:—

There are three conveyances, viz., appointment to uses, bargain and sale, and covenant to stand seised where there is no transmuta-

tion or change of possession but only a use raised in favour of the appointee, purchaser or covenantee, and a transmutation of the legal estate by virtue of the Statute of Uses, while there are other conveyances such as feoffment grant or which transmute the possession at law, and no use is raised at all unless declared or implied upon the change in possession. Consequently if a use is declared upon a conveyance of the first kind, that use would be a use upon a use; in conveyances of the latter class, the use (if any) declared is the first, and the only use, on which it has been held that the Statute of Uses can work.

The following examples point out the peculiar operation of these two classes of transfers, i.e. (*a*) non-transmutation of possession, or (*b*) transmutation of possession as to the vesting of the legal and equitable estates:—

An Appointment, Bargain and Sale, or Covenant to stand seized

To D. and his heirs,
To the use of T. and his heirs,
To the use of, or in trust for, S. and his heirs,

vests the legal estate or use in D. and the equitable estate in S., T. not taking any legal estate. But

A Feoffment or Grant

To D. and his heirs,
To the use of T. and his heirs,
To the use of, or in trust for, S. and his heirs,

gives D. but a seisin, and vests the use or legal estate in T., and the equitable estate in S.

A release does not transmute the possession but it transvests the legal ownership and has the same effect as a feoffment or grant.

It was to avoid the divesting of the legal estate in the feoffee to uses that the practice grew up of a feoffment or grant by A. to B. and his heirs to the use of B. and his heirs, or, in the usual form, *Unto and to the Use* of B. and his heirs. A feoffment or grant to B. and his heirs would have been perfectly good to transmute the possession and transfer the legal estate, but if a use arose expressly or by implication on that estate, B. would have lost the legal estate without any transmutation of possession from him, and it may be suggested that the additional words, so far from being superfluous, meant no more than to express the grant to be for the benefit of the grantee as his legal estate, subject, of course, to any trust that may have been engrafted on the grant.

Upon this doctrine that there can be no use upon a use, equity interfered, and resuming her old dominion, treated C., the person having the second use, as the beneficiary, and compelled B., having the statute use, to deal with the estate for C.'s benefit as a trustee, and then giving the technical term of 'trust' to C.'s second use, deprived the use properly so called of its beneficial interest, and revived the twofold system of one person holding the legal estate in the land, while the equitable estate or the usufructuary right therein was actually enjoyed by another, and thus the Court of Chancery reasserted its jurisdiction over uses under the name of trusts.

Although, for the sake of distinction, and in practice, the first use executed by the statute is called a use, and the second use not executed by the statute a trust, yet this phraseology is altogether arbitrary; for either word may be applied indiscriminately and convertibly to either estate, since the particular interests enjoyed by the parties depend upon their position with regard to one another, and not upon the term employed in their denomination. The usual and strictly technical form is:—

To F. to the use of F. or to the use of C. in trust for E. (but it is immaterial whether it is in this form), so that a trust in name may be a use in effect, and *è converso*.

(5) Future executory and contingent uses cannot be executed into legal estates by the statute until they arise.

(6) It is said that devises are not within the Statute of Uses, because it was passed before the Statute of Wills (32 Hen. 8, c. 1, A.D. 1540). But this is of no practical importance, since the Courts, in their decisions, are entirely guided by a testator's intention, and it has been always held that if A. devise to B, and his heirs, to the use of or in trust for C. and his heirs, or in trust to permit C. and his heirs to take the profits, it shows that the testator intended that C. should have the legal estate in fee, and so the law decided. And if there be a devise to the use of A. for life, with remainder over, although it could not take effect by way of a use executed by the statute, because there was no seisin to serve the use, yet A. would have the legal estate. Indeed, uses were executed in a will as if they were limited by deed, if such was the testator's intent. See the judgment of Jessel, M.R., in *Baker* v. *White*, (1875) L. R. 20 Eq. 166.

The practical advantages of the system, subsequently to the statute, were:—

Conveyances to uses legalized many dispositions which were altogether void at the Common Law, for uses might be suspended, revived, postponed, and accelerated in a way altogether opposed to the rules of the ancient feudal law. Amongst the most important relaxations thus introduced were the following :—

(1) A person could convey to himself, which he could not at the Common Law, as it would have been absurd to give possession by livery of seisin to one's self. This was found to be convenient, especially in the following example :—

It frequently happened that upon the death or removal of trustees, it became necessary to fill up their number pursuant to a power for that purpose, usually introduced into settlements of real property. In order to effect this it was formerly the practice for the old trustees to make a conveyance, which operates by way of transmutation of possession (either by release or grant) to the new trustees and their heirs, to the use of the old and new trustees and their heirs. Without the assistance, therefore, of the Statute of Uses, it would have been necessary in the above case that the old trustee should have first enfeoffed A., who would have re-enfeoffed the old and new trustees jointly, thereby making two conveyances necessary. Indeed, in the case of terms for years, and other personal property, two assignments were required for this purpose, until 22 & 23 Vict. c. 35, s. 21 ; and by the Conveyancing Act, 1881, s. 50, freehold land might be conveyed by a person to himself jointly with another, and by the Law of Property Act, 1925, s. 72, to himself alone ; this section also reproduces the last-mentioned two enactments.

(2) A conveyance could not have been made by a husband to his wife, but by limiting a seisin to the grantee or releasee, the husband might declare the use to his wife, which the statute would execute.

(3) A man could not make his own heir a purchaser, even of an estate tail, for *filius est pars patris—hæres est pars antecessoris ;* but a man might limit the use so as to make his heirs special take, either by purchase or descent.

(4) No person could take a present interest in the *habendum* of a deed who was not named in the premises. But in a case where A. enfeoffed B., *habendum* to the said B. and C., their heirs and assigns, to the use and behoof of the said B. and C., their heirs and assigns, it was resolved that, as C. was not named in the premises, he could take no *possession* originally by the *habendum ;* and that the livery, made according to the intent of the indenture, did not give anything to C., because as to him it was void ; but though the feoffment did not give any *seisin* to C., yet it did to B. and his heir, which *seisin* was sufficient to serve the use declared to C. Therefore the use limited to B. and C. was good, and the statute executed it. But this limitation of the use in a bargain and sale to a person not named in the premises, after a previous disposition of it to the bargainee, would be ineffective to pass the legal estate, for the reasons before mentioned.

(5) So it was a rule of law that if an estate be conveyed to two, the one being capable and the other incapable at the time of the grant, he who was capable should take the whole, and that *joint tenants* cannot take at different periods. But since the introduction of uses, if A. made a feoffment in fee, to the use of B. and his future wife, though the whole estate would vest in B. at first, yet upon his marriage the wife would take jointly with him. So if a disseisin be had to the use of two, and the one agreed to it at one time, and the other at another, they became *joint tenants.*

(6) An estate of freehold could not be granted, apart from statute, at the Common Law, to commence *in futuro*, nor could a contingent remainder be supported, without an express particular estate of freehold (see CONTINGENT REMAINDERS), but by a conveyance under the Statute of Uses, a freehold could be created to commence *in futuro*, and future limitations would have been supported when no particular estate had been made, either as remainders or springing uses.

(7) An estate could not at the Common Law be limited upon a fee-simple, i.e., a fee-simple could not be made to cease as to one, and take effect by way of limitation upon a contingent event in favour of another person ; but such a limitation could take effect by way of shifting or springing use. A shifting or springing use, after a previous limitation of the fee, could not be barred by the *cestui que use* by any kind of conveyance, but where it was limited upon an estate-tail the tenant-in-tail could bar it.

(8) Every remainder, at the Common Law, must be limited, so as to await the determination of the particular estate, before it

can take effect in possession : but an abridgment of the particular estate, upon a certain condition, could be effected by a conveyance to uses, so as to accelerate the expectant estate into possession.

The Statute of Uses has been repealed by the Law of Property Act, 1925 (see s. 207 and 7th Sched.), and many former legal estates can only take effect in equity now, but the law on the subject is still applicable to the investigation of titles up to 1926 (s. 1 (10), *ibid.*), and a direction in any statute or other instrument requiring land to be conveyed to uses shall (subject to creating or reserving thereout any legal estate authorized by the L. P. Act which may be required) be conveyed to a person of full age upon the requisite trusts ; and see ss. 130 to 132 of the same Act ; also s. 65 (reservations in lieu of grants of rent-charges, easements, etc.) ; s. 66 (confirmation of past transactions), and s. 4 (equivalence in equity of former legal estates). See LAW OF PROPERTY ; SETTLED LAND and VOLUNTARY CONVEYANCE.

Usher [fr. *huis*, Fr., a door], a door-keeper, an officer who keeps silence in a court. The office of Usher of the Court of Chancery was abolished by 15 & 16 Vict. c. 87, s. 27.

Usque ad medium filum aquæ, *or* viæ [Lat.] (even to the middle of the stream or road). See AD MEDIUM FILUM VIÆ.

Usual Covenants, covenants usually inserted in deeds having a similar scope to that in respect of which a question arises. The phrase occurs most frequently in connection with agreements for leases stipulating that the lease when granted shall contain 'all usual covenants.' What these are is a question of fact, but it may perhaps be laid down that at the present day covenants by the lessee to pay rent, to pay taxes, and to repair, and a qualified covenant by the lessor for quiet enjoyment (see that title), are usual, but that no others are, and in particular that the covenant not to assign or underlet without the leave of the lessor is not : see *Hampshire* v. *Wickens*, (1878) 7 Ch. D. 555 ; *Re Lander*, 1892, 3 Ch. 41.

A proviso for re-entry on breach of covenants generally is not 'usual,' but a proviso for re-entry on breach of the covenant to pay rent is : see per James, L.J., in *Hodgkinson* v. *Crowe*, (1875) L. R. 10 Ch. 622 ; *Re Anderton*, (1890) 45 Ch. D. 476.

Usual Terms, a phrase in the Common Law practice, which meant pleading issuably, rejoining gratis, and taking short notice of trial. When a defendant obtained further time to plead, these were the terms usually imposed. The phrase is often used informally upon declaring an Order of Court, according to the practice of the Court, e.g., 'Stay of proceedings upon the usual terms pending an appeal.' As a rule, this means payment of the sum in question by the appellant, if defendant, the plaintiff giving security for repayment and an undertaking by his solicitor to abide any order for refunding if the appeal is successful—costs of the application to be paid by the applicant. See *A. P. notes to Ord. LVIII., r.* 16.

Usucapio, the enjoying, by continuance of time, a long possession or prescription ; property acquired by use or possession.—*Civ. Law.* See LIMITATION.

Usucapio constituta est ut aliquis litium finis esset.—(The object of *usucapio* (title by quiet possession) is to put an end to litigation.) See *Sand. Just.*, and *Broom's Leg. Max.*

Usufruct, the right of reaping the fruits (*fructus*) of things belonging to others, without destroying or wasting the subject over which such right extends.—*Ibid.*

Usufructuary, he who enjoys the usufruct.

Usura maritima [*fœnus nauticum*, Lat.], interest taken on bottomry or respondentia bonds, which is proportioned to the risk, and was not affected by the abolished usury laws.—19 Geo. 3, c. 37 ; 2 *Steph. Com.*

Usurpation, a keeping or holding by using that which is another's ; an interruption of *usucapio*, or disturbing a man in his right and possession, etc. It is called *intrusion* in the civil and canon laws.—*Sand. Just.*

Usury, any reward taken for the use of money. *Usura est commodum certum quod propter usum rei (vel æris) mutuatæ recipitur ; sed, secundariò sperare de aliquâ retributione, ad voluntatem ejus qui mutuatus est, hoc non est vitiosum.* 5 Rep. 70.—(Usury is a certain benefit which is received for the use of a thing (or of money) lent ; but, secondly, to hope for a certain return at the option of the party who borrowed, this is not vicious.) The term is usually applied to the taking of exorbitant interest, or of interest of a greater amount than is allowed by law. Eleven statutes, from 37 Hen. 8, c. 9, to 13 & 14 Vict. c. 56, fixing the legal rates of interest, were all repealed in 1854 by 17 & 18 Vict. c. 90, together with 'all "the then" existing laws against usury,' but the interest which pawnbrokers (see that title) may take is still restricted by law, and the 109th Canon, including usury amongst other offences for which an offender may be presented, has not

only not been expressly repealed, but made part of the Clergy Discipline Act, 1892.

See, further, MONEY-LENDERS Act, and PAWNBROKERS.

Usus est dominium fiduciarium. *Bacon's Read. Stat. Uses.*—(Use is a fiduciary dominion.)

Utas [*octave*, Fr.], the eighth day following any term or feast.

Uterine Brother [*uterinus frater*, Lat.], a brother born of the same mother; *frater consanguineus* is a brother by the same father.

Utero-gestation, pregnancy.

Utfangethef. See OUTFANGTHEF.

Uti possidetis [Lat.] (as you possess).

Utlagus, or **Utlagatus,** an outlaw. See OUTLAWRY.

Utland, tenemental land.

Utlesse, an escape of a felon out of prison.

Utter Barristers, barristers who plead 'without' the bar; all such counsel as are not either King's Counsel or Serjeants-at-law. See *Cowel*, tit. '*Barraster.*'

Uttering, tendering; selling; putting in circulation; publishing. Knowingly uttering counterfeit coin is a misdemeanour, and after two prior convictions a felony, by the Coinage Offences Act, 1861, s. 21. Knowingly uttering a forged document is punishable as forgery.—The Forgery Act, 1913, s. 6.

V.

V. G., *verbi gratiâ*, for the sake of example.

Vacant Possession, in action for recovery of land. See R. S. C. 1883, Ord. IX., r. 9, as to mode of service of writ.

Vacant Succession, an inheritance the heir to which is unknown.

Vacation. By Ord. LXIII., r. 4, it is provided that 'the vacations to be observed in the several courts and offices of the Supreme Court shall be four in every year—viz., Long vacation, Christmas vacation, Easter vacation, and Whitsun vacation.' See LONG VACATION.

The county courts are, by s. 39 of the County Courts Act, 1934, as a rule, wholly closed during the month of September.

Vacation Schools. A local education authority has power under s. 22 of the Education Act, 1922, 'to provide, for children attending a public elementary school, vacation schools, vacation classes, play-centres, or other means of recreation during their holidays, or at such other times' as the authority may prescribe.

Vacation Sittings. Under the Jud. Act, 1873, s. 28 (replaced by Jud. Act, 1925, s. 54), and R. S. C. 1883, Ord. LXIII. r. 11, two 'vacation judges' of the High Court sit during vacations, for the hearing of such applications as may require to be immediately or promptly heard.

Vacatura, an avoidance of an ecclesiastical benefice.

Vaccaria, a dairy.—*Co. Litt.* 5 *b.*

Vaccination, inoculation with the virus of cowpox as a preventive of smallpox. First made compulsory in 1853 by 16 & 17 Vict. c. 100, gratuitous vaccination having been previously provided for in the various enactments, dating from 1840, on the subject prior to 1867, all of which were repealed by the Vaccination Act of that year (30 & 31 Vict. c. 84). By that Act it was provided, *inter alia*, that the parent of every child born in England should within three months after the birth of such child, or where by reason of the death, illness, absence, or inability of the parent or other cause, any other person should have the custody of such child, such person should within three months after receiving the custody of such child, take it, or cause it to be taken, to the public vaccinator of the vaccination district in which it should be then resident, to be vaccinated, or should within such period as aforesaid cause it to be vaccinated by some medical practitioner (s. 16). This Act was amended in 1871 by 34 & 35 Vict. c. 98, in 1874 by 37 & 38 Vict. c. 75, and in 1898 by the Vaccination Act, 1898, and this last Act was itself amended by the Vaccination Act, 1907, in order to give relief to persons having a conscientious objection to vaccination, and s. 1 (1) is as follows:—

> 1.—(1) No parent or other person shall be liable to any penalty under section 29 or section 31 of the Vaccination Act of 1867 if within four months from the birth of the child he makes a statutory declaration [see *infra*] that he conscientiously believes that vaccination would be prejudicial to the health of the child, and within seven days thereafter delivers or sends by post the declaration to the vaccination officer of the district.
>
> (2) A statutory declaration made for the purposes of this section shall be exempt from stamp duty.
>
> (3) A statutory declaration for the purposes of this section shall be made in the form set out in the schedule to this Act, or in a form to the like effect.

The Act of 1898 also substitutes six months (s. 1 (1)) for three as the period within which a child must be vaccinated, abolishes in ordinary cases the requirement that the child is to be taken to a vaccination station, substituting a domiciliary visit (s. 1 (2)) by the public vaccinator, and directs that the

public vaccinator (who previously had the power of taking lymph (s. 1 (3)) from a vaccinated child for the purpose of a further vaccination) shall offer to vaccinate with glycerinated calf lymph or other lymph issued by the Ministry of Health.

It is provided also that an order directing vaccination, which previously could be made repeatedly until a child reached the age of 14, shall not be made on a person (s. 3) convicted of disobedience of a similar order as to the same child; and that no proceedings for disobedience to such an order shall be taken against any person convicted in respect of non-vaccination for not having the same child vaccinated until it has reached the age of four years (s. 4).

The following is the statutory form of declaration provided by the Act of 1907:—

FORM OF DECLARATION.

I, A. B., of in the parish of in the county of , being the parent [*or* person having the custody] of a child named C. D., who was born on the day of 19 , do hereby solemnly and sincerely declare that I conscientiously believe that vaccination would be prejudical to the health of the child, and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Dated this day of 19 .

Signed, A. B.

Declared before me, at on the day of .

E. F.,

a Commissioner for Oaths [*or* Justice of the Peace, *or* other officer authorized to receive a statutory declaration].

See *Fry's Vaccination Acts; Shaw's Vaccination Acts; Chit. Stat.*, tit. '*Vaccination*.'

Vackeel, Vakeel, Vaqueel, one endowed with authority to act for another; ambassador; agent sent on a special commission, or residing at a court; also a native law pleader or attorney.—*Indian.*

Vadiare duellum (to wage combat), where two contending parties, on a challenge, give and take a pledge of fighting.

Vadium [fr. *vas, vadis*, Lat.], a pledge or security.—*Civ. Law.*

Vadium mortuum, a mortgage or dead-pledge by which the pledgor loses the security and its fruits or interest which were taken by the pledgee or mortgagee until repayment or redemption; and see VIVUM VADIUM.

Vadium ponere, to take bail or pledges for a defendant's appearance.

Vadlet, the king's eldest son—hence the valet or knave follows the king and queen in a pack of cards.—*Barr. on Stat.* 344.

Vagrants, sturdy beggars; vagabonds.

The Act which is now in force, embodying, mitigating, and extending numerous former provisions, is the Vagrancy Act, 1824 (5 Geo. 4, c. 83). It has been extended by the Vagrancy Act, 1838, as to re-commitment on failure to prosecute, appeal, and exhibition of obscene prints; by the Vagrant Act Amendment Act, 1873, as to gambling and betting in streets; by the Vagrancy Act, 1898, amended by the Criminal Law Amendment Act, 1912, s. 7, as to men living on earnings of prostitution; and by Poor Law Act, 1930, s. 150, as to obtaining relief by falsehood. It points out three classes of persons:—

1st, idle and disorderly persons; 2nd, rogues and vagabonds; 3rd, incorrigible rogues.

First. *Idle and Disorderly Persons.*—The following are, under the Vagrancy Act, 1824, s. 3, to be deemed 'idle and disorderly persons,' so that any justice of the peace may commit them (being convicted before him) to the house of correction to hard labour for not more than *one* month subject to an appeal to the sessions, viz.:—(1) Every person able to maintain himself or his family, and wilfully refusing or neglecting so to do, whereby he or any of his family whom he is bound to maintain shall become chargeable to any parish. (2) Every person returning to and becoming chargeable in any parish, etc., whence he, etc., shall have been removed by order of two justices, unless he, etc., produce a certificate of the churchwardens and overseers of the poor of some other parish, etc., acknowledging him, etc., to be settled in such parish, etc. (3) Every pedlar wandering abroad, and trading without licence. (4) Every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous and indecent manner. (5) Every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg, or gather alms, or procuring children so to do. See *Mathers* v. *Penfold*, 1915, 1 K. B. 514. (6) Every person relieved, in a workhouse, and refusing or neglecting while therein to perform the task prescribed by the guardians of the parish or union, if suited to his age and strength, or wilfully destroying or injuring his clothes, or damaging property of the guardians. (7) Every woman neglecting to maintain her bastard child, being able so to do, whereby it becomes chargeable to any parish or union.

Secondly. *Rogues and Vagabonds.*—The

following are, by the Vagrancy Act, 1824, s. 4, as amended by the Vagrancy Act, 1935 (25 Geo. 5, c. 20), to be deemed 'rogues and vagabonds,' whom it is lawful for any justice to commit (being convicted before him) to the house of correction to hard labour for not more than *three* months, subject, as in the case of idle and disorderly persons, to an appeal to the sessions, viz. : —

(1) Every person committing any of the offences hereinbefore mentioned, after having been convicted as an idle and disorderly person. (2) Every person pretending to tell fortunes, or using any craft or device, by palmistry, or otherwise (this includes 'Spiritualism'—*Monck* v. *Hilton*, (1877) 2 Ex. D. 268), to deceive (see *R.* v. *Entwistle*, 1899, 1 Q. B. 846) and impose on any of his Majesty's subjects. (3) Every person wandering abroad, or lodging in any barn or outhouse, or in any deserted or unoccupied buildings, or in the open air, or under a tent, or in any cart or waggon, and not giving a good account of himself; but not unless (by Vagrancy Act, 1935) it is proved (*a*) that he had been directed to an accessible place of shelter and failed to apply for or refused shelter there, (*b*) that he is a persistent wanderer abroad notwithstanding accessible shelter, or caused damage or was or was likely to be infectious with vermin or otherwise (a place of shelter means gratis accommodation for the night), a 'tent, cart or waggon' with or in which the person travels is excluded from the meaning of the penalising words in the Act of 1824. (4) Every person unlawfully exposing to view in any street, or shop in any street, road, or public place, any obscene picture, or other indecent exhibition. (5) Every person wilfully exposing his person in any street, etc., or in any place of public resort, with intent to insult any female. (6) Every person wandering abroad, and endeavouring, by the exposure of wounds or deformities, to obtain alms. (7) Every person endeavouring to procure charitable contributions of any kind, under any false pretence. (8) Every person running away and leaving his wife, or his or her child or children, chargeable, or whereby they become chargeable, to any parish, etc. (9) Every person playing or betting in any street, road, highway, or other open or public place, at or with any table or instrument of gaming, at any game or pretended game of chance. (10) Every person having in his possession any picklock, etc., or other implement, with intent feloniously to break into any dwelling-house, etc., or being armed with any gun, etc., or other offensive weapon, or having upon him any instrument with intent to commit any felonious act. (11) Every person being found in any dwelling-house, etc., or in any enclosed yard, garden, or area, for any unlawful purpose. (12) Every suspected person or reputed thief frequenting any river, canal, etc., or any street, highway, etc., or any place of public resort, with intent to commit felony. (13) Every person apprehended as an idle and disorderly person, and violently resisting any constable or other peace officer so apprehending him, and being subsequently convicted thereof.

[If in possession of firearms or imitation firearms, may be sentenced to a maximum of seven years in addition : see Firearms and Imitation Firearms (Criminal Use) Act, 1933, s. 2.]

Thirdly. *Incorrigible Rogues.*—The following persons are, by the Vagrancy Act, 1824, s. 5, to be deemed 'incorrigible rogues' under the Act :—(1) Every person escaping out of any place of legal confinement before the expiration of the term for which he shall have been committed thereto by the Act. (2) Every person committing any offence against this Act, which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be and duly convicted thereof. (3) And every person apprehended as a rogue and vagabond, and violently resisting any constable apprehending him, and subsequently convicted of the offence for which he was so apprehended. As to incorrigible rogues, it is enacted that it shall be lawful for any justice to commit such offender (being thereof convicted before him) to the house of correction, there to remain until the next general or quarter sessions of the peace, at which sessions the justices may examine into the case, and order that such offender be imprisoned and kept to hard labour for *one year* or less ; and, further, that such offender (not being a female) be punished *by whipping*, at such time, and at such place within their jurisdiction, as they deem expedient.

By the Vagrant Act Amendment Act, 1873 (36 & 37 Vict. c. 38), s. 3, persons gaming with coin, etc., in streets or public places are to be deemed rogues and vagabonds, and may be punished under the Vagrancy Act, 1824 (5 Geo. 4, c. 83); by the Poor Law Act, 1930 (20 Geo. 5, c. 17), ss. 151 *et seq.* (see CASUAL PAUPER); any person making a false statement for the

purpose of or committing other offences when obtaining relief out of the poor rate is to be deemed an 'idle and disorderly person'; and by the Vagrancy Act, 1898, a man either (1) living on the earnings of prostitution, or (2) in any public place persistently soliciting or importuning for immoral purposes, is to be deemed a rogue and vagabond under the Act of 1824, and may be dealt with accordingly. The provisions of the Act of 1898 have been considerably amended and extended by the Criminal Law Amendment Act, 1912, s. 7.

As to the possession of firearms entailing penal servitude by a person committing certain offences under the Vagrancy Acts, see Firearms, etc. (Criminal Use) Act, 1933 (23 & 24 Geo. 5, c. 50), s. 2 and Sched.

Valeat quantum, let it have its weight, small or great.

Valec, Valect, or **Vadelet,** a young gentleman; a gentleman of the chamber; a personal attendant or servant.

Valentia, the value or price of anything.

Valsheria, the proving by the kindred of the slain, one on the father's side, and another on that of the mother, that a man was a Welshman.

Valor beneficiorum, the value of every ecclesiastical benefice and preferment, according to which the first-fruits and tenths are collected and paid. It is commonly called the *King's books*, by which the clergy are at present rated.—2 *Steph. Com.*

Valuation. This term is generally applied to the equivalent in money of any kind of property. Thus for the payment of estate duty, a valuation of property of all kinds has to be made. Perhaps the most important and the most difficult valuation is that of land. This has almost invariably to be undertaken whenever land is compulsorily acquired. The difficulties that surround this question were fully considered in the case of *Re Lucas and Chesterfield Gas and Water Board*, 1909, 1 K. B. 16, in which Lord Justice Moulton in the course of his judgment said (at p. 29):—

'The principles upon which compensation is assessed when land is taken under compulsory powers are well settled. The owner receives for the lands he gives up their equivalent—that is, that which they are worth to him in money. His property is, therefore, not diminished in amount, but to that extent it is compulsorily changed in form. But the equivalent is estimated on the value to him, and not on the value to the purchaser, and hence it has from the first been recognized as an absolute rule that this value is to be estimated as it stood before the grant of the compulsory powers. The owner is only to receive compensation based upon the market value of his lands as they stood before the scheme was authorized by which they are put to public uses. Subject to that he is entitled to be paid the full price for his lands, and any and every element of value which they possess must be taken into consideration in so far as they increase the value to him. At a very early date in the history of this branch of the law there arose what is known as the question of "special adaptability." The phrase is not a happy one, for special adaptability for some purpose or other is the very basis of the market value of all land, except, perhaps, land that in all respects falls below the average. In agricultural land extra fertility, in town lands advantages of site, are true cases of special adaptability for farming or building purposes. These tend so directly to increase both the value and the market price of lands in the hands of a private owner that it has never been doubted that he could urge them in augmentation of the compensation which he was entitled to receive. . . . No element of that which economists term "value in use" can, in my opinion, increase compensation unless it is either a "value in use" to the seller, or a "value in use" to persons other than the proposed purchaser so as to introduce the element of competition as a factor in fixing price.'

See Lands Clauses Consolidation Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919, which varies the compensation for land acquired compulsorily under any statute passed either before or after 1919 for public purposes by any local or public authority. Section 2 of the Act provides:—

2. In assessing compensation, an official arbitrator shall act in accordance with the following rules:—

(1) No allowance shall be made on account of the acquisition being compulsory:

(2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: Provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant:

(3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority: Provided that any bonâ fide offer for the purchase of the land made before the passing of this Act which may be brought to the notice of the arbitrator shall be taken into consideration:

(4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account:

(5) Where the land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that

purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is bonâ fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement:

(6) The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

For the purposes of this section an official arbitrator shall be entitled to be furnished with such returns and assessments as he may require.

The operation of this Act has been restricted under the Housing Acts, 1925 to 1936, and the Small Holdings and Allotments Act, 1926, for the purposes of those Acts.

See VALUE; and consult *Cripps* or *Browne and Allen on Compensation*.

Valuation List. By the Rating and Valuation Act, 1925, in England outside the county of London, a list of all the rateable hereditaments in a rating area (and not in a parish) is to be prepared by the rating authority, i.e., the council of every county, borough, or urban and rural district to whom all powers of the overseers of the poor in regard to the levying and collection of rates were transferred by s. 1 of the R. and V. Act, 1925, for the purposes of a general rate. A draft list is drawn up after requiring returns from the owner, occupier or lessee of every hereditament in the area. The draft list is revised by the assessment committee appointed by the rating authority for the area and is then transmitted to the rating authority, by whom it is deposited for public inspection at the office of the authority. Appeals may be made within twenty-five days from the date of deposit, and the lists are quinquennial and conclusive evidence of the value of the hereditaments therein included. In the *metropolis*, by s. 43 of the Metropolis Valuation Act, 1869 (32 & 33 Vict. c. 67), and amending Acts (18 & 19 Geo. 5, c. 44, s. 7 (2); 19 & 20 Geo. 5, c. 17, s. 18; and 7 Edw. 7, c. cxi., s. 29), a valuation list (subject as in the Act mentioned) lasts for five years from its approval by the assessment committee, and by s. 45 is *conclusive* for the purposes of rates (not including water rates) and taxes and property qualifications generally. See RATES.

Valuation Roll. The list, prepared by assessors, which narrates each holding and its assessment (Valuation Roll (Scotland) Order, 5th July, 1929).

Value, a relative term. The value of a thing may refer to a certain standard with which the thing can be measured or compared. The factors of comparison should be capable of precise definition.

The word 'value,' when used without adjunct, always means, in political economy, value in exchange; or, as it has been called by Adam Smith and his successors, exchangeable value, a phrase which no amount of authority that can be quoted for it can make other than bad English. Mr. De Quincey substitutes the term 'exchange value,' which is unexceptionable.—1 *Mill's Pol. Econ.* 528, 578.

The word 'value,' it is to be observed, has more than one meaning, and sometimes expresses the utility of some particular object, and sometimes the power of purchasing other goods which the possession of that object conveys. The one may be called 'value in use,' the other 'value in exchange.' The things which have the greatest value in use have frequently little or no value in exchange; and, on the contrary, those which have the greatest value in exchange have frequently little or no value in use. Nothing is more useful than water, but it will purchase scarce anything; scarce anything can be had in exchange for it. A diamond, on the contrary, has scarce any value in use, but a very great quantity of other goods may frequently be had in exchange for it.—1 *Sm. Wealth of Nat.* 37.

By s. 4 of the Sale of Goods Act, 1893 (*q.v.*), a sale of goods of the *value* of 10*l.* or upwards (must be in writing, etc.), this enactment being a repetition of s. 17 of the Statute of Frauds as amended by Lord Tenterden's Act (9 Geo. 4, c. 14), s. 7, which substituted 'value' for 'price.'

Valued Policy, a policy of insurance in which the sum at which the subject of the policy is insured is expressed (having been fixed by agreement between the parties), and so the value in case of loss need not (as a general rule) be proved.—See *Arnould on Marine Insurance*.

Value Received, a phrase generally inserted in bills of exchange, but which is not necessary, since value is implied in every bill, as much as if expressed *in totidem verbis*.—*White* v. *Ledwick*, (1785) 4 Doug. 247.

Valuer, a person whose business is to appraise, or set a value upon property.

Valvasors, or **Vidames,** an obsolete title of dignity next to a peer.—2 *Inst.* 667; 2 *Steph. Com.* See VAVASOR.

Vancouver's Island. See 12 & 13 Vict. c. 48; 21 & 22 Vict. c. 99, s. 6; 29 & 30 Vict. c. 67 (providing for union with British Columbia); 33 & 34 Vict. c. 66, and British North America Act, 1930 (20 & 21 Geo. 5,

c. 26), confirming the agreement between British Columbia and the Dominion of Canada.

Van Diemen's Land. See TASMANIA.

Vang [Sax.], to stand for one at the font.—*Blount.*

Vantarius, a precursor.

Varectum. See WARECTUM.

Variance, difference between the statements in a pleading and the evidence adduced in proof thereof. See *Stephen on Pleading.*

The Courts are now very liberal in permitting variances in proceedings to be amended, especially where parties will suffer no prejudice. See AMENDMENT.

Vassal [fr. *vassallo,* Ital., a dim. of *vassus,* low Lat. Wachter refers it to the Gallic *gwas,* a servant], one who holds of a superior lord; a subject; a dependant; a tenant or feudatory.—1 *Steph. Com.*

Vassalage, the state of a vassal; tenure at will; slavery.

Vasseleria, the tenure or holding of a vassal.

Vasto, a writ against tenants for term of life or years committing wastes.—*Fitz. N. B.* 55.

Vastum, a waste or common lying open to the cattle of all tenants who have a right of commoning.

Vastum forestæ vel bosci, that part of a forest or wood wherein the trees and underwood were so destroyed that it lay, in a manner, waste.—*Paroch. Antiq.* 351.

Vauderie, sorcery; witchcraft; the profession of the Vaudois.—3 *Hallam's Mid. Ages,* c. 9, pt. 2, p. 386, n.

Vavasor. The first name of dignity, next beneath a peer, was anciently that of *vidames, vice domini,* or *valvasors:* who are mentioned by our ancient lawyers as *viri magnæ dignitatis;* and Sir Edward Coke speaks highly of them. Yet they are now quite out of use; and our legal antiquaries are not agreed upon even their original or ancient office (1 *Bl. Com.* 403). And see *Camden's Brit.; Reeves,* c. 5, p. 26.

Vavasory (*vavasoria*), the lands that a vavasor held.—*Bract.* lib. 2.

Veal-money. The tenants of the manor of Bradford, in the county of Wilts, paid a yearly rent by this name to their lord, in lieu of veal paid formerly in kind.—*Bract.*

Vectigal judiciarium, fines paid to the Crown to defray the expenses of maintaining courts of justice.—3 *Salk.* 33.

Vectigal origine ipsâ, jus Cæsarum et regum patrimoniale est. *Dav.* 12.—(Tribute, in its origin, is the patrimonial right of emperors and kings.)

Vejours [*visores,* Lat.], persons sent by a Court to take a view of any place in question, for the better decision of the right thereto: also persons appointed to view the result of an offence.—*O. N. B.* 112.

Velindre, the Welsh word for vill.—4 *T. R.* 552, note (b).

Veltraria, the office of dog-leader or courser.

Veltrarius [fr. *welter,* Germ.], one who leads greyhounds.—*Blount.*

Venaria, beasts caught in the woods by hunting.

Venatio, hunting.

Vendee, one to whom anything is sold.

Vendition, sale, the act of selling.

Venditioni exponas, a judical writ addressed to the sheriff, commanding him to expose to sale goods which he has already taken into his hands, to satisfy a judgment-creditor.—*Reg. Judic.* 33. After delivery of this writ the sheriff is bound to sell the goods, and have the money in Court on the return day of the writ.—3 *Steph. Com.*

By R. S. C. 1883, Ord. XLIII., r. 2, this writ may be sued out where it appears upon the return of a *fi. fa.* that the sheriff has seized goods but not sold them.

Vendor, one who sells anything.

Vendor and Purchaser Act, 1874 (37 & 38 Vict. c. 78), as amended by the Land Transfer Act, 1875, was repealed by the Law of Property Act, 1925. It provided (*inter alia*) that in the completion of any contract of sale of land made after the 31st December, 1874, and subject to any stipulation to the contrary in the contract, forty years was to be substituted for sixty years as the period of commencement of title which a purchaser may require, saving those cases in which an earlier title than sixty years might formerly have been required (s. 1); replaced with the substitution of thirty years for forty by s. 44 (1), L. P. Act, 1925. See ABSTRACT.

The Act also provided that documents twenty years old should be *primâ facie* proof of facts stated in them (s. 2). This has been replaced by s. 45 (6), L. P. Act, 1925.

Vendor and Purchaser Summons. A further innovation of the Vendor and Purchaser Act, 1874, s. 9, replaced and extended by the Law of Property Act, 1925, s. 49, enables any vendor or purchaser or upon a contract for exchange of any interest in land to apply in a summary way in respect

of any requisitions or objections or claim for compensation or any other question arising out of or connected with the contract (not affecting the existence or validity), and the Court may make any order that to it may seem just, including costs. See DEPOSIT; SPECIFIC PERFORMANCE; and R. S. C. Ord. LV., r. 14A; ORIGINATING SUMMONS.

Vendor's Lien for Unpaid Purchase Money. Where a vendor of land conveys, without more, although the consideration is expressed to be paid both in the body of the deed and by a receipt endorsed on the back of it, still if the money or part of it was not in fact paid, a lien arises as between the vendor and the purchaser, and persons claiming as volunteers, for so much of the purchase money as remains unpaid. The mere giving of security will not prevent the lien arising, unless it appears that the security was to be substituted for the lien. Similarly a purchaser will have a lien for prematurely paid purchase money. See *Mackreth* v. *Symmons*, (1808) 15 Ves. 329; 1 *W. & T. L. C.*

If the lien arose before 1926 and was not transferred after 1925, a purchaser for value of the legal estate in the land from the original purchaser will take it subject to the lien if he had notice of it, and in all cases where a pre-1926 lien has been transferred or a lien has arisen since 1925, it must be registered under the Land Charges Act, 1925, s. 10, or it will be void against a purchaser, even if he has actual notice. See LAND CHARGES.

Vendue Master, an auctioneer.

Venella, a narrow or straight way.—*Dugd. Mon.* i. 488.

Venereal Disease. The Venereal Disease Act, 1917, prohibits the treatment of venereal disease otherwise than by a duly qualified medical practitioner. Advertisement of cures, treatment, etc., is prohibited except when made to duly qualified medical practitioners or chemists or by public authorities. Venereal disease is defined as meaning syphilis, gonorrhœa, or soft chancre, and see INFECTIOUS DISEASES; Public Health Acts, 1875–1936; Local Government Acts, 1929 and 1933. See also SLANDER and CRUELTY.

Venia, a kneeling or low prostration on the ground by penitents; pardon.

Venia ætatis, a privilege granted by a prince or sovereign, in virtue of which a person is entitled to act, *sui juris*, as if he were of full age.—*Story's Conflict of Laws*, 74.

Veniæ facilitas incentivum est delinquendi. 3 *Inst.* 236.—(Facility of pardon is an incentive to crime.

Venire facias, a judicial writ awarded to the sheriff to summon a jury for the trial of a cause, but abolished by C. L. P. Act, 1852, s. 104. It is the first process in outlawry, when a person charged with misdemeanour absconds.—4 *Steph. Com.*

Venire facias de novo, a second writ to summon another jury for a new trial.

The *venire de novo* was the Old Common Law method of proceeding to a new trial, and differed materially from granting a new trial, inasmuch as it was awarded from some defect appearing upon the face of the record, while a new trial was granted for matter entirely extrinsic. Where a verdict could have been amended, a *venire de novo* was never awarded. If awarded, the party succeeding at the second trial was not entitled to the costs of the first. It has since been superseded by a trial *de novo*. The Court of Criminal Appeal can order a writ of *venire de novo* to issue (*R.* v. *Crane*, 1921, 2 A. C. 299, and *R.* v. *Dennis*, 40 T. L. R. 420). See also NEW TRIAL.

Venire facias tot matronas, a writ to summon a jury of matrons to execute the writ *de ventre inspiciendo*.

Venter, womb. As to the cases in which a child will be held to be born in a testator's lifetime because it was at that time *en ventre sa mère*, see *Villar* v. *Gilbey*, 1907, A. C. 139; and see *Elliot* v. *Joicey*, 1935, A. C. 209; and *Law Quarterly Review*, Vol. 52, p. 1.

Ventre inspiciendo. See DE VENTRE INSPICIENDO.

Venue [fr. *visne, vicinetum, visnetum*, Lat.], the place whence a jury are to come for trial of causes. See *Co. Litt.* 125 *a*, and Hargrave's note (2).

Local actions must, before the Jud. Act, have been brought in the county in which the cause of action arose; but transitory actions in any county at the plaintiff's option; and no venue could be changed without a special order of the Court or a judge, unless by consent of the parties.—*R. H. T.* 1853, r. 18.

It is, however, provided by R. S. C. 1883, Ord. XXXVI., r. 10, that there shall be no local venue for the trial of any action, except where otherwise provided by statute, but in every action in every Division the place of trial shall be fixed by the Court or a judge; and r. 1, the order made on the summons for directions, fixes the place of trial, but this can be subsequently altered for sufficient cause.

Very numerous statutes have from time to time provided that any actions for anything done in pursuance of them should be brought in the county where the cause of action arose; but the Public Authorities Protection Act, 1893 (see PUBLIC AUTHORITIES), has repealed, in any proceeding to which that Act applies, so much of any public general Act as enacts that the proceeding is to be commenced in any particular place.

As to County Courts, see s. 99 of the County Courts Act, 1934, and Rules of Procedure made thereunder.

In criminal cases, the rule of the Common Law is that the venue shall be co-extensive with the jurisdiction of the Court.

By the Judicature Act, 1875, s. 23 (4) (replaced by Jud. Act, 1925, s. 72 (1) (*g*)), the King may by Order in Council from time to time provide for the regulation, so far as may be necessary for carrying into effect any order made under the other parts of that section, of the venue in all cases, civil and criminal, triable on any circuit or elsewhere.

Veray, true.

Verba accipienda sunt secundum subjectam materiam. 6 *Rep.* 62. See SECUNDUM SUBJECTAM MATERIAM.

Verba aliquid operari debent—debent intelligi ut aliquid operentur. 8 *Rep.* 94.—(Words ought to have some operation—they ought to be interpreted in such a way as to have some operation.)

Verba chartarum fortius accipiuntur contra proferentem. *Co. Litt.* 36; *Bac. Max. Reg.* 3; *Broom's Max.*—(The words of deeds are received more strongly against the grantor.) Bacon styles this 'a rule drawn out of the depth of reason'; but in 1877, Jessel, M.R., in *Taylor* v. *St. Helen's Corporation*, 6 Ch. D. at p. 280, citing three House of Lords cases, 'did not see how it could be considered as having any force at the present day.' The cases cited by Jessel, M.R., however, all turned upon the construction of wills; the maxim has been recognized in the House of Lords since 1877 (see *Birrell* v. *Dryer*, (1884) 9 App. Cas. 345); and it is submitted that the *dictum* of Jessel, M.R., is incorrect.

Verba de futuro. See PER VERBA, etc.

Verba de præsenti. See PER VERBA, etc.

Verba generalia restringuntur ad habilitatem rei vel aptitudinem personæ. *Bacon.*—(General words must be narrowed to the nature of the subject or the aptitude of the person.)

Verba ilata in esse videntur.—(Words referred to are considered to be incorporated.) See INCORPORATION BY REFERENCE.

Verba ita sunt intelligenda ut res magis valeat quam pereat. *Bacon.*—(Words are to be so understood as that the subject-matter may be rather preserved than destroyed.)

Verbal Note, a memorandum or note, in diplomacy, not signed, sent when an affair has continued a long time without any reply, in order to avoid the appearance of an urgency which, perhaps, is not required; and, on the other hand, to guard against the supposition that it is forgotten, or that there is an intention of not prosecuting it any further.

Verderer, an officer in the royal forest, whose office is properly to look to the vert, and see it well maintained; and he is sworn to keep the assize of the forest, and view, receive and enrol the attachments, and presentments of trespasses of vert and venison, etc.—*Manw.* 332.

Verdict [fr. *vere dictum*, Lat.], the determination of a jury declared to a judge.

The verdict is either general or special. A general verdict is given, *vivâ voce*, by the jury, thus, 'We find for the plaintiff, damages ——,' or, if for the defendant, then, 'We find for the defendant.' In criminal cases a general verdict is either *Guilty*, or *Not Guilty*. If there be several issues, the verdict may be distributed, some issues being found for the plaintiff and others for the defendant. A verdict must comprehend the whole issues submitted to a jury in the particular cause, otherwise the judgment founded upon it may be reversed. See SPECIAL VERDICT; PERVERSE VERDICT.

Verge or **Virge,** the compass of the King's Court, which bounds the jurisdiction of the lord steward of the household; it seems to have been twelve miles about.—*Britt.* 68. A quantity of land from fifteen to thirty acres.—28 Edw. 1. Also, a stick, or rod, whereby one is admitted tenant to a copyhold estate.—*O. N. B.* 17. Hence, copyholders are sometimes called 'tenants by the verge.'

Vergelt, the Saxon fine for a crime. See WERGILD.

Vergers [*portatores virgæ*, Lat.; *bédeaux d'église*, Fr.], those who carry white wands before the judges, or before church dignitaries.—*Fleta*, l. 2, c. 38.

Verification, the proper form of concluding (under the old system of pleading) any pleading after the declaration alleging new matter. It was made in the words, '*And*

this he is ready to verify.' It was rendered unnecessary by C. L. P. Act, 1852, s. 67.

Verna, a slave born in his master's house.—*Civ. Law.*

Versus [Lat.], abbrev. *v.* (against).

Vert [fr. *verd*, Fr.; *viridis*, Lat.], otherwise called *greenhue*, everything that bears a green leaf within a forest that may cover a deer; but especially great and thick coverts. 'Vert, venison and inclosure' were three of the requisites of an ancient legal park; see *Pease* v. *Courtney*, 1904, 2 Ch. 509, per Swinfen Eady, J.

Manwood (part 2, p. 33) divides vert into overt-vert and nether-vert—the *overt-vert* is that which is termed *haut-boys*, and *nether-vert, sub-boys*—and into *special vert*, which is all trees growing within the forest that bear fruit to feed deer, because the destroying of it is more grievously punished than the destroying of any other vert. See 3 *Steph. Com.* And see per Bacon, V.-C., in *Earl De la Warr* v. *Miles*, (1881) 17 Ch. D. at p. 570.

Also that power which a man has, by royal grant, to cut green-wood in a forest.

Also green colour, called *Venus* in the arms of princes, and *Emerald* in those of peers, and expressed in engravings by lines in bend.—*Heraldic term.*

Very Lord and Very Tenant [*verus dominus et verus tenens*, Lat.], they that are immediate lord and tenant one to another.—*Bro. Abr.*

Vest. (1) Either to place in possession; to make possessor of; or, to give an absolute interest in property when a named period or event occurs. (2) (of a right or interest) Its coming into the possession of any one; enuring to the benefit of any one.

Vesta, the crop on the ground.

Vested in Interest, a legal term applied to a present fixed right of future enjoyment, as reversions, vested remainders, such executory devises, future uses, conditional limitations, and other future interests, the present right of which is not referred to, or made to depend on, a period or event that is uncertain, although the period of enjoyment may be uncertain or conditional. See following titles and CONTINGENT LEGACY; CONTINGENT REMAINDER.

Vested in Possession, a legal term applied to a right of present enjoyment actually existing.

Vested Legacy. See LEGACY.

Vested Remainder, an expectant estate, which is limited or transmitted to a person who is capable of receiving the possession, should the particular estate happen to determine: as a limitation to A. for life, remainder to B. and his heirs; here, as B. is in existence he is capable (or his heirs, if he die) of taking the possession whenever A.'s death may occur. A vested estate may take effect though the preceding estate be defeated, as when an infant makes a lease for life with a remainder over, and on majority he disagrees to the estate for life, but not with the remainder; the remainder is good, having been duly vested by a good title. See *Fearne, C. R.* 308; 1 *Steph. Com.*

The person who is entitled to a vested remainder having a present vested right of future enjoyment, i.e., an estate in *præsenti*, to take effect in possession and pernancy of the profits *in futuro*, can transfer, alien, and charge it much in the same manner as an estate in possession.—2 *Cru. Dig.* 204.

Interests in remainder can now only take effect as equitable interests: see Law of Property Act, 1925, s. 1; and Settled Land Act, 1925, s. 1.

Vesting Assent, defined by s. 117 (1) (xxx.), Settled Land Act, 1925, to mean the instrument whereby a personal representative after the death of a tenant for life or statutory owner or the survivor of two or more tenants for life or statutory owners vests settled land in a person entitled as tenant for life or statutory owner. For the contents, see s. 8 and 1st Sched. (*ibid.*). and VESTING DEED and VESTING INSTRUMENT.

The term 'vesting assent' should be distinguished from an assent by personal representatives (see ASSENT), which vests the property in a person who is not tenant for life or statutory owner (see *Bridgett and Hayes' Contract*, 1928, Ch. 163, and next title).

Vesting Instrument, a deed, order of Court, or assent, constituting the evidence under the Settled Land Act, 1925, of the title of a tenant for life or statutory owner to the legal estate in settled property as estate owner thereof. This evidence is essential for the settlement of a legal estate in land otherwise than by way of trust for sale (Settled Land Act, 1925, s. 4). The trusts are (after 1925) to be declared by a separate instrument called the Trust Instrument (see that title). Sect. 5 of the Act provides that the principal vesting deed must state:—

(*a*) a description of the settled land;

(*b*) that the settled land is vested in the person or persons to or in whom it is conveyed or declared to be vested upon the trusts from time to time affecting the settled land;

(*c*) the names of the trustees of the settlement;

(*d*) any powers which are additional or larger than the statutory powers and are exercisable as statutory powers under the Act;

(*e*) the name of the person entitled under the trust instrument to appoint new trustees of the settlement.

References are permitted to any existing vesting instrument, but not as a rule to a trust instrument, except e.g., to a person taking title from a tenant for life under the first vesting instrument, etc. (see S. L. Act, 1925, s. 110, and see s. 5 (2)). See VESTING ASSENT; TRUST INSTRUMENT.

Vesting Order. The Court of Chancery had, and the Chancery Division of the High Court of Justice now has, the power of making orders passing the legal estate in property without a conveyance. Also commissioners appointed by several modern statutes have power, by vesting order, to transfer legal estates without the necessity of a deed of transfer, e.g., Charity Commissioners, or Board of Education.

Vesting Orders may be made under the Law of Property Act, 1925, see s. 9 and *passim*; Trustee Act, 1925, ss. 44 *et seq.*; Settled Land Act, 1925, ss. 12 and 16: Administration of Estates Act, 1925, ss. 38 and 43. As to Vesting Orders in Lunacy, see Lunacy Act, 1890, ss. 135–140; and Trustee Act, 1925, s. 54. Consult *Seton on Judgments*; *Dan. Ch. Pr.*

Vestments. See ORNAMENTS RUBRIC.

Vestry, or **Vestiary,** a place or room adjoining to a church, where the vestments of the minister are kept; also, a parochial assembly commonly convened in the vestry, to transact the parish business. By custom in some parishes, and by the (adoptive) Vestries Act, 1831 (1 & 2 Wm. 4, c. 60), in others, a select number of parishioners was chosen yearly to manage the concerns of the parish for that year. They were called a Select Vestry.

The non-ecclesiastical functions of vestries are now exercised by borough and urban district councils under orders of the Ministry of Health: see Local Government Act, 1894 (56 & 57 Vict. c. 73), and Local Govt. Act, 1933 (23 & 24 Geo. 5, c. 51), and in rural parishes by the parish council or meeting (*ibid.*). As to the ecclesiastical functions in England (election of churchwardens), see Parochial Church Councils (Powers) Measure, 1921 (11 & 12 Geo. 5, No. 1), s. 13. This measure transferred all such ecclesiastical functions, except ecclesiastical charities, to parochial church councils. For the regulations for meetings and right to be present and vote, see the Vestries Acts, 1818 to 1853, and the Local Government Act, 1933, and see also RATES. See *Chitty's Statutes*, tit. '*Vestry*'; *Steer's Parish Law*: and *Prideaux's Law of Churchwardens*.

In the Metropolis, the vestries were elected under the Metropolis Management Act, 1855, until they were superseded by the Councils of the Metropolitan Boroughs under the London Government Act, 1899.

Vestry Cess, a rate levied in Ireland for parochial purposes, abolished by 27 Vict. c. 17.

Vestry Clerk, an officer appointed to attend vestries, and take an account of their proceedings, etc. See the Vestries Act, 1850, ss. 6–8, and RATES.

Vestura, a crop of grass or corn.—*Cowel.* Also a garment, metaphorically applied to a possession or seisin.

Vetera Statuta, the ancient statutes commencing with *Magna Charta*, and ending with those of Edward II., including also some which, because it is doubtful to which of the three reigns of Henry III., Edward I., or Edward II. to assign them, are said to be *incerti temporis*.—2 *Reeves*, c. 8, p. 85.

Veterinary Surgeon [fr. *veterinarius*, concerned with *veterinum*, a beast of burden]. A person who treats the illnesses, etc., of animals. A Royal College of Veterinary Surgeons was incorporated in 1844, and supplemental charters were granted thereto in 1876 and 1879. The charter of 1876 directed a register of veterinary surgeons to be kept. The Veterinary Surgeons Act, 1881, regulates the correction of the register, enacts that examinations shall be held in accordance with the charters, and provides that no person not qualified by registration, etc., may recover in any court any charge for performing any veterinary operation, or for giving any veterinary advice, and imposes penalties for false representation as to membership of the college, and prohibits unregistered practitioners from using the title of veterinary surgeon or veterinary practitioner. The college has disciplinary powers over its members, which have been extended to holders of the veterinary certificate of the Highland and Agricultural Society who received the certificate before the passing of the Act of 1881 and were allowed to practise by that Act (Veterinary Surgeons Amendment Act, 1900). The Act of 1881 allowed persons who had been practising continuously for not less than five years before the passing of the Act to

be placed on a separate register under the heading 'Existing Practitioners.' The Veterinary Surgeons Act (1881) Amendment Act, 1920, extends the disciplinary powers of the college to these persons, and also provides that companies and societies registered under the Companies Acts or the Industrial and Provident Societies Acts shall be liable to penalties under the Act of 1881 in the same way as individuals. With exception of the above two classes of persons, all veterinary surgeons must be persons qualified in accordance with examination prescribed by the college, and see the Veterinary Surgeons (Irish Free State Agreement) Act, 1932 (22 & 23 Geo. 5, c. 10), preserving, subject to the Act, the functions of the Royal Veterinary College in respect of Southern Ireland. See *Chitty's Statutes*, tit. '*Veterinary Surgeons*.'

As to avoidance of a sale of a horse on a certificate of a veterinary surgeon given after offer or acceptance of a bribe from the seller, see BRIBE.

As to fees for notifying diseases of animals and other matters, see the Diseases of Animals Act, 1909, and Acts referred to sub tit. ANIMALS.

Vetitum namium, or **Repetitum namium,** a second or reciprocal distress, in lieu of the first, which has been eloigned.

Veto, a prohibition, or the right of forbidding; especially applied to the royal power of refusing assent to a Bill in Parliament passed by the two Houses: '*Le Roy*' or '*La Reyne*' *s'avisera*. See 2 *Steph. Com.*

As to the veto by Archbishops and Bishops in regard to proceedings and inquiries relating to certain offences, see the Church Discipline Act, 1840 (3 & 4 Vict. c. 86), and Public Worship Regulation Act, 1874 (37 & 38 Vict. c. 85).

Vexata quæstio [Lat.], an undetermined point, which has been often discussed.

Vexatious Action. The High Court has an inherent power to stay any action brought merely for the sake of annoyance or oppression (see *Lawrance* v. *Norreys*, (1890) 15 App. Cas. 210; *Haggard* v. *Pelicier Frères*, 1892, A. C. 61); see also R. S. C. Ord. XXV., r. 4; and the Judic. Act, 1925, s. 5, replacing the Vexatious Actions Act, 1896 (59 & 60 Vict. c. 51), gives special power to the Court if satisfied, on the application of the Attorney-General, that any person has habitually and persistently instituted vexatious proceedings in any court to order that no proceedings shall be instituted by that person in any court without the leave of the Court or some judge thereof. See also the Vexatious Actions (Scotland) Act, 1898 (61 & 62 Vict. c. 35). An order dismissing an action as frivolous and vexatious is an interlocutory order (*Re Page*, 1910, 1 Ch. 489).

Vexatious Indictments. In order to prevent these, it was provided, by the Vexatious Indictments Act, 1859 (22 & 23 Vict. c. 17) (repealed), as amended by the Criminal Law Amendment Act, 1867 (30 & 31 Vict. c. 35, ss. 1, 2 (repealed), that no bill of indictment for perjury, conspiracy, indecent assault, or certain other misdemeanours therein named, should be presented to a grand jury, unless the prosecutor had been bound over by recognizance to prosecute, or unless the person accused had been committed to or detained in custody, or unless the indictment should be preferred with the written consent of the Attorney-General. The Administration of Justice (Miscellaneous Provisions) Act, 1933 (which abolished Grand Juries and amended the law as to presentment of indictments), repealed the whole of the Vexatious Indictments Act, 1859, and s. 1 of the Criminal Law Amendment Act, 1867, but not so as to affect any enactment restricting the right to prosecute in particular classes of cases.

Via, the right to use a way for any purpose.—*Cum. C. L.* 83; also, by way of, or through, a given point to a destination.

Viability, a capability of living after birth; extra-uterine life.

Viæ servitus (servitude of way), a right of way over another's land.

Via Regia, the highway or common road, called the king's way, because under his protection; it was sometimes called *via militaris*.—*Bract.* l. 4.

Viaticum. In the Roman Catholic Church, the communion administered to the dying.

Vibration. This may amount to a nuisance, but regard must be had to the character of the locality (*Polsue, etc., Ltd.* v. *Rushmer*, 1907, A. C. 121), and the aggrieved person is usually entitled to an injunction as well as damages (*Shelfer* v. *City of London Electric Lighting Co.*, 1895, 1 Ch. 287).

Vicar, one who performs the functions of another; a substitute. Also, the incumbent of an appropriated or impropriated benefice, as distinguished from the incumbent of a non-impropriated benefice, who is called a rector. See RECTOR, and 31 & 32 Vict. c. 117, s. 2.

Vicarage, (1) the benefice of a vicar; (2) his house. See 31 & 32 Vict. c. 117, s. 2.

Vicar-General, an ecclesastical officer who assists the archbishop in the discharge of his office.

Vicarial Tithes, petty or small tithes payable to the vicar.—2 *Steph. Com.*

Vicario, etc., an ancient writ for a spiritual person imprisoned, upon forfeiture of a recognizance, etc.—*Reg. Brev.* 147.

Vicarious Responsibility. A principal is liable for acts of his agent within the scope of his mandate. If A., an innocent principal, by B. his agent to report, misleads C., his selling agent, and C., relying on the report, innocently misleads the buyer, the latter may recover damages against the principal for deceit if B.'s report was reckless and untrue (*London County Freehold, etc. Properties, Ltd.* v. *Berkeley Property, etc. Co. Ltd.*, 155 L. T. 190). The knowledge of the principal and his agent is one (*Pearson* v. *Dublin Corporation*, 1907, A. C. 351); although the functions may have been divided and one only of the constituents has been guilty, the mind, and with it the guilt, if any, and the act are collectively the principal's, and his the responsibility. *Qui facit per alium facit per se.*

Vicarius non habet vicarium.—(A delegate cannot have a delegate.) See DEPUTY.

Vice and Immorality, Proclamation against, made until its abrogation by Order in Council of June 26th, 1884, at the opening of Assizes and Quarter Sessions. First issued by William III. in 1697, and issued in a new form in 1860. See *Law Times Newspaper* for April 20th, 1901.

Vice-Admiral, an under-admiral at sea, or admiral on the coasts: a naval officer of a rank which is next to Admiral.

Vice-Admiralty Courts, tribunals established in his Majesty's possessions beyond the seas with jurisdiction over maritime causes, including those relating to prize. See 3 *Steph. Com.*

The Vice-Admiralty Courts Act, 1863 (26 Vict. c. 24), repealed 2 & 3 Wm. 4, c. 51, and other Acts. For the matters in respect of which the Vice-Admiralty Courts should have jurisdiction, see ss. 10, 11 of the 1863 Act.

The above Act, with other cognate enactments, is repealed by the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), by which (see s. 17) Vice-Admiralty Courts are abolished, and superseded (see s. 2) by Colonial Courts with unlimited jurisdiction in Admiralty, subject to an appeal (see s. 6) to the Sovereign in Council.

The Act has been amended in regard to the self-governing Dominions by the Statute of Westminster (22 & 23 Geo. 5, c. 4), ss. 1, 6 and 11.

Vice-Chamberlain, a great officer next under the Lord Chamberlain, who, in his absence, has the rule and control of all officers appertaining to that part of the royal household which is called the chamber above stairs.

Vice-Chancellor [fr. *vice-cancellarius*, Lat.], a sub-chancellor.

Vice-Chancellors in Equity. The first Vice-Chancellor (Sir Thomas Plumer) was appointed by 53 Geo. 3, c. 24, and two more by 5 Vict. c. 5, s. 19. One of them was at one time called Vice-Chancellor of England, the last who bore that title being Sir Lancelot Shadwell. Each Vice-Chancellor sat separately from the Lord Chancellor and lords justices, to whom an appeal lay from his decisions. See 14 & 15 Vict. c. 4, and 15 & 16 Vict. c. 80, ss. 52–58. They became judges of the High Court of Justice (Jud. Act, 1873, s. 5), retaining their titles, but it was enacted that on the death or retirement of any one of them his successor should be styled a judge of the High Court (*ibid.*). Vice-Chancellor Bacon (1870 to 1886) was the last of them. For a complete list of the Equity judges since 1660, see *Seton on Judgments.* There is also a Vice-Chancellor of the County Palatine of Lancaster.

Vice-comes, a viscount; a sheriff.

Vicecomes dicitur quod vicem comitis supleat. *Co. Litt.* 168 *a.*—(*Vicecomes* (sheriff) is so called because he supplies the place of the *comes* (earl).)

Vice-comes non misit breve [Lat.] (the sheriff has not sent the writ). This continuance is abolished by r. 31, H. T. 1853.

Vice-Constable of England, an ancient officer in the time of Edward the Fourth.

Vice-Consul, a consular officer, which expression by the Interpretation Act, 1889, s. 12 (20), includes consul-general, consul, vice-consul, and any person for the time authorized to discharge their duties, and also consular-agent; see CONSUL; a sheriff.

Vice-dominus, a sheriff.—*Ingulphus.*

Vice-dominus episcopi, the vicar-general or commissary of a bishop.—*Blount.*

Vice-gerent, a deputy or lieutenant.

Vice-Marshal, an officer who was appointed to assist the Earl Marshal.

Viceroy, the sovereign's lord-lieutenant over a kingdom. See INDIA.

Vice-Treasurer. See UNDER-TREASURER.

Vicinage [fr. *voisinage*, Fr.], neighbourhood, or near dwelling; places adjoining.

As to common because of vicinage, see 1 *Steph. Com.*

Vicini vicinora præsumuntur scire. 4 *Inst.* 173.—(Persons living in the neighbourhood are presumed to know the neighbourhood.)

Vicious Intromission, a meddling with the movables of a deceased, without confirmation or probate of his will, or other title.—*Scots term.*

Vicis et venellis mundandis, an ancient writ against the mayor or bailiff of a town, etc., for the clean sweeping of the streets and lanes.—*Reg. Brev.* 267.

Vicountiel, or **Vicontiel,** anything that belongs to the sheriffs, as *vicontiel writs*, i.e. such as are triable in the sheriff's court. As to vicontiel rents, see 3 & 4 Wm. 4, c. 99, ss. 12, 13, which places them under the management of the Commissioners of Woods and Forests.

Vicountiel Jurisdiction, that jurisdiction which belongs to the officers of a county, as sheriffs, commoners, etc.

Victoria Colony. Separated from New South Wales by 13 & 14 Vict. c. 59; see also 18 & 19 Vict. c. 55, 56; and 22 & 23 Vict. c. 12. Included as a State in the Union of States (New South Wales, Victoria, South Australia, Queensland, Tasmania and Western Australia) by the Commonwealth of Australia Constitution Act, 1900 (63 & 64 Vict. c. 12). See AUSTRALIA.

Victoria Park. See 4 & 5 Vict. c. 27; 5 & 6 Vict. c. 20; 14 & 15 Vict. c. 46; 35 & 36 Vict. c. 53; now managed by the London County Council (see 50 & 51 Vict. c. 34); and see PARK.

Victualling Houses. See PUBLIC-HOUSES.

Vidame. See VAVASOR.

Vide [Lat., see], a word of reference; *vide ante*, or *vide supra*, refers to a previous passage; *vide post*, or *vide infra*, to a subsequent passage in a book.

Videlicet (to wit), a word used in pleading to precede the specification of particulars which need not be proved. See SCILICET.

Vidimus, an inspeximus, which see.—*Barr. on Stat.* 5.

Viduitatis professio, the making a solemn profession to live a sole and chaste woman.

Viduity, widowhood.

Vi et armis [Lat.] (with force and arms), words formerly inserted in pleadings to characterize a trespass, but directed to be omitted by C. L. P. Act, 1852, s. 49.

View, an inspection of property in controversy, or of a place where a crime has been committed, by the jury previously to the trial. See C. L. P. Act, 1852, s. 114; *H. T.* 1853, rr. 48, 49; R. S. C. 1883, Ord.L., rr. 3–5; *Ann. Prac.*

View of Frankpledge. See LEET.

Vifgage, vivum vadium, which see.

Vigil, the eve or next day before any solemn feast.

Vigilantibus non dormientibus jura subveniunt. *Wing.* 692.—(Laws come to the assistance of the vigilant, not of the sleepy.) See LIMITATION OF ACTIONS.

Vi laica removendâ, a writ that lies where two persons contend for a church, and one of them enters into it with a great number of laymen, and holds out the other *vi et armis*; and he that is holden out shall have this writ addressed to the sheriff, that he remove the lay force; but the sheriff ought not to remove the incumbent out of the church, whether he is there by right or wrong, but only the force.—*Fitz. N. B.* 54.

Vill, or **Village,** a manor; a parish; the out-part of a parish.—1 *Steph. Com.* A town or township, the simplest form of social organization; see *Stubbs's Const. History of England*, vol. i. p. 82; *Williams on Rights of Common*, pp. 39 *et seq.*; 1 *Bl. Com.* 115.

The following is the difference between a mansion, a village, and a manor, viz.: a mansion may be of one or more houses, but it must be of one dwelling-house, and none near to it, for if other houses are contiguous, it is a village; and a manor may consist of several villages, or one alone.—*Fleta*, l. 6, c. 51.

Villa est ex pluribus mansionibus vicinata et collata ex pluribus vicinis. Et sub appellatione villarum continentur burgi et civitates. *Co. Litt.* 115 *b.*—(A vill is a neighbourhood of many mansions, a collection of many neighbours. And under the term vills, boroughs and cities are contained.)

Villain, or **Villein** [fr. *vilis*, Lat.], a man of base or servile condition; a bondman or servant; one who held by a base service.—1 *Hallam's Mid. Ages*, ch. 2, pt. 2, p. 499; and 1 *Steph. Com.*

Villanis regis subtractis reducendis, a writ that lay for the bringing back of the king's bondmen that had been carried away by others out of his manors whereto they belonged.—*Reg. Brev.* 87.

Villa regia, a manor held by the Crown.

Villein in Gross, one annexed to the person of the lord, and transferable by deed from one owner to another.—1 *Steph. Com.*; 2 *Br. & Had. Com.* 183.

Villein Regardant, one annexed to the manor or land.—1 *Steph. Com.*

Villein Services, base, but certain and determined services.—1 *Steph. Com.*

Villein socage, a holding of the king; a privileged sort of villenage.—1 *Steph. Com.*

Villenage, a base tenure.

There are two sorts:—1st, *pure*, where a man holds upon terms of doing whatsoever is commanded of him; and 2nd, *privileged*, otherwise called *villein socage*, which see. See also TENURE; 1 *Steph. Com.*

Villenous Judgment [*villanum judicium*, Lat.], a judgment which deprived one of his *libera lex*, whereby he was discredited and disabled as a juror or witness; forfeited his goods and chattels, and lands for life; wasted the lands, razed the houses, rooted up the trees, and committed his body to prison. It has long become obsolete.—4 *Bl. Com.* 136; 4 *Steph. Com.*; and 4 *Br. & Had. Com.* 153.

Vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ; non ad sumendam vindictam, sed ad propulsandam injuriam. *Co. Litt.* 162.—(It is lawful to repel force by force, so as it be done with the moderation of blameless defence; not to take revenge, but to repel injury.)

Vinagium [*tributum a vino*, Lat.], a payment of a certain quantity of wine instead of rent for a vineyard.—*Dugd. Mon.* t. 2, 980.

Vinculo matrimonii, Divorce à. See À VINCULO MATRIMONII and DIVORCE.

Vindex, a defender.—*Civ. Law.*

Vindicatio, a real action claiming property for its owner.—*Civ. Law.*

Vindicatory Parts of Laws, the sanction of the laws, whereby it is signified what evil or penalty shall be incurred by such as commit any public wrongs, and transgress or neglect their duty.—1 *Steph. Com.*, and 1 *Br. & Had. Com.* 50, 51.

Vindictive Damages, damages given on the principle of punishing the defendant, over and above compensating the plaintiff (recognized by Bowen, L.J., in *Whitham* v. *Kershaw*, (1886) 16 Q. B. D. 613—where, however, these damages were not, and could not have been, given).

Viol [old law, Fr.], rape.—*Barr. on Stat.* 139.

Violation of Safe Conducts, an offence against the law of nations.—4 *Steph. Com.*

Violation of Women. See RAPE.

Violent Profits. Mesne profits in Scotland. 'They are so called because due on the tenant's forcible or unwarrantable detaining the possession after he ought to have removed.'—*Erskine* 2, 6, 54; and *Bell's Scots Law Dict.*

Vir et uxor sunt quasi unica persona, etc. *Co. Litt.* 112.—(Man and wife are, as it were, one person, etc.) Consequently if lands be given to A. and B. (husband and wife) and C., a third person, and their heirs, A. and B. being one person take a moiety only of the rents and profits, with a power to dispose only of one-half of the inheritance; and C., the third person, will take the other half as joint tenant with them (*Williams on Real Property*). This rule was not altered by the Married Women's Property Act, 1882 (*Re March*, (1884) 27 Ch. D. 166; *Re Jupp*, (1888) 39 Ch. D. 148), but any indication of an intention that husband and wife are to take separately would defeat the application of the doctrine: see *Dias* v. *De Livera*, (1879) 5 App. Cas. 135; *Re Jeffery*, 1914, 1 Ch. 375; and now, by s. 37 of the Law of Property Act, 1925, a husband and wife shall, for all purposes of acquisition of any property, under a disposition made after 1925, be treated as two persons. See also ENTIRETIES, TENANCY BY.

Virga, a rod or ensign of office.—*Cowel.*

Virgate, a yard-land.

Virge, Tenant by, a species of copyholder who holds by the verge or rod.

Virgo intacta, an unblemished virgin.

Viridario eligendo, a writ for the choice of a verderer in the forest.—*Reg. Brev.* 177.

Virilia, the privy members of a man, to cut off which was felony by the Common Law, though the party consented to it.—*Bract.* l. 3, 144.

Vir militans Deo non implicetur secularibus negotiis. *Co. Litt.* 70 *b.*—(A man fighting for God must not be involved in secular business.)

Virtute cujus. This was the clause in a pleading justifying an entry upon land, by which the party alleged that it was in virtue of an order from one entitled that he entered.

Vis [Lat.], any kind of force, violence, or disturbance to person or property. It was a *vis armata*, i.e. *vis cum armis*, or *vis simplex*, i.e. *vis sine armis*.—1 *Reeves*, c. 6, p. 322.

Visa, a register; the authentication of a passport by a foreign authority.

Viscount, or **Vicount** [fr. *vicecomes*, Lat.], an arbitrary title of honour, without any office pertaining to it, created by Henry VI. —2 *Inst.* 5. See *Barr. on Stat.* 409. A peer of the fourth order, between earl and baron. —2 *Steph. Com.*

Visit and Search. A right, claimed and exercised by belligerents, to stop, visit and

search neutral merchant vessels on the high seas and territorial waters, and confiscate contrabrand (see that title and *The Pellworm*, 1918, A. C. 292). As to the effect of convoy under neutral men-of-war, see *Lawrence, Int. Law*, referring to *Dupuis, La Guerre Maritime et les Doctrines Anglaises*, pars. 244–248.

Visitation, judicial visit or perambulation; the periodical visit of a bishop or archdeacon to his clergy at the principal church of the diocese or archdeaconry, when he delivers a hortatory address called a 'charge.'

Visitation Books of Heralds, compilations, when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, to register marriages and descents, which were verified to the heralds upon oath; they are allowed to be good evidence of pedigree.—3 *Steph. Com.* See *Hubback on Succession*, p. 538.

Visitor, an inspector of, incidental to and necessary for all eleemosynary, many ecclesiastical and other corporations, endowed and other colleges, schools, hospitals and institutions; also of a college, corporation or hospital (see *Halsb. L. E.* (*Hailsham Edn.*), vol. iv., tit. '*Charities*'; and Cathedrals Measure, 1931 (21 & 22 Geo. 5, No. 7)). The Court of Chancery has exercised the right of visitation on behalf of the Crown, in whom the right (see 25 Hen. 8, c. 21 and 1 Eliz. c. 1, s. 2) of visitation and inspection lies, in default of special visitors. Under the Lunacy Act, 1890, Parts VI. and VII., ss. 163 to 206, Chancery visitors of persons of unsound mind, so found by inquisition, appointed by the Lord Chancellor, visiting committees under the regulations of a mental hospital, visitors appointed by justices, and visiting commissioners have special powers and duties to inspect persons, treatment, documents and places in connection with persons of unsound mind. See also IDIOT and PERSON OF UNSOUND MIND.

As to prisons, see 40 & 41 Vict. c. 21; asylums, see Lunacy Act, 1890.

Any jurisdiction exercised by the Lord Chancellor in right or on behalf of his Majesty as visitor of any college, or of any charitable or other foundation, is not transferred to the High Court of Justice (Jud. Act, 1873, s. 17) (replaced by Jud. Act, 1925, s. 19 (5)).

Visitor of Manners, the regarder's office in the forest.—*Manw.*, i. 195.

Vis legibus est inimica. 3 *Inst.* 176.—(Violence is inimical to the laws.)

Vis Major, insuperable accident, irresistible force. See ACT OF GOD.

Visne [*visnetum*, Lat.], a neighbourhood.

Visus, view or inspection.

Vitilitigate, to litigate cavillously.

Vitium clerici nocere non debet. *Jenk. Cent.* 23. (A clerical error ought not to hurt.) See CLERICAL ERROR.

Viva pecunia [Lat.], cattle which obtained this name from being received during the Saxon period as money upon most occasions, at certain regulated prices.

Vivary or **Vivarye** [fr. *vivarium*, Lat.], a place where animals are preserved; a park, warren, piscary, etc.—2 *Inst.* 100.

Vivâ voce (by word of mouth).

Viver, or **Vivier,** a fish-pond.—2 *Inst.* 199.

Vivisection, the dissecting of animals alive, for the purpose of scientific experiments, may only be practised by persons holding a licence from a Secretary of State, and subject to the restrictions imposed by the Cruelty to Animals Act, 1876: *Chitty's Statutes*, tit. '*Animals*.' A Royal Commission published its report in 1907; see also 6 Edw. 7, c. 32 (stray dogs taken up by the police).

Vivum vadium, Vifgage or **Living Pledge,** when a person borrows money of another, and grants to him an estate to hold till the rents and profits shall repay the sum borrowed with interest. The estate is conditioned to be void as soon as the sum is realized. See WELSH MORTGAGE, and 2 *Br. & Had. Com.* 299.

Vocabulum artis, a word of art.

Vocatio in jus, a citation to law.—*Civil Law.*

Vociferatio, an outcry; hue and cry (*q.v.*).

Void and **Voidable.** There is this difference between these two words: *void* means that an instrument or transaction is so nugatory and ineffectual that nothing can cure it; *voidable*, when an imperfection or defect can be cured by the act or confirmation of him who could take advantage of it. Thus, while acceptance of rent will make good a voidable lease, it will not affirm a void lease. See NULL AND VOID.

Voidance, the act of emptying; ejection from a benefice.

Voir dire [*veritatem dicere*, Lat., 'to tell the truth,' *voir* being the Norman-French for *vrai*].

A sort of preliminary examination by the judge, in which the witness is required to speak the truth with respect to the questions put to him, when, if incompetency appears

from his answers, he is rejected, and even if they are satisfactory, the judge may receive evidence to contradict them or establish other facts showing the witness to be incompetent.—*Best on Evidence.*

Volenti non fit injuria. *Plow.* 501.—(Where the sufferer is willing no injury is done.) See this maxim criticized by Lord Esher in *Yarmouth* v. *France*, (1887) 19 Q. B. D. at p. 653, and by Lord Watson in *Smith* v. *Baker*, 1891, A. C. at p. 355. The question is one for the jury (*Dublin, etc., Railway Co.* v. *Slattery*, (1878) 3 App. Cas. 1155). For a recent application of the maxim, see *Herd* v. *Weardale, etc., Co.*, 1915, A. C. 67.

Consent or 'leave and licence' may be said to be a defence in actions of tort or prosecutions (see *Archbold, Cr. Pr.*), where the consent is to the specific injury or act, unless the act amounts to the infliction of a serious physical injury or where the rights of the public as well as the individual sustaining harm have intervened. The public are interested in preventing one of their number from grievous bodily harm and from exhibitions which alarm the public conscience, such as prize-fights without gloves, duels, etc., and see LIBEL.

The maxim has also been invoked in cases where the person injured was alleged to have contracted to absolve the defendant from a known risk or from obligations, such as not to be negligent in the course of a contract (see *Smith* v. *Baker*, 1891, A. C. 325, commenting on *Thomas* v. *Quartermaine*, (1887) 18 Q. B. D. 685), but in these cases knowledge of the risk is not conclusive; it is only evidence from which consent may be inferred; and see *Letang* v. *Ottawa Electric Ry. Co.*, 1926, A. C. 725, as to invitation, knowledge and consent.

The performance of a duty in the face of imminent risk is not consent disentitling a plaintiff from his remedy (*Haynes* v. *Harwood & Son*, 1935, 1 K. B. 146); *contra* if the risk was undertaken voluntarily and not under duty (*Cutler* v. *United Dairies (London) Ltd.*, 1933, 2 K. B. 297); and see *Rescue and Voluntary Assumption of Risk, by Professor Goodhart, Cambr. L. J.* 1934, vol. 5, No. 2, p. 192; and, generally, *Pollock* or *Salmond on Torts.*

Volumus (we will), the first word of a clause in the royal writs of protection and letters-patent.

Voluntarius dæmon, a drunkard.—*Co. Litt.* 247 *a.*

Voluntary, acting without compulsion; doing by design, without a consideration in return. See VOLUNTEER.

Voluntary Answer, one filed by a defendant in equity, without being called upon to answer by the plaintiff.

Voluntary Conveyance. A conveyance by way of gift or otherwise without valuable consideration. Liable to be defeated, under 27 Eliz. c. 4, by a subsequent sale for value, but no voluntary disposition whenever made shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made if that conveyance was made after the 18th January, 1893: Law of Property Act, 1925, s. 173, reproducing 27 Eliz. c. 4, as amended by the Voluntary Conveyances Act, 1893. Any conveyance made with intent to defeat or delay creditors may be set aside under 13 Eliz. c. 5; see *Twyne's Case*, (1601) 3 Rep. 80; 1 *Sm. L. C.*, unless the conveyance was made for valuable consideration and in good faith or upon good consideration and in good faith to any person not having at the time of the conveyance notice of the intent to defraud creditors (s. 172 (3), Law of Property Act, 1925). This Act (ss. 172 and 173) repeals and reproduces the Acts above referred to with amendments. 'Good faith' appears to mean 'as between grantor and grantee,' since an intent to defraud creditors is the gist of the action and must be proved *in limine.* As to good consideration, see CONSIDERATION (*end of title*).

By the Bankruptcy Act, 1914, s. 42:—

(1) Any settlement of property not being in consideration of marriage or upon a sale or mortgage for valuable consideration or property coming to the settlor after marriage in right of his wife is void if the settlor becomes bankrupt within two years in any case, and within ten years if the settlor was not at the time of the settlement able to pay his debts without the aid of the settled property and had not transferred the property to the trustee of the settlement at that time.

(2) Any agreement in consideration of marriage to make a future payment to or to settle future property on persons within that consideration if, as regards the future property, the settlor had no interest in it at the time, or if either the money or property was not money or property in right of the settlor's wife or husband, is to be void against the trustee in bankruptcy if the agreement has not been performed at the date of commencement of the bankruptcy.

(3) And even if any such agreed payment or transfer (under 2) was made before bankruptcy it may be avoided unless it was made more than two years before the bankruptcy or the settlor was able to pay all his debts at the time without the aid of such money or property, or unless the money or property was an expectation from a person named in the agreement and was paid or transferred within three months after coming into possession or control of the settlor.

The beneficiaries under either (2) or (3) may claim for dividend after the creditors have been satisfied. See also s. 27, *ibid.*; FRAUDULENT CONVEYANCES.

Voluntary Deposit, such as arises from the mere consent and agreement of the parties.—*Story on Bailments*, 47.

Voluntary Jurisdiction, one exercised in matters admitting of no opposition or question, and therefore cognizable by any judge and in any place, and on any lawful day.—*Bell's Scots Law Dict.*

Voluntary Oath, an oath administered in a case for which the law has not provided. See Statutory Declarations Act, 1835 (5 & 6 Wm. 4, c. 62), and OATH.

Voluntary Schools. The popular name for public elementary day schools not provided by the local education authority to which grants are made when recognized under the Education Act, 1921.

Voluntary Waste, that which is the result of the voluntary act of the tenant of property, as where he pulls down a wall, or cuts timber; opposed to permissive waste. See WASTE.

Voluntas reputatur pro facto. 3 *Inst.* 69.—(The intention is to be taken for the deed.)

Volunteer, a person who takes under a voluntary conveyance, or who, though the conveyance may have been for value, is not within the scope of the consideration, e.g., persons not issue of the marriage claiming under limitations in a marriage settlement.

Also, a person who has voluntarily joined a corps raised either for home or foreign service. See TERRITORIAL ARMY.

Vote, suffrage, voice given. See titles BALLOT and ELECTORAL FRANCHISE.

Voter, one who has the right of giving his vote or suffrage.

Votum, a vow or promise. *Dies votorum*, the wedding-day.—*Fleta*, l. 4.

Vouch, to give testimony, to answer for.

Vouche [fr. *voco*, Lat.], to call one to warrant lands.

Vouchee, the person vouched in a writ of right.

Voucher, (1) a witness, testimony; (2) acquittance, or receipt

Vraic, seaweed. It is used in great quantities by the inhabitants of Jersey and Guernsey for manure, and also for fuel by the poorer classes. In *Benest* v. *Pipon*, (1829) 1 Kn. 60, on appeal from Jersey to the Privy Council, it was held that the lord of a manor could not establish a claim to the exclusive right of cutting seaweed on rocks situate below low-water mark, except by a grant from the Crown, or by such long and undisturbed enjoyment of it as to give him a title by prescription.

Vulgaris purgatio. See JUDICIUM DEI.

W.

Wadset, corresponds in Scotland to mortgage in England. The lender is called the wadsetter, and the borrower the reverser. *Bell's Scots Law Dict.*

Waftors, conductors of vessels at sea.

Wage [fr. *vador*, Lat.; *gage*, Fr.], the giving of a security for the performance of anything.

Wager, a contract by A. to pay money to B. on the happening of a given event, in consideration of B. paying money to him on the event not happening; and see the elaborate definition of 'wagering contract' in *Carlill* v. *Carbolic Smoke Ball Co.*, 1892, 2 Q. B. at p. 490, by Hawkins, J.

At Common Law a wager was a legal contract, which the Courts were bound to enforce, so long as it was not against morality, decency, or sound policy (*Johnson* v. *Lumley*, (1852) 12 C. B. 468). But by the Gaming Act, 1845, s. 18:—

> All contracts or agreements, whether by parol or in writing, by way of gaming or wagering, shall be null and void; and no suit shall be brought or maintained in any court of law or equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made: Provided always, that this enactment shall not be deemed to apply to any subscription or contribution, or agreement to subscribe or contribute, for or toward any plate, prize, or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime, or exercise.

In *Read* v. *Anderson*, (1884) 13 Q. B. D. 779, it was held by a majority of the Court of Appeal, that a turf commission-agent might recover the amount of lost bets paid by him, in defiance of a revocation of the authority to make them; but the correctness

of this decision was much questioned, and the law has been since altered by the Gaming Act, 1892, by which any promise to pay any person any sum paid by him in respect of any contract made void by the Act of 1845, or any commission in respect of any such contract, is itself made void ; and the effect of this Act is that money paid by A. for B. at the request of B. in discharge of bets lost by B. to other persons cannot be recovered by A. from B. (*Tatam* v. *Reeve*, 1893, 1 Q. B. 44). The consideration for a cheque given, or in repayment of a loan made for wagering is bad (Gaming Act, 1835 (5 & 6 Wm. 4, c. 41), even though the cheque was drawn in a country where wagering is legal (*Moulis* v. *Owen*, 1907, 1 K. B. 746) ; but money lent for such a purpose can be recovered in the courts of this country (*Saxby* v. *Fulton*, 1909, 2 K. B. 208), but see *Carlton Hall Club* v. *Laurence*, 1929, 2 K. B. 153. There may, however, be a new consideration, e.g., an agreement to hold the cheque back and not present it for a certain time ; such new consideration will support an action. The deposit given to a stakeholder on a wagering contract may be recovered if not, or before it has been, paid over (*Burge* v. *Ashley and Smith*, 1900, 1 Q. B. 744 ; *Hyams* v. *Stuart King*, 1908, 2 K. B. 696). See, generally, the Betting and Lotteries Act, 1934 (24 & 25 Geo. 5, c. 58). Consult *Coldbridge and Hawksford's* or *Shoolbred's Law of Gambling*.

Wager of Battel. See BATTEL.

Wager of Law [fr. *vadatio legis*, Lat.], a proceeding which consisted in a defendant's discharging himself from the claim on his own oath, bringing with him at the same time into court eleven of his neighbours (*compurgatores*) to swear that they believed his denial to be true. It was abolished after long disuse (see, however, a revival of it in 1824 in *King* v. *Williams*, (1824) 2 B. & C. 538) by 3 & 4 Wm. 4, c. 42, s. 13.

Wagering Policies, those effected for gambling purposes, which are void by 14 Geo. 3, c. 48. As far as marine insurance is concerned the matter is dealt with by s. 4 of the Marine Insurance Act, 1906, and the Marine Insurance (Gambling Policies) Act, 1909. See INSURANCE.

Wages, the compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him. An infant can recover wages up to 100*l.* in the county court, by s. 77 of the County Courts Act, 1934, as if he were of full age.

Wages of any 'servant, labourer, or workman' cannot be attached to satisfy judgments.—Wages Attachment Abolition Act, 1870 (33 & 34 Vict. c. 30).

Seamen have a lien on the ship for their wages ; they may enforce their claim by an action *in rem* or *in personam*. Courts of Summary Jurisdiction are given jurisdiction to try cases where wages not exceeding 50*l.* are claimed by a seaman (Merchant Shipping Act, 1894, s. 164). See also title MASTER AND SERVANT ; PREFERENTIAL PAYMENTS ; TRUCK ACTS.

Wagessum, a doubtful word, perhaps Mussel Ouze. See *Re Alston's Estate*, (1856) 5 W. R. 189.

Waggonage, money paid for carriage in a waggon.

Waif or **Waift, Weif** or **Weft** (*waiviatum*, Low Lat.]. (1) Goods found but claimed by nobody ; that of which every one waives the claim. (2) Goods stolen and waived (*bona*) or thrown away by the thief in his flight (*bona waviata*), for fear of being apprehended. These are given to the sovereign by the law, as a punishment upon the owner for not himself pursuing the felon and taking away his goods from him.—*Cro. Eliz.* 694 ; 1 *Bl. Com.* 297.

Wainable, land that may be ploughed, manured, or tilled.—*Chart. Antiq.*

Wainagium or **Wonogium,** the *countenance* of a villein ; that which is necessary for the cultivation of land.—*Barr. on Stat.* 12 ; 4 *Steph. Com.* See CONTENEMENT.

Wain-bote, timber for waggons or carts.

Waiting-clerks in Chancery. Their offices were abolished by 5 & 6 Vict. c. 103.

Waive, to forego, decline to take advantage of. 'A woman which is outlawed is called waived.'—*Co. Litt.* 122 *b*.

Waiver. (1) The passing by an occasion to enforce a legal right whereby the right to enforce the same is lost ; a common instance of this is where a landlord waives a forfeiture of a lease by receiving rent, or distraining for rent, which has accrued due after the breach of covenant causing the forfeiture became known to him ; see *Davenport* v. *The Queen*, (1877) 3 App. Cas. 115. Mere lying by is no waiver for this purpose ; there must be some positive act on the part of the landlord, which act, however, if done, is a waiver in law, notwithstanding any protest. (2) Declining to take advantage of irregularities in proceedings. Consult *Bullen and Leake's Prec. of Plead.*, and *Broom's Leg. Max.* under the titles *Consensus tollit errorem, Quilibet potest renunciare juri pro se introducto*. See RELEASE.

Waiver Clause. That clause in the prospectus of a joint stock company, or in the application for its shares, which, as in *Greenwood* v. *Leather Shod Wheel Co.*, 1900, 1 Ch. 421 (where it was held bad), waives claims of shareholders against directors for damages caused by the issue of a prospectus not disclosing contracts as required by s. 38 of the Companies Act, 1867. An honest waiver clause protected the defendant in *Calthorpe* v. *Tait*, 1906, A. C. 24. These waivers are rendered void by s. 35 (2) of the Companies Act, 1929, replacing s. 81 (4) of the Companies (Consolidation) Act, 1908. Consult *Buckley on the Companies Acts*.

Wake. By s. 165 of the Public Health Act, 1936, replacing after 31st October, 1936, s. 68 of the Public Health Acts Amendment Act, 1907, it is provided as follows :—

> 68. It shall not be lawful to hold a wake over the body of a person who has died while suffering from a notifiable disease, and the occupier of any premises who permits or suffers any such wake to take place thereon, and every person who takes part in the wake, shall be liable to a penalty not exceeding five pounds.

Wakeman [*quasi*, watchman], the chief magistrate of Ripon, in Yorkshire.—*Camden.*

Wakening, a citation narrating that a complainer has raised a summons which he had let sleep for a year and a day, concluding that all persons cited on the first should compare, hear, and see the aforesaid action called, awakened, and debated, till sentence be given.—*Bell's Scots Law Dict.*

Wales. After Edward I. conquered the Welsh the line of their ancient princes was abolished, and the King of England's eldest son was created their titular prince, and the territory of Wales was then entirely annexed to the British Crown. The Act 27 Hen. 8, c. 26, confirmed by 34 & 35 Hen. 8, c. 36, gave the utmost advancement to their civil prosperity, by admitting them to a thorough communion of laws with the subjects of England.

By the Wales and Berwick Act, 1746 (20 Geo. 2, c. 42), it is declared that where England only is mentioned in any Act of Parliament, it shall be deemed to comprehend the dominion of Wales and town of Berwick-upon-Tweed.

By 1 Wm. 4, c. 70, the jurisdiction of the Court of Great Sessions was abolished, and assizes are held in Wales as in England; and by 8 & 9 Vict. c. 11, the manner of assigning sheriffs in Wales is regulated by and assimilated to that of England.

Welsh-speaking inspectors of factories, mines, and quarries are required in Wales and Monmouthshire by s. 118 (2) of the Factories and Workshops Act, 1901 (re-enacting s. 23 of the Act of 1891), s. 97 of the Coal Mines Act, 1911, and s. 2 (3) of the Quarries Act, 1894.

By the Welsh Church Act, 1914, the Church of England in Wales and Monmouthshire was disestablished and disendowed. The operation of the Act was postponed, but eventually took effect as from 31st March, 1920. See WELSH CHURCH.

Wales, Prince of. See PRINCE OF WALES.

Wales, Statute of (12 Edw. 1, A.D. 1284).—2 *Reeves*, c. ix., 95.

Waleschery, the being a Welshman.—*Spelm.*

Waliscus [*servus*, Lat.], a servant, or any other ministerial officer.—*Leg. Jud.* c. 34.

Walkers, foresters who have the care of a certain space of ground.

Wall. A demise in writing of the 'rooms situate on the first and second floors' of business premises, *primâ facie* includes the external walls of the two floors (*Goldfoot* v. *Welch*, 1914, 1 Ch. 213). See PARTY WALL.

Waltham Black Act, The. See BLACK ACT.

Waltham Forest. See 12 & 13 Vict. c. 81.

Wanlass, an ancient tenure of lands, i.e. to drive deer to a stand, that the lord may have a shot.—*Blount's Tenures*, 140.

Wapentake, or **Wapentachium,** synonymous with 'hundred' in Yorkshire, Lincolnshire, Nottinghamshire, Derbyshire, Rutland, and Leicestershire; the term is said to be derived from recognition of the local magistrate by touching his arms, but this is very questionable, though it unquestionably has reference to armed gatherings of the freemen.—*Stubbs's Constitutional History*, vol. i., p. 96.

War. The sovereign has the sole prerogative of making war or peace.

Where war actually prevails, the ordinary courts have no jurisdiction over the action of the military authorities (*Ex parte D. F. Marais*, 1902, A. C. at p. 115). See ARMY; DECLARATION OF WAR; and consult *Owen's Declaration of War; Holland's Laws of War on Land; Hall's International Law; Grot. De Jure Pac. et Bel.*

War Department, a department from which the sovereign issues orders to his forces. This department was formerly united with the Colonial Office under an official called the 'Secretary at War,' who was not a Secretary of State; but an addi-

tional Secretary of State was appointed, for affairs of war solely, in the year 1854. See the War Office Act, 1870 (33 & 34 Vict. c. 17).

By the Army (Annual) Act (9 Edw. 7, c. 3), certain powers formerly exercisable by the Secretary of State, and all powers of the Commander-in-Chief and the Adjutant-General under the Army Act, were transferred to the Army Council. See ARMY COUNCIL.

War Memorial. The War Memorials (Local Authorities Powers) Act, 1923, enables local authorities under certain circumstances to maintain and repair memorials vested in them.

War Office, the address and offices of the Secretary of State for War and Army Council.

Ward, a child under guardianship. A *ward of Court* is an infant under the protection of the High Court. An infant is constituted a ward of Court by an action relating to his estate; by an order made on an application for the appointment of a guardian; or by a payment into Court under the Trustee Act, 1925, s. 63; or in an administration action, to which he is a party (see *Brown* v. *Collins*, (1884) 25 Ch. D. 56). The control of the Court ceases when the infant comes of age (*Bolton* v. *Bolton*, 1891, 3 Ch. 270): see *Seton on Judgments; Dan. Ch. Pr.; Simpson on Infants.* See INFANT.

Also, an electoral subdivision of a borough for the purposes of the local government elections (Local Government Act, 1933, ss. 24 to 30). In boroughs divided by wards, an alderman or, in some cases, a councillor, not the mayor, is returning officer (s. 28). As to district councils, see ss. 36 and 37. Parishes may be divided into wards by the county council (s. 52). This Act, replacing the Municipal Corporations Act, 1882, and previous Acts, all repealed except as to London, provides that the number of councillors in each ward is to be always divisible by three. There is to be a separate election for each ward, and every elector may give one vote and no more for each candidate. For qualification to vote, see Representation of the People Act (*ibid.*, s. 51). See also WATCH AND WARD.

Warda, the custody of a town or castle, which the inhabitants were bound to keep at their own charge.—*Dugd. Mon.*, i. 372.

Wardage, money paid and contributed to watch and ward.—*Domesday.*

Warden, guardian or keeper. The Lord Warden of the Cinque Ports is prohibited from recommending Members of Parliament to those places by 2 W. & M. sess. 1, c. 7. As to wardens of the Society of Apothecaries, see 55 Geo. 3, c. 194; 3 *Steph. Com.*

Ward-holding, the ancient military tenure in Scotland. Abolished by 20 Geo. 2, c. 50.

Wardmote, a court held in every ward in London.

The wardmote inquest has power to inquire into and present all defaults concerning the watch and police doing their duty, to see that engines, etc., are provided against fire, that persons selling ale and beer be honest and suffer no disorders, nor permit gaming, etc., that they sell in lawful measures; searches are to be made for beggars, vagrants, and idle persons, etc., who shall be punished.

Ward-penny, wardage, which see.

Wards and Liveries, Court of, a court erected by Henry III., and abolished by 12 Car. 2, c. 24.

Wardship, pupilage, guardianship; an incident to tenure in socage. See TENURE.

Wardship in Chivalry, an incident to the tenure of knight-service. See *Ibid.*

Wardship in Copyholds, the lord is guardian of his infant tenant by special custom.

Wardship of Infants. The wardship of infants and the care of infants' estates is assigned to the Chancery Division of the High Court of Justice (Jud. Act, 1873, s. 34; see now Jud. Act, 1925, s. 56 (1) (*b*)). See INFANT; WARD OF COURT.

Wardstaff, a watchman's staff.

Wardwrit, the being quit of giving money for the keeping of wards.—*Spelm.*

Warectare, to plough up land designed for wheat in the spring, in order to let it lie fallow for better improvement, which in Kent is called summer-land.—*Jac. Law Dict.*

Warectum, otherwise called wareccum or varectum, 'doth signify fallow.'—*Co. Litt.* 5 *b.*

Warehousing System, the allowing of goods imported to be deposited in public warehouses, at a reasonable rent, without payment of the duties on importation if they are re-exported; or if they are ultimately withdrawn for home consumption, without payment of such duties until they are so removed, or a purchaser found for them.—2 *Steph. Com.*

Wargus, a banished rogue.—*Leg. Hen.* 1, c. 83.

Waring, Ex parte, Rule of. The principle established in *Ex parte Waring*, (1815) 19 Ves. 345, that securities held by the acceptor of a bill against his acceptances are available

to the bill-holders if both acceptor and drawer are insolvent, even though the bill-holders had no knowledge that the securities had been appropriated for the purpose.

Warncistura, garniture, furniture, provision, etc.

Warning of a Caveat, a notice to a person who has entered a caveat in the Probate branch of the High Court to appear and set forth his interest. Consult *Tristram and Coote's Probate Practice.* See CAVEAT.

Warnoth, an ancient custom, that if any tenant holding of the castle at Dover failed in paying his rent at the day, he should forfeit double, and for his second failure treble; and the lands so held are called *terræ cultæ et terræ de warnoth.—Dugd. Mon.*, ii. 589.

Warping. A mode of fertilizing land by the 'warp' or deposit of flooded or tidal rivers artificially let in over the land and let off from it. Warping is an improvement within the Agricultural Holdings Act for which compensation is payable if executed with the consent of the landlord, and an improvement upon which a tenant for life may expend capital money under the Settled Land Act, 1925. See 3rd Sched., Part I. (iii.), and AGRICULTURAL HOLDINGS and SETTLED LAND.

Warrandice, warranty.—*Scots term.*

Warrant, an authority; a precept under hand and seal to some officer to arrest an offender, to be dealt with according to due course of law; also, a writ conferring some right or authority, a citation or summons.

Warrant of Attorney, a written authority addressed to one or more solicitors to appear for the party executing it, and receive a statement of claim for him in an action at the suit of a person therein mentioned, and thereupon to confess the same, or to suffer judgment to pass by default and to permit judgment to be entered up against him. The practice of giving warrants of attorney is seldom resorted to. A warrant of attorney may be executed as a security for the performance of any agreement between the parties; but it does not extinguish an original debt, or affect the right to sue upon it, unless judgment has been signed, for until this is done it is merely a collateral security. It is usual to make the warrant subject to be defeated on the performance of certain conditions, and when this is the case, they are set forth in an agreement, hence called the defeasance.

The Debtors Act, 1869, contains various provisions in regard to warrants of attorney, e.g., they must be executed in the presence of a solicitor acting on behalf of the person signing and explaining the consequences and effect of the warrant, and filed at the Central Office (Bills of Sales Department) of the Supreme Court within twenty-one days, and if affecting land, registered under the Land Charges Act, 1925, s. 6, every five years. See LAND CHARGES. If a warrant of attorney be obtained by fraud, duress, or misrepresentation, or upon illegal consideration, the Court will order it to be delivered up to be cancelled, and will set aside all proceedings upon it, and so if a material alteration be made in it. If the warrant is good in part, and bad in part, the Court will sustain it *quoad* the good part. If the fact of the consideration be doubtful, the Court may direct an issue to try it. See COGNOVIT and *Chitty's Archbold.*

Warrantee, a person to whom a warranty is made.

Warrantia chartæ, a writ where one was enfeoffed of lands with warranty, and then he was sued or impleaded in assize or other action in which he could not vouch or call to warranty.—*Fitz. N. B.* 134. Abolished by 3 & 4 Wm. 4, c. 27.

Warrantia diei, an ancient writ, where one having a day assigned personally to appear in court to any action, is in the meantime employed in the royal service, so that he cannot come on the day appointed; it was addressed to the justices to this end, that they neither take nor record him in default for that time.—*Fitz. N. B.* 17.

Warrantizare nihil aliud est, quam defendere et acquietare tenentem qui warrantum vocavit in seisinâ suâ. *Co. Litt.* 365 *a.*—(To warrant is simply to defend and ensure in peace the tenant who calls for warranty in his seisin.)

Warranty of lands, by s. 39 of the Real Property Limitation Act, 1833 (3 & 4 Wm. 4, c. 27), cannot defeat a right of entry.

Warrantor, a person who warrants; the heir of one's husband.

Warrantor potest excipere quod quærens non tenet terram de qua petit warrantiam, et quod donum fuit insufficiens. *Hob.* 21.—(A warrantor may object that the complainant does not hold the land of which he seeks the warranty, and that the gift was insufficient.)

Warranty, a guarantee or security; formerly a promise or covenant by deed by the bargainer, for himself and his heirs, to warrant and secure the bargainee and his heirs against all persons for the enjoying of

the thing granted, accompanied by a promise, express or implied, that if eviction should take place, the warrantor would substitute an equivalent estate in its place — see *Co. Litt.* 365 *a*. In that form it has been superseded in practice by 3 & 4 Wm. 4, cc. 27 (s. 39) and 74 (s. 14). See RECOVERY.

More generally, a warranty is any agreement either accompanying a transfer of property, or collateral to the contract for such transfer (see *Lawrence* v. *Cassell*, 1930, 2 K. B. 83, and *Miller* v. *Cannon Hill Estates Ltd.*, 1931, 2 K. B. 113), or to any other agreement or transaction, and in so far as it is a contract a warranty does not differ from any other contractual promise. A warranty may be express or implied by law or statute.

For instances of implied warranties, see that title, CAVEAT EMPTOR, TITLE, COVENANTS FOR, and *infra*. Implied warranties have been said to underlie or to be the gist of actions for negligence or breach of duty arising out of the special relations between parties; cf. the judgment of Gould, J., in, and notes to, *Coggs* v. *Bernard*, 2 *Lord Raymond*, 1 *Sm. L. C.*, and see NEGLIGENCE.

As a general rule an express warranty, or a known usage, excludes any implication of warranty in regard to the same subject-matter. See *expressum facit cessare tacitum*, and e.g., QUIET ENJOYMENT. But upon sale of goods if the express warranty (which includes representation, such as 'sample') has been superadded for the benefit of the buyer or is not inconsistent with the implied warranty, the latter is not excluded: cf. Sale of Goods Act, 1893, ss. 14 and 55; and see *Drummond* v. *Van Ingen*, (1887) 12 App. Cas. 284.

The expression 'warranty' in the Sale of Goods Act (see that title and s. 62 (1) of the Act) 'as regards England and Northern Ireland means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such a contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated,' and 'as regards Scotland' it is provided by the same section that 'a breach of warranty shall be deemed to be a failure to perform a material part of the contract.'

The same Act does not define a condition which, in contract, is a stipulation which goes to the root of the contract and the breach or non-performance of which absolves the promisee from his part of the contract and entitles him to repudiate it *in toto*. Whether a stipulation is a condition or a warranty depends entirely on the construction of the contract (s. 11), *Bentsen* v. *Taylor*, No. 2, 1893, 2 Q. B. 274; and generally, see, e.g., Sale of Goods Act, 1893, s. 11.

There is nothing, if the facts are present, to prevent the performance or fulfilment of a warranty in its strict sense of a collateral agreement from being at the same time a condition either of a transfer of property or of the entire contract. On the other hand, the person entitled to the benefit of a condition is at liberty to waive his right to repudiate upon condition broken and merely claim damages or compensation for breach of the collateral agreement: see Sale of Goods Act, 1893, s. 11; and the right to repudiate may also be lost if the promisee has adopted the transaction, or the rights of the parties have been so altered as to prevent a return to the *status quo ante*. In the Sale of Goods Act, 1893, specific rules are provided in respect of conditions and warranties. These rules are, in the main, merely declaratory of law which is applicable to many transactions other than sales: see REPRESENTATION; TRADE MARKS; LANDLORD AND TENANT; PROVISO FOR RE-ENTRY; HOUSING; and, upon sales of certain goods, Anchor and Chain Cables Act, 1899 (62 & 63 Vict. c. 23), s. 2 (warranty of test of anchors exceeding 168 lbs. and cables); Fertilizers and Feeding Stuffs Act, 1926 (16 & 17 Geo. 5, c. 45); Fabrics (Misdescription) Act, 1913 (3 & 4 Geo. 5, c. 17) (inflammable textiles); Merchandise Marks Act, 1887, s. 17; Sale of Food and Drugs Acts, 1926 (16 & 17 Geo. 5, c. 63) and 1928 (18 & 19 Geo. 5, c. 31), and other statutes.

In marine insurance a 'warranty' means a condition: see Marine Insurance Act, 1906, ss. 33-41.

Warren [fr. *waerande*, Dut.; *guerenne*, Fr.]. A free warren is a franchise to have and keep certain wild beasts and fowls, called game, within the precincts of a manor, or other known place; in which animals the owner of the warren has a property, and consequently a right to exclude all other persons from hunting and taking them. It must be derived from a royal grant, or from prescription, which supposes such a grant.—*Williams on Rights of Common*, p. 238. See *Earl Beauchamp* v. *Winn*, (1873) L. R. 6 H. L. at p. 238; *Robinson* v. *Duleep Singh*, (1879) 11 Ch. D. 798; *Fitzhardinge (Lord)* v. *Purcell*, 1908, 2 Ch. 139.

Warscot, a contribution usually made towards armour in the time of the Saxons.

Warth, a customary payment for castle guard.

Wash, a shallow part of a river or arm of the sea.

Washhouses, Public. See BATHS.

Washing-horn [fr. *corner l'eau*, Fr.], the sounding of a horn for washing before dinner. The custom was formerly observed in the Temple.

Washington, Treaty of. A treaty signed on May 8th, 1871, between Queen Victoria and the United States of America, as to certain differences arising out of the war between the Northern and Southern States of the Union, the Canadian Fisheries, and other matters. See 35 & 36 Vict. c. 45.

Waste [fr. *vastum*, Lat.], any spoil or destruction in houses, gardens, trees, etc., by a tenant; as to what acts amount to waste, see *Co. Litt.* 53 *a*. It is either (1) legal, sub-divided into (*a*) *voluntary* or *commissive*, as where the tenant pulls down a house or a part thereof, or ploughs up ancient meadow, and (*b*) *permissive* or *omissive*, as where a tenant suffers a house to fall out of repair; or (2) equitable, which comprehends acts not deemed waste at Common Law. Both for voluntary and permissive waste an action lies against a tenant, whether for life or years, by virtue of the statute of Gloucester, 6 Edw. 1, c. 5. A tenant from year to year is liable for voluntary waste only. An injunction will be granted to restrain voluntary waste, as by ploughing up ancient meadow. See *Woodfall, L. & T.*, and *Aggs on Agricultural Holdings*. A mortgagor in possession will be restrained from cutting down timber, for as the whole estate is the security for the money advanced, the mortgagor ought not to be suffered to diminish it; but he may cut underwood of a proper growth at seasonable times. As to an estate under forestry management, see *Dashwood* v. *Magniac*, 1892, 2 Ch. 253.

Equitable waste (which is voluntary only) is an unconscientious abuse of the privileges of non-impeachability for waste at Common Law, whereby a tenant for life, without impeachment of waste, will be restrained from committing wilful, destructive, malicious, or extravagant waste, such as pulling down houses, cutting timber of too young a growth, or trees planted for ornament, or for shelter of premises; for, though in some cases *fortior est dispositio legis quam hominis*, yet that shall not extend to encumber or spoil estates. See *Baker* v. *Sebright*, (1879) 13 Ch. D. 179; *Garth* v. *Cotton*, (1750) 1 Ves. Sen. 524, 546; 1 *W. & T. L. C.*

By the Law of Property Act, 1925, s. 135, replacing the Judicature Act, 1873, s. 25 (3), it is provided that an estate for life without impeachment of waste shall not confer upon the tenant for life any legal right to commit waste of the kind known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate. And see s. 89, Settled Land Act, 1925, which enables a tenant for life to effect authorized improvements without impeachment of waste by remaindermen, etc.

Wastors, thieves.

Watch, The, a body of constables on duty on any particular night.

Watch and Ward. One of the principal duties of constables is to keep watch and ward. Ward [*custodia*, Lat.] is chiefly applied to the daytime, in order to apprehend rioters and robbers on the highways. Watch [fr. *watcht*, or *wacta*, Teut.] is applicable to the night only, and begins at the time when ward ends.—1 *Bl. Com.* 356.

Watch Committee, a committee of the town council of a municipal borough, not exceeding one-third of the council in number, having the appointment and control of the borough constables.—Municipal Corporations Act, 1882, ss. 5, 190, 191. Prior to this Act, it was a common custom for a town council to constitute the whole of their number the watch committee.

Watching and Lighting. See LIGHTING AND WATCHING ACT, 1833 (3 & 4 Wm. 4, c. 90).

Watch Rate, a rate leviable in many municipal boroughs by order of the council which is carried to the borough fund.—Municipal Corporations Act, 1882, ss. 197–200; repealed by the Rating and Valuation Act, 1925; see ss. 10 and 11, and RATE.

Water and Watercourse. In the language of the law the term 'land' includes water.—2 *Bl. Com.* 18. An action cannot be brought to recover possession of a pool or other piece of water by the name of water only, but it must be brought for the land that lies at the bottom, e.g. 'twenty acres of land covered with water.'—*Brownl.* 142. See POOL. By granting a certain water, though the right of fishing passes, yet the soil does not. Water being a movable, wandering thing, there can be only a temporary, transient, usufructuary property therein. Consult *Coulson and Forbes on the Law of Waters*, *Gale on Easements*, and *Angell on Watercourses*. 'Water'

does not include the land on which it stands, unless perhaps in the case of salt pits or springs, where the interest of each owner is measured by *builleries*, ballaries or buckets of brine.—*Burt. Comp.* pl. (550), and see *Co. Litt.* 4 *b*.

The Waterworks Clauses Act, 1847, and the Waterworks Clauses Act, 1863 (see *Chitty's Statutes*, tit. 'Water,' and *Michael and Will on Gas and Water Supply*), each of them consolidate in one Act provisions usually contained in special Acts authorizing the construction of waterworks by companies for the supply of water to the public at a limited profit to the shareholders by means of water rates. By s. 68 of the Act of 1863 these rates are payable according to the annual value of the tenement supplied with water.

London.—The Metropolis Water Act, 1902 (2 Edw. 7, c. 41), and the rules made thereunder (see *Chitty's Statutes*, tit. '*Metropolis*'), established a Metropolitan Water Board consisting of members appointed by the London County Council, the Metropolitan Borough Councils (the County Council appointing fourteen, and the borough councils appointing one each), and other Councils (the quorum being one third of the whole number), to manage the supply of water within London and certain adjoining districts. The Act effected a transfer to the Board of the undertakings and liabilities of each of the Metropolitan water companies, at a price to be agreed on between the Board and the companies, or in default of agreement by Sir Edward Fry (formerly Fry, L.J.), Sir Hugh Owen, and Sir J. W. Barry.

The supply of water to their districts by local authorities was provided for by the Public Health Act, 1875, ss. 51-68, and as to obligation of owners of houses to provide water supply, see Public Health (Water) Act, 1878. Both these Acts have been repealed and replaced by Part IV. of the Public Health Act, 1936, ss. 111 to 142; and see also Rural Water Supplies Act, 1934, enabling the Minister of Health and the Health Department for Scotland to contribute towards the expenses of any local authorities for water supplies; the Water Supplies (Exceptional Shortage Orders) Act, 1934, enabling the same Minister and Department respectively to provide against exceptional deficiencies of water due to drought; and other statutes. See RESERVOIR.

Watercourse, an incorporeal hereditament, being a natural right which a man has to the benefit of the flow of a river or stream, such right commonly referring to a stream passing through a man's own land, and the banks of which belong either to himself on both sides, or to himself on one side, and to his neighbour on the other, in which latter case (unless the stream be navigable, for then the bed of it, so far at least as the tide of the sea flows, presumably belongs to the Crown) the proprietor of each bank is considered as *primâ facie* the proprietor also of half the land covered by the stream, i.e., *usque ad medium filum aquæ*. A prescriptive *primâ facie* right affecting watercourses or waterways (*q.v.*) is gained by twenty years' uninterrupted enjoyment, and an indefeasible right after forty years; and when the land over which such rights as these are claimed has been held for term of life, or a term exceeding three years, such term shall be excluded from the computation of the forty years, in the event of the person who may be entitled in reversion resisting the claim within three years after the term determines.—2 & 3 Wm. 4, c. 71.

A right of the public to enter upon land belonging to another to take water is not a *profit à prendre* and is not, apparently, a subject of prescription, but it may be acquired by custom or usage. See *Halsb. L. E.*, tit. '*Customs and Usages*,' and *Gateward's Case*, (1607) 6 Rep. 59.

So, also, a prescriptive right to a watercourse is not lost by unity of possession (see EASEMENT) because the right begins *ex jure naturæ* and cannot be averted. See *Gale* or *Goddard on Easements* and *Angell on Watercourses*; and WAY (*Waterway*).

Flow of Water.—Every riparian owner has a right to the uninterrupted flow of water (*McCartney* v. *Londonderry Ry.*, 1905, A. C. 301), and may be liable for damage caused by neglect which prevents the free flow of water (*Finch* v. *Bannister*, 1908, 2 K. B. 441); he is also entitled to receive the water in its natural character and quality (*Young* v. *Banker Distillery Co.*, 1893, A. C. 691). Any one who interferes with the natural channel of a stream must see that the works which he substitutes are sufficient to carry off the water, even in the case of extraordinary rainfall (*Corp. of Greenock* v. *Caledonian Ry. Co.*, 1917, A. C. 556). The above rights apply to water flowing in known channels whether above or below ground.

A distinction must be drawn, however, in the case of water which merely percolates through the soil: see *Chasemore* v. *Richards*,

(1859) 7 H. L. C. 349; *Bradford Corporation* v. *Pickles*, 1895, A. C. 587; and *Acton* v. *Burnell*, (1843) 12 M. & W. 324. As to nuisances, cleansing, etc., in connection with watercourses, see Public Health Act, 1936, ss. 259 to 267.

Water-bailiff, an officer in port towns, whose duty it is to search ships; also an officer appointed under the Salmon Fishery Acts to enforce the provisions of those Acts by searching for illegal engines, etc. See Salmon and Fresh Water Fisheries Act, 1923 (13 & 14 Geo. 5, c. 16), ss. 66 *et seq.*

Water-gage, a sea-wall or bank to restrain the current and overflowing of water; also *gauge*, an instrument to measure water.

Water-gang, a trench or course to carry a stream of water.

Water-gavel, a rent paid for fishing in, or other benefit received from, some river.

Water-measure, a greater measure than the Winchester, formerly used for selling coals in the Pool, etc.—22 Car. 2, c. 11.

Watermen. See THAMES WATERMEN.

Water-ordeal. See ORDEAL.

Waterscape, an aqueduct or passage for water.

Waveson, goods swimming upon the waves after a shipwreck.

Waviata, Bona, goods stolen and *waived* or thrown away by the thief in his flight, for fear of being apprehended. They are given by the law to the king.—1 *Bl. Com.* 297. See WAIF.

Wax Scot [fr. *cerarium*, Lat.], duty anciently paid twice a year towards the charge of wax candles in churches.

Way [fr. *wæg*, SAX.; *weigh*, Dut.; *vig* or *wig*, M. Goth.], road made for passengers.

There are three kinds of ways:—1st, a footway (*iter*); 2nd, a footway and horse-way (*actus*), vulgarly called *packe* and *prime way*; 3rd, *via* or *aditus*, which contains the other two, and also a cartway, etc.; and this is two-fold, viz., *regia via*, the king's highway for all men, and *communis strata*, belonging to a city or town or between neighbours and neighbours. This is called in our books *chimin.*—*Co. Litt.* 56 *a.*

All ways are divided into highways and private ways. A right of way strictly means a private way, i.e. a privilege which an individual or a particular description of persons may have of going over another's ground. Such a right is an incorporeal hereditament.

A highway is a public passage for the sovereign and all his subjects, and it is commonly called the king's public highway; and the turnpike roads, created and regulated by specific Acts of Parliament, have now for many years become ordinary highways. See TURNPIKE-ROADS. Highways generally become so by what is called a 'dedication' of them to the public by the owner of the soil.

Public bridle-paths and footways are highways within the meaning of the Highway Acts.

As highways are for public service, if they are so out of repair that the usual track is impassable, people may pass, by going out of the track, upon the land of the owners of the adjoining closes; but this privilege is confined to highways; for as private ways are presumed to have originated in grants from the owner of the soil, the want of repair, amounting to a founderous state, does not authorize passengers to go out of the way upon the adjacent land.

The inhabitants of a parish are *primâ facie* bound to repair a highway of common right; unless by prescription they can throw the burden on particular persons by reason of their tenure; and if the inhabitants of a township, bound by prescription to repair, be expressly exempted by an Act of Parliament from repairing the roads to be made within the township, it falls on the rest of the parish.

By the General Highway Act, 1835, power is given to stop up and divert highways, and the mode of proceeding to effect this object is pointed out. Parties grieved have a right of appeal to the sessions.

Bridges are public highways. See BRIDGE.

A private right of way may be claimed by prescription and immemorial usage; thus where the inhabitants of a particular hamlet, or the owners or occupiers of a particular close or farm, have immemorially been used to cross a particular piece of land, a right of way is created by the immemorial usage, which supposes a grant. By the Prescription Act, 1832 (2 & 3 Wm. 4, c. 71), s. 2, it is enacted that no claim by custom, prescription, or grant, to any way or other easement, or to any watercourse or the use of any water which has been enjoyed twenty years without interruption, shall be defeated by showing the commencement of the right within the time of legal memory; and where the right shall have existed forty years, it shall be absolute and indefeasible, unless it appears to have been enjoyed by express agreement made for that purpose by deed or writing. The right must be proved by user down to the time of the commencement

of the action; and, therefore, if there be no proof of user for the last four or five years, it is insufficient. Unity of possession operates as an extinguishment of a right of way by prescription. See *Shury* v. *Pigott*, (1627) 3 Bulstrode 339, and EASEMENT.

A highway can always be dedicated to the public, and as to what will constitute dedication, see *Simpson* v. *A.-G.*, 1904, A. C. 476.

By the Rights of Way Act, 1932 (22 & 23 Geo. 5, c. 45), public use of way as of right and without interruption for a full period of twenty years is conclusive that that way is a public highway, unless of such a character that user by public could not give rise at common law to any prescription of dedication; or unless there is evidence that there was no intention to dedicate, or unless there was not at any time any person in possession of such land capable of dedicating such way. Enjoyment of a way as of right and without interruption for a full period of forty years is conclusive evidence of dedication unless there is sufficient evidence that there was no intention to dedicate such way. The dedication could be made by a tenant for life and remainderman (*Farquhar* v. *Newbury District Council*, 1909, 1 Ch. 12), and see Rights of Way Act, 1932, s. 4, as to the rights of remaindermen or reversioners next entitled in possession.

A *quasi*-private right of way may also be grounded on a special permission; as when the owner of lands grants to another a liberty of passing over his grounds, to go to church, market, or the like, in which case the gift or grant is particular and confined to the grantee alone; it dies with the person; the grantee cannot assign it, or justify taking another person in his company—it is a mere personal licence.

A right of way may also arise by act and operation of law; for if a man grant a piece of ground in the middle of his field, he at the same time tacitly and impliedly gives a way to come to it, and the grantee may cross the grantor's land without being a trespasser. Such a 'way of necessity' is limited by the necessity which created it; and when such necessity ceases, the right of way also ceases. See EASEMENTS.

Disturbance of way happens when a person, who has a right of way over another's grounds, by grant or prescription, is obstructed by inclosures or other obstacles, or by ploughing across it, by which means he cannot enjoy the right of way, or at least not in so commodious a manner as he might have done. The remedy is usually by action on the case for damages. A right of way is often contested in an action of trespass. The remedy for the want of repair of or obstruction to public highways is by indictment. Consult *Gale* or *Goddard on Easements*; *Glen on Highways.*; and see HIGHWAYS; TRUNK ROADS.

Waterway.—A navigable river is deemed to be a highway; and if the water, which is the highway, change its course and flow upon the land of another, the highway extends over the place where the water newly flows in like manner as it existed over the ancient course, so that the owner may not disturb it. With respect to navigable rivers there is this difference, however, between them and highways, that the right to the soil of a navigable river is not, by presumption of law, in the owners of the adjoining lands.

Ferries may be said to be common highways, as they are a common passage over rivers. They differ, however, in some measure, as they are the private property of individuals, who may maintain an action for the disturbance of their rights. See FERRY.

Way, Under, a ship is 'under way' within the meaning of the Sea Regulations, 1910, when she is not at anchor or made fast to the shore or aground (see *The Palembang*, 1929, P. 246).

Way-bill, a writing in which is set down the names of passengers who are carried in a public conveyance, or the description of goods sent with a common carrier by land.

Way-going Crops. See AWAY-GOING CROPS.

Waynagium, implements of husbandry.—1 *Reeves*, c. v., 268.

Weald, Wald, Walt [Sax.], a wood or grove.

Wealreaf, the robbing of a dead man in his grave.

Wealth, all useful or agreeable things which possess exchange-value, or, in other words, all useful and agreeable things except those which can be obtained in the quantity desired without labour or sacrifice.—1 *Mill's Pol. Eco.* 10. The actual and potential possessions and resources of one or more individuals, or a community, either convertible into terms of money, or measured by any other standard of value. See VALUE.

Wear, or **Weir,** a great dam or fence made across a river, or against water, formed of stakes interlaced by twigs of osier, and accommodated for the taking of fish, or to convey a stream to a mill. Prohibited by Magna Charta and other early statutes in *navigable* rivers.—*Lord Leconfield* v. *Earl of*

Lonsdale, (1870) L. R. 5 C. P. 657. Prohibited for the purpose of catching salmon by the Salmon Fishery Act, 1861, unless 'lawfully in use' at the time of the passing of that Act by virtue of a grant or charter or immemorial usage. Weirs and mill dams for taking or obstructing salmon and trout not in use before 1861 are prohibited: see Salmon and Freshwater Fisheries Acts, 1923–35.

Wear and Tear, Reasonable, the waste of substance by the ordinary use of it. This expression commonly occurs in connection with leases, in which the lessee agrees to return the subject-matter of the lease at the end of the lease in the same state as it was at the beginning of it, 'reasonable wear and tear excepted'; as to the meaning of which, see *Manchester Bonded Warehouse Co.* v. *Carr*, (1880) 5 C. P. D. at p. 513; *Terrell* v. *Murray*, (1901) 17 T. L. R. 570; *Miller* v. *Burt*, (1918) 63 Sol. Jo. 117; *Citron* v. *Cohen*, (1920) 36 T. L. R. 560; and cases under LANDLORD AND TENANT. As to the insertion of the exception in a lease made by a tenant for life, see *Davies* v. *Davies*, (1888) 38 Ch. D. 499.

Wed [SAX.], a covenant or agreement.

Wedbedrip, the customary service which inferior tenants paid to their lords in cutting down their corn, or doing other harvest duties.

Wedding-rings. As to the assaying and marking of gold wedding-rings, see 18 & 19 Vict. c. 60, s. 1.

Weighage, a toll or duty paid for weighing merchandise.

Weight of Evidence, such superiority in the evidence for one side over that for the other as calls for a verdict for the first. When a new trial is asked for on the ground that the verdict is against the weight of the evidence, the judge who tried the cause is consulted, and it does not very often happen that a new trial is ordered if he reports that he is satisfied with the verdict (R. S. C. Ord. XXXIX., r. 6, and notes thereto in *Annual Practice*).

Weights and Measures, instruments for reducing the quantity and price of merchandise to a certainty, that there may be the less room for deceit and imposition. See AVOIRDUPOIS; TROY WEIGHT; and METRIC SYSTEM.

The adjustment of weights and measures is a prerogative of the Crown, and has from an early date been regulated by statute—the Weights and Measures Act, 1878. The 25th and 26th sections enact that:—

25. *Use or Possession for Use.*—Every person who uses or has in his possession for use for trade any weight, measure, scale, balance, steelyard, or weighing machine which is false or unjust, shall be liable to a fine not exceeding 5*l.*, or in the case of a second offence 20*l.* [as amended by the W. and M. Act, 1889], and any contract, bargain, sale, or dealing made by the same shall be void, and the weight, measure, scale, balance, or steelyard shall be liable to be forfeited.

26. *Fraud in Use.*—Where any fraud is wilfully committed in the using of any weight, measure, scale, balance, steelyard or weighing machine, the person committing such fraud, and every person party to the fraud, shall be liable to a fine not exceeding 5*l.*, or in the case of a second offence 20*l.* [as amended by the 1889 Act], and the weight, measure, scale, balance, or steelyard shall be liable to be forfeited.

Section 25 applies to a vendor's churn conveying milk by rail (*Harris* v. *London County Council*, 1895, 1 Q. B. 240), but not to post-office scales (*Reg.* v. *Justices of Kent*, (1889) 21 Q. B. D. 181). Paper bags for tea may come within s. 25 (*London County Council* v. *Payne* (No. 1) and (No. 2), 1904, 1 K. B. 194; 1905, 1 K. B. 410), but a paper bag for sugar was held not to be within s. 26 in *Stone* v. *Tyler*, 1905, 1 K. B. 290.

An amending Weights and Measures Act, 1889, provides for the verification of weighing instruments, authorizes the publication of convictions, prescribes that coal is to be sold by weight only, and otherwise increases the severity of the law; and an amending Weights and Measures Act, 1904, substitutes for the power of the Board of Trade to disapprove of regulations of local authorities an initiative power to that Board to make regulations as to verification and stamping of weights and measures, obliteration of stamps, application of tests of accuracy, limits of error to be allowed, 'and generally for the guidance of local authorities,' but adds that these regulations may confer on local authorities power to make special local regulations of their own in suitable cases. There are also many small amendments of the Acts of 1878 and 1889, as that the existing fines for increasing or diminishing weights are to apply to measures, that inspectors are disabled from receiving an informer's part of a fine, that imprisonment with hard labour may be awarded on conviction of any offence (instead of only on conviction of a second or subsequent offence) committed with intent to defraud, that local authorities, under the Act of 1889 only enabled to provide working standards of measure and weight for their officers, become bound to provide them if the Board of Trade

so direct. Moreover, for the vague general prohibition of discount being allowed by an inspector on his scheduled fees for verification and stamping there is substituted (s. 13) the specific and comprehensive enactment that:—

> No discount, commission, or rebate of any kind shall be given, nor any allowance made, by such inspector, or by the local authority, for the use of tools, premises, machinery, or instruments, or assistance rendered . . . except when verification and stamping take place on the premises of a glass or earthenware manufacturer, in which case such adequate and reasonable allowance as may be agreed upon by the local authority with the consent of the Board of Trade may be made.

The Weights and Measures (Amendment) Act, 1926, amends the law with respect to measuring instruments, and the power to charge fees in connection with the listing and measuring apparatus.

The Sale of Food (Weights and Measures) Act, 1926, provides for the better protection of the public in relation to the sale of food, including agricultural and horticultural produce. See *Cave* v. *Dudley Co-operative Society*, 103 L. J. K. B. 569, as to meaning of 'average' in the Act; CORN SALES ACT, 1921; TEA; CRAN; and Fees (Increase) Act, 1923, s. 6, and the Weights and Measures (Leather Measurement) Act, 1919; and also *Butler* or *Robert on Weights and Measures*, and *Chit. Stat.*, tit. '*Weights and Measures*.'

Weights of Auncel. See AUNCEL WEIGHT.

Weir. See WEAR.

Welcher, a person who receives money which has been deposited to abide the event of a race, and who has a predetermined intention to keep the money, and not to part with it in any event: see *Blackman* v. *Bryant*, (1872) 27 L. T. 491, where, in an action of slander, the word was held not actionable without proof of special damage; but see *Williams* v. *Magyer*, *Times*, 1st March, 1883; *Odgers on Libel*, p. 49.

Welsh Church. The Welsh Church Act, 1914, provided for the disestablishment of the Church of England in Wales and Monmouthshire. Its operation was suspended by the Suspensory Act, 1914, but it came into effect under, and was amended by, the Welsh Church (Temporalities) Act, 1919, as from 31st March, 1920. All ecclesiastical corporations are dissolved and disendowed, but churches, ecclesiastical residences and certain endowments, as well as a million pounds under a scheme of commutation of existing interests, are transferred to a 'representative body' which has been incorporated by Royal Charter. See the above-mentioned Acts and the Welsh Church Rules.

Welsh Mortgage (now rare), a conveyance of an estate redeemable at any time by the mortgagor, on payment of the loan; the rents and profits of the estate being received in the meantime by the mortgagee, in satisfaction of interest, subject, however, to an account in Chancery. There is no covenant for the repayment of the loan, and the mortgagee cannot compel either redemption or foreclosure. A Welsh mortgage differs from a *vivum vadium* or vifgage, which is a conveyance of property to the creditor and his heirs, until out of the rents and profits of the estate he has satisfied the debt with interest; it was so called because neither debt nor estate was lost. The distinction between these securities is, that in the vifgage the profits are applied in the periodical reduction of the debt, while in the Welsh mortgage they are applied in satisfaction of the interest, the principal remaining undiminished. In neither, however, is the estate ever forfeited. See 2 *Br. & Had. Com.* 299, and consult *Coot on Mortgages*, 8th ed. pp. 31 *et seq.*, and see LAND CHARGES.

Wend, a certain quantity or circuit of land.

Were [*capitisæ stimatio*], a pecuniary compensation for any injury. See WITE.

Werelada, a purging from the crime by the oaths of several persons according to the degree and quality of the accused.

Wergild, Weregild, Weregildum [fr. *wer*, man, and *geld*, satisfaction, Ang.-Sax.], the price of homicide or other enormous offences, paid partly to the Crown for the loss of a subject, partly to the lord whose vassal he was, and partly to the party injured or the next of kin of the party slain. This is the earliest award of damages in our law.—4 *Bl. Com.* 188. Obsolete Saxon custom.

Westminster, a city by express creation of Henry VIII. It was dissolved as a see and restored to the bishopric of London by Edward VI., and turned into a collegiate church, subject to a dean, by Queen Elizabeth. The Superior Courts sat here until 1822 in Westminster Hall itself, and after 1822 in courts opening into it—the Court of Chancery only upon the first day of certain sittings, after which it sat at Lincoln's Inn. The same course was observed under the Judicature Act by the Divisions representing the respective courts until the opening of the Royal Courts of Justice in 1883 (see that title).

It has been provided by many Acts of Parliament, e.g., by the repealed County

Courts Act, 1850, s. 14, which gave an appeal from a county court, that certain jurisdiction shall be exercised by the courts 'at Westminster.' All such Acts are, by s. 18 of the Courts of Justice Building Act, 1865, to be construed as if the Royal Courts of Justice had been referred to therein instead of the courts at Westminster.

Westminster Confession, a document containing a statement of religious doctrine drawn up at a conference of British and Continental Protestant divines at Westminster in the year 1643, which subsequently became the basis of the Scotch Presbyterian Church.

Westminster, Statute of, 1931 (22 Geo. 5, c. 4). This Act was passed to confirm and ratify certain declarations made by the delegates to the Imperial Conferences of 1926 and 1930. Six Dominions are affected: Canada, Australia, New Zealand, South Africa, the Irish Free State, and Newfoundland. The arrangement is as follows:—

Sect. 1. Meaning of 'Dominion' in this Act.

Sect. 2. Validity of laws made by Parliament of a Dominion; the Colonial Laws Validity Act, 1865, shall not apply to any law made by the Parliament of a Dominion.

Sect. 3. Power of Parliament of Dominion to legislate extra-territorially.

Sect. 4. Parliament of United Kingdom not to legislate for 'Dominion' except by consent.

Sect. 5. Powers of Dominion Parliaments in relation to shipping.

Sect. 6. Powers of Dominion Parliaments in relation to Courts of Admiralty.

Sect. 7. Saving for British North America Acts and application of Act to Canada.

Sect. 8. Saving for Constitution Acts of Australia and New Zealand.

Sect. 9. Saving with respect to States of Australia.

Sect. 10. Certain sections of Act not to apply to Australia, New Zealand or Newfoundland unless adopted.

Sect. 11. Meaning of 'Colony' in future Acts.

Sect. 12. Short title.

As to the right of appeal to the Privy Council, see an article in the *Law Quarterly Review*, vol. liii., No. 206, April, 1936; and see *British Coal Corpn.* v. *The King*, 1935, A. C. 500; *Moore* v. *A.-G. of Irish Free State*, 1935, A. C. 484.

Westminster the First, Statute of (3 Edw. 1, A.D. 1275). This statute, which deserves the name of a Code rather than an Act, is divided into fifty-one chapters. Without extending the exemption of churchmen from civil jurisdiction, it protects the property of the Church from the violence and spoliation of the king and the nobles, and provides for freedom of popular elections, because sheriffs, coroners, and conservators of the peace were still chosen by the freeholders in the county court, and attempts had been made to influence the election of knights of the shire, from the time when they were instituted. It contains a declaration to enforce the enactment of Magna Charta against excessive fines, which might operate as perpetual imprisonment; enumerates and corrects the abuses of tenures, particularly as to marriage of wards; regulates the levying of tolls, which were imposed arbitrarily by the barons, and by cities and boroughs; corrects and restrains the power of the king's escheator and other officers; amends the criminal law, putting the crime of rape on the footing to which it has been lately restored, as a most grievous but not capital offence, and embraces the subject of procedure, civil and criminal matters, introducing many regulations to render it cheap, simple, and expeditious.—*Lord Campbell's Lives of the Chancellors*, v. 1, p. 167; 2 *Reeves*, c. 9, p. 107. Certain parts of this Act are repealed by the Statute Law Revision Act, 1863, and other statutes.

Westminster the Second, Statute of (13 Edw. 1, st. 1, A.D. 1285); otherwise called the Statute *De donis conditionalibus*; see TAIL. 2 *Reeves*, c. 10, p. 163. Certain parts of this Act are repealed by Statute Law Revision Act, 1887.

Westminster the Third, Statute of (18 Edw. 1, st. 1, A.D. 1290); otherwise called the Statute *Quia emptores terrarum*. See QUIA EMPTORES, STATUTE OF.

Westmoreland, the Shrievalty of, was hereditary in the family of the Earl of Thanet, and descended to females as well as males. Anne, Countess of Pembroke, exercised this office in person, and, at the assizes at Appleby, sat with the judges on the bench.—*Co. Litt.* 326 *n.* After the death of the Earl of Thanet in 1849, without issue, an Act was passed abolishing all hereditary claims and titles to the office and empowering her Majesty to appoint as in other counties. See 13 & 14 Vict. c. 30.

West-Saxon-lage, the laws of the West Saxons.

Whales, like sturgeon, are royal fish, which when taken belong of right to the Crown; but the right to them may be

vested in the lord of a manor or other subject by grant from the Crown, or by prescription (*Williams on Commons*, p. 292).

The whaling industry is regulated by the Whaling Industry (Regulation) Act, 1934 (24 & 25 Geo. 5, c. 49). The Act prohibits the catching and treatment of whales within waters of the United Kingdom and provides for the licensing of whaling ships and whale-oil factories.

Wharf, a broad plain place, near some creek or haven, to lay goods and wares on that are brought to or from the water. See Harbours, Docks, and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27), s. 68, and Port of London (Consolidation) Act, 1920 (10 Geo. 5, c. clxxiii.).

There are two kinds—1st, *legal*, which are certain wharves in all seaports, appointed by commission from the Court of Exchequer, or legalized by Act of Parliament; 2nd, *sufferance*, which are places where certain goods may be landed and shipped, by special sufferance granted by the Crown for that purpose,—2 *Steph. Com.* See as to both kinds, Customs (Consolidation) Act, 1876 (39 & 40 Vict. c. 36). As to larcenies from a wharf, see Larceny Act, 1916, s. 15. As to implied liability or warranty for fitness of wharf for a ship unloading, see *The Moorcock*, (1889) 14 P. D. 64.

Wharfage, money paid for landing goods at a wharf, or for shipping and taking goods into a boat or barge thence. See *London County Council* v. *General Steam Nav. Co. Ltd.*, (1907) 97 L. T. 863, and Harbours and Clauses Act, 1847, and Port of London (Consolidation) Act, 1920, *supra*.

Wharfinger. This term is defined in s. 49 of the Port of London Act, 1908, as follows :—

> The expression 'wharfinger' means the occupier of a wharf, quay, warehouse, or granary adjoining the Port of London mainly used for warehousing the goods, imported into the Port of London, of persons other than the occupier of such premises.

See also Merchant Shipping Act, 1894, s. 492.

Wharfingers, who transport goods of their customers by lighter from importing ships, do not come under liability as common carriers (*Consolidated Tea, etc., Co.* v. *Oliver's Wharf*, 1910, 2 K. B. 395). As a rule, they have a general lien for the balance of their account. Consult *Chitty* or *Addison on Contracts*.

Wheat. See Corn; Quota. The Wheat Act, 1932 (22 & 23 Geo. 5, c. 24), was passed to secure to registered growers of wheat grown in the United Kingdom a standard price and a market, and to provide payments by millers and importers of flour by reference to a quota of home-grown wheat and to provide for the purchase by the Flour Millers Corporation representing such millers of unsold stocks of such wheat up to 12½ per cent. of the anticipated home-grown supply at the fair market price in the locality.

Wheelage, duty or toll for carts, etc., passing over certain ground.

Whereas, a word which implies a recital of a fact. The word *whereas*, when it renders the deed senseless or repugant, may be struck out as impertinent, and shall not vitiate a deed in other respects sensible. See *Platt on Covts.* 35.

Whichwood Forest. As to the disafforesting of this, see 16 & 17 Vict. c. 36, and 19 & 20 Vict. c. 32.

Whig, said to be a word meaning sour milk. The name was applied in Scotland, in 1648, to those violent Covenanters who opposed the Duke of Hamilton's invasion of England in order to restore Charles the First. Sir Walter Scott, however, gives a different derivation. Speaking of the rising of the Covenanters on this occasion, he says: 'This insurrection was called the Whigamores' Raid, from the word *whig, whig*, that is, *get on, get on*, which is used by the western peasants in driving their horses—a name destined to become the distinction of a powerful party in British history.'—*Tales of a Grandfather*, ch. xlv.

The appellation of Whig and Tory to political factions was first heard of in 1679, and though as senseless as any cant terms that could be devised, they became instantly as familiar in use as they have since continued.—2 *Hallam's Const. Hist.*, c. 12.

Whig and Tory differed mainly in this, that to a Tory the Constitution, inasmuch as it was the Constitution, with an ultimate point beyond which he never looked, and from which he thought it altogether impossible to swerve: whereas a Whig deemed all forms of government subordinate to the public good, and, therefore, liable to change when they should cease to promote their object. See Tory.

Whipping, a punishment not authorized in modern times except under a statutory enactment (Criminal Justice Administration Act, 1914). No person can be whipped more than once for the same offence (*ibid.*, s. 36). Numerous Acts provide for the whipping of boys under 16: adult males

may be whipped, e.g., under the Criminal Law Amendment Act, 1912, when convicted on indictment under the Vagrancy Act, 1898, for the second time, or when convicted of certain offences against women under s. 2 of the Criminal Law Amendment Act, 1885; and also for robbery with violence. See VAGRANT; GARROTTING.

The punishment was abolished for females by 1 Geo. 4, c. 57. As to the power of justices to order whipping of a male child (7–14), see Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 10, as substituted by the Children and Young Persons Act, 1933 (23 Geo. 5, c. 12), s. 60, 3rd Sched.

Whirligig, or 'merry-go-round,' or 'round-about.' If it be driven by steam power, bye-laws for the prevention of danger from it may be made by an urban authority, under the adoptive Public Health Acts Amendment Act, 1890.

Whitefriars, a place in London between the Temple and Blackfriars, which was formerly a sanctuary, and therefore privileged from arrest. See ALSATIA.

Whitehart Silver, a mulct on certain lands in or near to the forest of Whitehart, paid into the Exchequer, imposed by Henry III. upon Thomas de la Linda, for killing a beautiful white hart which that king before had spared in hunting.—*Camd. Brit.* 150.

White Meats, milk, butter, cheese, eggs, and any composition of them.—*Cowel.*

White Phosphorus. The White Phosphorus Matches Prohibition Act, 1908 (8 Edw. 7, c. 42), prohibits the use of this substance in the manufacture of matches.

White Rents [*reditus albi*, Lat.], payments received in silver or white money.—2 *Br. & Had. Com.* 54; 1 *Steph. Com.*

White Slave Traffic. See the Criminal Law Amendment Act, 1912 (2 & 3 Geo. 5, c. 20), as amended by the Criminal Law Amendment Act, 1922 (12 & 13 Geo. 5, c. 56), passed to prevent the procuration and attempted procuration of young girls and women for purposes of prostitution, and to strengthen the criminal law in relation to brothels, procurers, and the immoral trafficking in females.

White-spurs, a kind of esquires.

Whit Monday. See WHITSUNTIDE.

Whitsun Farthings, pentecostals, which see.

Whitsuntide, the Feast of Pentecost, being the fiftieth day after Easter, and the first of the four cross-quarters days of the year.

Whitsuntide offerings were held assessable to income tax in *Slaney* v. *Starkey*, 1931, 2 K. B. 148.

Whit Monday is, by the 34 & 35 Vict. c. 17, and 38 & 39 Vict. c. 13, made a holiday in banks, custom-houses, docks, inland revenue offices, and bonding-warehouses. Whit Monday is a holiday in the several courts and offices of the Supreme Court (R. S. C. 1883, Ord. LXIII., r. 6).

Whittlewood Forest. As to disafforesting this forest, see 16 & 17 Vict. c. 42; see also 18 & 19 Vict. c. 16.

Whole Blood. 'A kinsman of the whole blood is he that is derived not only from the same ancestor, but from the same couple of ancestors.'—1 *Steph. Com.*

Wic, a place on the sea-shore or the bank of a river.

Wica, a country house or farm.

Wichencrif, witchcraft.

Widow, a woman whose husband is dead.

A widow is entitled equally with next of kin to administration of her deceased husband's estate subject to the discretion of the Court (see *In the Estate of Paine, A. J.*, (1916) 115 L. T. 935).

In regard to deaths after 1925, by the Administration of Estates Act, 1925, s. 46:—

(1) The residuary (*real and personal*) estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:—

(i.) If the intestate leaves a husband or wife (with or without issue) the surviving husband or wife shall take the personal chattels (*q.v.*) absolutely and in addition the residuary estate of the intestate shall stand charged with the payment of a net sum of 1000*l.* free of death duties and costs to the surviving husband or wife (*with interest from date of death at 5 per cent. per annum until paid or appropriated and subject thereto as provided*).

(*a*) If the intestate leaves no issue, upon trust for the surviving husband or wife during his or her life;

(*b*) If the intestate leaves issue, upon trust as to one-half for the surviving husband or wife during his or her life and subject to such life interest, on the statutory trusts for the issue of the intestate; and as to the other half, on the statutory trusts for the issue of the intestate, but if those trusts fail or determine in the lifetime of a surviving husband or wife of the intestate, then upon trust for the surviving husband or wife during the residue of his or her life.

(ii.) If the intestate leaves issue but no husband or wife, the residuary estate of the intestate shall be held on the statutory trusts for the issue.

And see Legitimacy Act, 1926, s. 9, as to rights of succession of a bastard and succession to a bastard dying intestate. The Statutory Trusts (s. 47) are, in effect, for the children living at the death of the intestate and attaining 21 years or marry-

ing, and the issue of any child predeceasing the intestate, such issue being living at the death of the intestate and attaining 21 years or marrying, *per stirpes* (*q.v.*), in equal shares, so that no issue takes more than a parent's share or takes if his parent is living at the death of the intestate. A married infant can give a receipt for income. The statutory powers for advancement, maintenance, accumulation of income and hotchpot (*q.v.*) are to apply and the personal representatives may allow infants to use personal chattels.

If the intestate leaves no issue surviving him or her and attaining a vested interest, then subject to the life interest of the surviving husband or wife the residuary estate is to be held :—

(iii.) For the intestate's father and mother, if both survive him or her, absolutely, if not,

(iv.) For the one parent, if any surviving, absolutely, if none,

(v.) For brothers and sisters of the whole blood of the intestate under the trusts, if none,

(vi.) For brothers and sisters of the half blood of the intestate under the statutory trusts, if none,

(vii.) Grandparents of intestate, if more than one, in equal shares absolutely, if none,

(viii.) Uncles and aunts of the whole blood of the intestate under the statutory trusts, if none,

(ix.) Uncles and aunts of the half blood in like manner, if none of the above,

(x.) For the surviving husband or wife absolutely.

'Statutory trusts' in this connection means the persons named and their issue respectively attaining vested interests upon trusts corresponding to s. 47, *supra* (see s. 47 (3)). Husband and wife, beneficiaries, count as two persons.

In default of the above, see BONA VACANTIA. See also DOWER; INHERITANCE; DISTRIBUTION, STATUTE OF; INTESTATES' ESTATES ACT (*for deaths before* 1926).

Widows are privileged by many statutes—see, e.g., PENSIONS; ACTIO PERSONALIS; HUSBAND AND WIFE.

Widow-Bench, the share of her husband's estate which a widow is allowed besides her jointure.

Widower, one whose wife is dead. A condition in restraint of the *second* marriage, whether of a man or a woman, is valid (*Allen* v. *Jackson*, (1875) 1 Ch. D. 399).

Widow's Chamber. In London the widow of a freeman was, by the custom of the city, entitled to her apparel and the furniture of her bed-chamber, but this custom was abolished by 19 & 20 Vict. c. 94.

Widow's Terce, the right for life which a wife has after her husband's death to a third of the rents of his heritable estate in Scotland; dower.

Wife [*wif*, Sax.; *wiff*, Dut,; *wyf*, Icel.; *uxor*, Lat.], a woman that has a husband. See HUSBAND AND WIFE.

Wife's Equity to a Settlement. See EQUITY TO A SETTLEMENT.

Wigreve, the overseer of a wood.

Wike, a farm.—*Co. Litt.* 5 *a*.

Wild Animals, or animals *feræ naturæ*, animals of an untamable disposition. See ANIMALS, and FERÆ NATURÆ.

Wild Birds. See BIRDS.

Wild's Case, Rule in. A devise to B. and his children or issue, B. having no issue at the time of the devise, gives him an estate-tail; but if he have issue at the time, B. and his children may, upon construction, take joint estates for life.—6 *Rep.* 16 *b*; *Tud. L. C. on Real Property*, 2nd ed. 542, 581.

The rule did not apply to personalty; see *Audsley* v. *Horn*, (1858) 26 Beav. 195, 1 De G. F. & J. 226; 2 *Jarm. on Wills*; *Theobald on Wills*.

The rule has apparently been abolished in regard to wills coming into operation after 1925. See TAIL.

Will, Estate at. This estate entitles the grantee or lessee to the possession of land during the pleasure of both the grantor and himself, yet it creates no sure or durable right, and is bounded by no definite limits as to duration. It must be at the reciprocal will of both parties expressly or by implication (*Co. Litt.* 55 *a*), and the dissent of either determines it. The grantee cannot transfer the estate to another, although after he has entered into possession he may accept a release of the inheritance from the grantor, for there exists a privity between them. It must end at the death of either party, for death deprives a person of the power of having any will. If a lessee for years accept an estate at will in the property leased, his term of years would in law be surrendered.

An estate at will is created either by the stipulation or express agreement of the parties, or by construction of law.

Sect. 54 of the Law of Property Act, 1925, enacts that a lease by parol for a longer term than three years shall have the force and effect of an estate at will only.

A tenant-at-will is entitled to emblements where his estate is determined by the lessor or by his death, and his personal representatives are entitled to them where the estate is determined by his own death; but if the lessee forfeit or determine the estate himself he is not then entitled to them. He is not bound to maintain or repair the premises, but is liable for wilful waste.

We have seen that either party may determine this estate. The lessor can do so by an express declaration that the lessee shall hold no longer, which should either be made on the land or notice of it served upon the lessee. But if he exercise any right of ownership, unless it be with the lessee's consent, inconsistent with the enjoyment of the estate, as entering upon the land, cutting down trees demised, making a transfer or lease for years to commence immediately, the estate will be determined. So also if the lessee commit an act of desertion or do anything inconsistent with his estate, as assigning it to another person to the landlord's knowledge, or committing waste, but a verbal declaration that he will hold the lands no longer does not determine his estate unless he at the same time waive possession.

If the lessor determine his estate, the tenant-at-will shall have reasonable ingress and egress to take away his goods and chattels without being a trespasser.—*Co. Litt.* 56 *a*. But the mere demand of possession by the lessor determines the will (*Doe* d. *Nicholl* v. *M'Kaeg*, (1830) 10 B. & C. 721). Consult *Woodfall* or *Foa on Landlord and Tenant*.

Willa, the relation between a master or patron and his freed-man, and the relation between two persons who had made a reciprocal testamentary contract.—*Macnaghten's Mahomedan Law*, 34 n.

Wills. A will is the valid disposition by a living person, to take effect after his death, of his disposable property. 'But in law *ultima voluntas in scriptis* is used, where lands or tenements are devised, and *testamentum*, when it concerneth chattels': *Co. Litt.* 111 *a*.

Depository of Will of Living Person.—By the Jud. Act, 1925, s. 172, replacing s. 91 of the Court of Probate Act, 1857:—

> There shall, under the control and direction of the High Court, be provided safe and convenient depositories for the custody of the wills of living persons, and any person may deposit his will therein.

And see Administration of Justice Act, 1928 (18 & 19 Geo. 5, c. 26), s. 11, as to deposit of wills under control of the High Court.

Law before 1838.—The right of testamentary alienation of lands is a matter depending on Act of Parliament. Before 32 Hen. 8, c. 1, a will could not be made of land, and before the Statute of Frauds a will (see NUNCUPATIVE WILL) could be made by word of mouth. Moreover, the testamentary power conferred by the statute of Hen. 8 did not extend to infants or married women. The Statute of Frauds, 1677, by s. 5 required wills of land to be in writing signed by three credible witnesses, and ss. 19–24 required nuncupative wills, where the estate bequeathed should exceed 30*l*., to be proved by three witnesses at the least, and to have been made at the time of the last sickness of the deceased, and in his dwelling-house or where he had resided ten days before; that after six months no nuncupative will should be proved, unless the words or their substance had been committed to writing within six days; and that no probate should be granted till after fourteen days from the death of the testator. These and many subsequent enactments are all and wholly repealed by s. 2 of the Wills Act, 1837, which does not extend to Scotland, where, as generally in Europe, except in England and Ireland, a man cannot deprive his wife and children of a reasonable part (see REASONABLE PARTS) of his personal property.

The Wills Act, 1837, deals with four classes of subjects touching wills, viz.:—

(1) What may be the subject-matter of wills.
(2) Who may execute a will.
(3) What are the formalities required in the execution of a will.
(4) How wills are to be construed.

(1) Subject-matter of wills.

The *first* section enacts that the word 'will' shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of 12 Car. 2, c. 24, or of 14 & 15 Car. 2 (Ireland), and to any other testamentary disposition, and also defines the meaning of the words 'real estate' and 'personal estate' as used in the Act.

The *second* section (repealed by 37 & 38 Vict. c. 35) repeals (amongst others) prior Acts relating to wills, leaving unrepealed,

however, that part of Magna Charta which presented to a man's wife and children their 'reasonable parts.' See REASONABLE PARTS.

The *third* section, termed the 'general enabling clause,' as explained by the Law of Property Act, 1925, s. 178, enacts that it shall be lawful for every person to devise, bequeath, or dispose of all real and personal estate which he shall be entitled to at the time of his death, notwithstanding that by reason of illegitimacy or otherwise he did not leave an heir or next-of-kin surviving him.

The *fourth* and *fifth* sections relate to dispositions of copyhold estates, and the *sixth* to estates *pur autre vie* of a freehold nature. See SPECIAL OCCUPANCY.

(2) Who may execute a will.

The *seventh* section enacts that no will made by any person under the age of twenty-one years shall be valid, repealing the old law, by which an infant of the age of fourteen years if a male, or of twelve years if a female, could make a valid will of personalty, although not of realty; and the *eighth*, that no will made by any married woman shall be valid, *except* such a will as might have been made by a married woman before the passing of the Act; but this section is impliedly repealed by the Married Women's Property Act, 1882. See MARRIED WOMEN'S PROPERTY.

(3) How wills are to be executed (*ninth* section). See EXECUTION OF WILLS; ATTESTATION CLAUSE.

The *tenth* section requires wills in exercise of powers of appointment to be executed like other wills. See APPOINTMENT.

The *eleventh* section excepts from the rule that all wills must be in writing, wills of personal estate made by soldiers in actual military service, or seamen at sea. This exception includes military and naval officers of all ranks. A will made under this section requires no attestation, and s. 15 does not apply to it; see *Re Limond*, 1915, 2 Ch. 240. The Wills (Soldiers and Sailors) Act, 1918, declares that the section authorized any soldier being in actual military service, or any mariner or seaman being at sea, to dispose of his personal estate, although under 21 years of age, as he might have done before the passing of the Act of 1837. Section 11 is extended to members of H.M. naval and marine forces, when so circumstanced that if they were soldiers they would be in actual military service within the section, and 'soldier' now includes a member of the Air Force. The Act of 1918 extends the operation of s. 11 to real property in the case of persons within the section. See NUNCUPATIVE WILL.

The *twelfth* section (now repealed) dealt with petty officers, seamen, and marines. It has been replaced by the Navy and Marines (Wills) Acts of 1865 to 1930. See above.

The *fourteenth* section enacts that if any person who shall attest the execution of a will shall, at the time of the execution, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

The *fifteenth* section enacts that if any person who shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, etc., shall, so far only as concerns such persons attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devises, etc.

The *sixteenth* section enacts that, in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor whose debt is so charged, shall attest the execution of such will, such creditor shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

The *seventeenth* section enacts that no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will or a witness to prove the validity or invalidity thereof.

With regard to the revocation of wills, it is enacted by the *eighteenth* section that every will shall be revoked by marriage, but if the will has been made in contemplation of a particular marriage it will not be revoked by that marriage: Law of Property Act, 1925, s. 177, and see *Sallis* v. *Jones*, 1936, P. 43, except a will made in exercise of a power of appointment, when the estate thereby appointed would not, in default of appointment, pass to the heir, executor, or administrator, or person entitled as next of

kin under the Statute of Distributions; by the *nineteenth* section, that no will shall be revoked by presumption of an intention on the ground of alteration in circumstances; by the *twentieth* section, 'that no will or codicil shall be revoked otherwise than as aforesaid, or by another will or codicil executed in the manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same'; and by the *twenty-third* section, 'that no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.'

The *twenty-first* section relates to obliterations, interlineations, and other alterations in wills, and enacts 'that no obliteration, interlineation, or other alteration made after execution shall be valid except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed as is required for the execution of the will, but the will with such alteration as part thereof shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in some part of the will.'

As a rule if the testator and each of the witnesses respectively signs his initials in the margin against or near each alteration or interlineation, it will be accepted for probate: see *In the Goods of Blewitt*, (1880) 5 P. D. 116.

By s. 175 of the Law of Property Act, 1925, contingent, specific or residuary devises of real or personal property carry the income, and see the Trustee Act, 1925, s. 31.

Sect. 179, L. P. Act, 1925, enables testators to incorporate the Statutory Will Forms in their wills: see *Statutory Will Forms*, 1925, S. R. & O. 1925, No. 780/L 15.

With regard to the revival of a revoked will, provided for by the *twenty-second* section, see REPUBLICATION OF WILLS.

As to wills of British subjects executed abroad, and of foreigners dying in this country, see DOMICIL, and the Wills Acts, 1861 (24 & 25 Vict. cc. 114 and 121), and see RENVOI.

(4) How wills are to be construed.

As to the time from which a will speaks, the *twenty-fourth* section enacts 'that every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention (see *Re Chapman*, 1905, A. C. 106, as explained by *Re Hewitt*, 1926, Ch. 740) shall appear by the will.' The effect of this is that if a legatee die before the testator, the representatives of the legatee take nothing, the legacy 'lapsing' for the benefit of the residuary legatee or next of kin, but from this rule of lapse the *thirty-third* section makes an important exception for legacies to children or other issue of the testator who may have died leaving issue living at the testator's death: in such a case the legacy takes effect as if the death of the legatee had taken place immediately after the testator's death. And section *thirty-two* provides in certain events against the lapse of devises of estates tail.

By the Law of Property Act, 1925, s. 176, a tenant-in-tail in possession may bar the entail by disposing of the entailed property by his will if executed, confirmed or republished after 1925, by a devise or bequest referring specifically either to the property or the instrument under which it was created or acquired, or to entailed property generally. If not so disposed of, the property does not become subject to his debts and liabilities under s. 176. The section extends to estates tail created either before or after 1925 but does not apply to tenants in tail after possibility of issue extinct or to a tenant-in-tail who is restrained by statute from barring or defeating the entail.

Section *twenty-five* includes lapsed and void devises in a residuary devise; section *twenty-six* makes a good devise of lands include copyholds and leaseholds as well as freeholds; section *twenty-nine* provides that words importing failure of issue shall mean issue living at his death; and sections *thirty* and *thirty-one* deal with the estates of trustees.

As to the expressions necessary to execute a general power, the *twenty-seventh* section enacts that a devise or bequest in general terms of real or personal property shall be construed to include any property coming within the description which the testator

may have power to appoint in any manner he may think proper, unless a contrary intention shall appear. Under the old law it was necessary that such a devise or bequest should refer either to the power or to the specific property which was the subject of it, in order that it might have that effect, and this is still the rule where the testator has only a special, as distinguished from a general, power of appointment.

As to the devise of a fee, the *twenty-eighth* section enacts 'that where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee-simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.' Under the old law only a life estate passed, unless words were used to show an intention to pass the fee.

As to stealing wills, see Larceny Act, 1916, s. 6. Forgery of a will is a felony punishable with penal servitude for life: see Forgery Act, 1913, s. 2 (1).

And see *Jarman*, *Hawkins*, or *Theobald on Wills*; and *Chit. Stat.*, tit. '*Wills*'; and Execution of Wills; Lapse; Probate; Married Women; and, for Scots Law, Holograph.

Winchester, the standard measure which was originally kept at Winchester. It was abolished by 5 & 6 Wm. 4, c. 63.

Windas, or **Windlass.** See Wanlass.

Winding-up, the process by which an insolvent estate is distributed, as far as it will go, amongst the persons having claims upon it. The term is most frequently applied to the winding-up of joint-stock companies.

The property of a company is collected and distributed firstly in discharge of its liabilities, and secondly, among its members according to their respective rights with a view to its dissolution. If the assets are not sufficient to meet the liabilities, a company is usually wound up by the Court. In other cases the winding-up is usually voluntary and conducted by the company itself either with or without the supervision of the Court. The provisions of the Companies Act, 1929, govern a winding-up in any of these three modes (s. 156). *In any winding-up* the members who may be called upon to contribute are ascertained and their liability determined under ss. 157–162; see Contributories. Debts and claims of all kinds require to be proved and if not of certain value to be estimated justly (s. 261).

If the company is insolvent, the rights of secured and unsecured creditors, the admissibility of debts and claims, and the valuation of annuities and future or contingent liabilities are to be regulated according to the law of bankruptcy (s. 262). Sect. 264 provides for preferential payments and (if the company is registered in England) postpones the claims of debenture holders under any floating charge created by the company, but only so far as the assets are insufficient to meet the claims of the general creditors.

Transactions which would be avoided against an individual in his bankruptcy as a fraudulent preference (Bankruptcy Act, 1914, s. 44, see Fraudulent Preference) are avoided by s. 265, the commencement of the winding-up being deemed to correspond with the presentation of a bankruptcy petition (for the date of commencement of a winding-up by the Court, see s. 175; of a voluntary winding-up, s. 277), and by s. 266, floating charges created within six months of the commencement of the winding-up are avoided unless the company was solvent immediately after the creation of the charge, subject to the provisions of the section. Onerous property may be disclaimed and rights under process of execution or attachment of creditors are restricted under ss. 267–270. Sects. 271–278 relate to offences, penalties, and the powers of the Court in connection therewith, and, among supplementary provisions, any company in liquidation must state on every invoice or order or business letter in which the name of the company appears that the company is being wound up (s. 280).

Winding-up by the Court may take place (s. 168)—

(1) In pursuance of a special resolution of the company requiring it; *or*

(2) If default is made in delivering the statutory report to the registrar or in holding the statutory meeting; *or*

(3) On non-commencement of business within one year from incorporation, or suspension of business for a year; *or*

(4) On reduction of members to less in number than seven, or, in a private company, below two; *or*

(5) On the company being unable to pay its debts; *or*

(6) 'Whenever the Court is of opinion that it is just and equitable that the company should be wound up.'

As from the commencement of the winding-up by the Court (see s. 175), any disposition by the company of its property and any

transfer of shares or alteration of the status of its members is void unless the Court otherwise orders (s. 173); and every attachment, sequestration, distress or execution if made after commencement is void under s. 174; no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court (s. 177); and in England the liquidator or provisional liquidator is to take the company's property into his custody or under his control.

Voluntary Winding-up may take place (see s. 225)—

(*a*) By effluxion of time under the articles and by resolution of the company in a general meeting for a voluntary winding-up.

(*b*) By special resolution to the same effect.

(*c*) By an extraordinary resolution of the company to the effect that it cannot by reason of its liabilities continue its business and that it is advisable to wind up. Thereupon the business of the company is to cease except for the purposes of a beneficial winding-up, but the corporate state and powers of the company shall continue until it is dissolved (s. 228).

A Member's Voluntary Winding-up.—The name of a voluntary winding-up where the directors or a majority of them have made a statutory declaration that the company will be able to pay its debts in full within 12 months from the commencement of the winding-up (see ss. 230–236); in the absence of this declaration the winding-up is referred to in the Act as a '*creditors' voluntary winding-up*' (see ss. 230 and 237–245).

Winding-up Subject to Supervision of the Court is obtained upon petition (Companies (Winding-up) Rules, 1929) at any time after a company has passed a resolution for voluntary winding-up. The petition gives the Court jurisdiction over actions, and ss. 173 and 174 (see *ante*) will apply (ss. 257 and 258). Generally, an order for winding-up subject to the supervision of the Court is deemed to be an order for winding-up by the Court for all purposes except matters set out in the 9th Schedule to the Act (s. 260).

The Regulations of the Companies Act, 1929, relating to winding-up are contained in Part V. of the Act and extend over 137 sections, and see the Companies (Winding-up) Rules, 1929, S. R. & O. 1929, 612, L/16. See also LIQUIDATOR; DIRECTORS. Consult *Buckley on the Companies Acts; Lindley on Companies; Palmer's Co. Prec.*

Window Cleaning. In urban districts, by s. 171 of the Public Health Act, 1875, incorporating s. 28 and other sections of the Town Police Clauses Act, 1847 :—

> Every occupier of any house or other building or other person who orders or permits any person in his service to stand on the sill of any window in order to clean, paint, or perform any other operation on the outside of such window, or upon any house or other building . . . unless such window be in the sunk or basement story,

is, if the offence be in any street and to the obstruction, annoyance, or danger of the residents, liable to fine up to forty shillings or to imprisonment up to fourteen days, and any constable of the district is directed to take him into custody without warrant and forthwith convey him before a justice of the peace if the offence shall have been committed within his view.

As to requirements in buildings in the Metropolis, see London Building Acts, and see LIGHT.

Window Tax, a tax on windows, levied on houses which contained more than six windows, and were worth more than 5*l. per annum;* established by 7 Wm. 3, c. 18. The 14 & 15 Vict. c. 36 substituted for this tax a tax on inhabited houses, which tax has been repealed. See HOUSE DUTY.

Windsor Forest, a royal forest founded by Henry VIII. (see 55 Geo. 3, cc. 122, 132, 158).

Wine, Adulteration of, an offence against public health, formerly punished with the forfeiture of 100*l.* if done by the wholesale merchant, and 40*l.* if done by the vintner or retail trader.—12 Car. 2, c. 25, s. 11, repealed by the Stat. Law Rev. Act, 1863 (26 & 27 Vict. c. 125). See ADULTERATION.

As to misdescription of 'Port' wine and Madeira, see 5 & 6 Geo. 5, c. 1, and 6 & 7 Geo. 5, c. 39.

Wine Licences. See INTOXICATING LIQUORS; the Licensing (Consolidation) Act, 1910; *Chitty's Statutes*, tit. '*Intoxicating Liquors*,' and *Paterson on Licensing.*

Winter Circuit, originally an occasional circuit appointed for the trial of prisoners, and in some cases of civil causes, between Michaelmas and Hilary Sittings. See Winter Assize Act, 1876, and ASSIZE. But of late years the circuit held in spring has been termed the 'Winter Circuit.'

Winter Heyning, the season between 11th November and 23rd April, which is excepted from the liberty of commoning in certain forests.—23 Car. 2, c. 3.

Wireless Telegraphy, defined in the Wireless Telegraphy Acts, 1904 (4 Edw. 7, c. 24), s. 7, and 1925 (15 & 16 Geo. 5, c. 67), s. 1,

as meaning 'any system of communication by telegraph as defined in the Telegraph Acts, 1863 to 1904, without the aid of any wire connecting the points from and at which the messages or other communications are sent and received,' it being also provided that nothing in the Act shall prevent any person from making or using electrical apparatus for actuating machinery or for any purpose other than the transmission, including the reception as well as the sending, of messages. The Act of 1924 prohibits the establishment of any wireless telegraph station, or the establishment or working of any apparatus for wireless telegraphy, in any place or on board any British ship, except under and in accordance with a licence granted in that behalf by the Postmaster-General. Search-warrants may be issued by order of the Postmaster-General, the Admiralty, Army Council, Air Council, or Board of Trade. The Act extends to the whole of the British Islands, the Channel Islands and the Isle of Man, and to all British ships on the High Seas; with certain regulations (s. 3 (4)), to foreign ships in territorial waters, and see Wireless Telegraphy Order, 1908 (S. R. & O. 1908 (No. 208), s. 3 of 1904). As to foreign ships registered in the United Kingdom in port there, see Merchant Shipping (Wireless Telegraphy) Act, 1919, s. 2 (9 & 10 Geo. 5, c. 38). That Act, as amended by the Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 Geo. 5, c. 9) (giving effect to the International Convention for the Safety of Life at Sea of 1929, set out in the 1st Sched.), provides that the wireless telegraphy rules of the Board of Trade are to give effect to the Convention if not provided for by the Merchant Shipping Acts, and that steamers carrying more than twlve passengers, and ships of 1,600 tons gross tonnage and upwards, must provide wireless installation and services. The Board of Trade may exempt ships from the obligations of either Act under certain circumstances.

Passenger ships of more than 5,000 tons gross tonnage are to be provided with a wireless direction-finding apparatus (1932 Act, s. 6).

The Act of 1904 was originally limited to expire on July 31st, 1906, but is continued annually by an Expiring Laws Continuance Act, and see BROADCASTING.

Wires, Overhead. For power to urban authority to make bye-laws for prevention of danger or obstruction from overhead telegraphic wires: see the Public Health and Local Government Acts. As to the power of the Post Office to place telegraph lines across private property or property belonging to public undertakings, etc., see the Telegraph Acts (41 & 42 Vict. c. 76; 26 & 27 Vict. c. 112; and 6 & 7 Geo. 5, c. 40), and special or local Acts.

Wisbuy, Ordinances of, a code of maritime jurisprudence compiled at Wisbuy, a town in the Isle of Gothland, principally from the laws of Oleron, in the year 1400, for the governance of the Baltic traders. See 3 *Hallam's Middle Ages*, c. 9, pt. 2, p. 334.

Wista, half a hide of land, or sixty acres.

Wit, To [*scilicet*, or *videlicet*, or *viz.*, Lat.], to know, that is to say, namely.

Witam, the purgation from an offence by the oath of the requisite number of witnesses.

Witchcraft, conjuration; sorcery.

By the Witchcraft Act, 1735 (so styled by the Short Titles Act, 1896) (9 Geo. 2, c. 5), 'no prosecution shall be carried on against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offence in Great Britain'; but it is also enacted that all persons pretending to use any kind of witchcraft, etc., shall upon conviction on indictment suffer one whole year's imprisonment, and also be obliged to give sureties for good behaviour if the Court thinks fit (*R.* v. *Stephenson*, (1904) 68 J. P. 524). See VAGRANT. Prior to this Act witchcraft was a capital offence (see 1 & 2 Jac. 1, c. 12), and a woman and her daughter aged nine years were hanged at Huntingdon for selling their souls to Satan as recently as 1716, this being the last execution in England for witchcraft. Pope Alexander the Sixth nominated a commission against witchcraft in 1494; five hundred persons were burnt as witches in Geneva in 1515; Sir Matthew Hale condemned the Suffolk witches to be burnt in 1664 (see 6 *State Trials*, 647); and a woman was burnt in Scotland in 1722, nine having been burnt after their own confession in 1678. See *Best on Evidence*, sect. 572; *Lecky's Rationalism*.

Wite [Sax.], a punishment, pain, penalty, mulct, or criminal fine.

The *wite* was a penalty paid to the Crown by a murderer. The *were* was the fine a murderer had to pay to the family or relatives of the deceased, and the *wite* was the fine paid to the magistrate who presided over the district where the murder was perpetrated. Thus, the *wite* was the satisfaction

to be rendered to the community for the public wrong which had been committed, as the *were* was to the family for their private injury.—*Bosworth's Anglo-Saxon Dict.*

Witekden, a taxation of the West Saxons.

Witena-gemot, or **Wittena-gemote** [fr. *witta*, Sax., a wise man, and *gemot*, a synod or council], the great council by which an Anglo-Saxon king was guided in all the main acts of government. It was composed of prelates and abbots, of the aldermen of shires, and, as it is generally expressed, of the noble and wise men of the kingdom. Whether the lesser thanes were entitled to a place is not certain.—2 *Hallam's Middle Ages*, c. 8, pt. 1.

Witens, the chiefs of the Saxon lords or thanes, the nobles and wise men.

Withdrawal of Juror. When a jury cannot agree upon a verdict, or even merely for the sake of compromise, one of them is often withdrawn by consent of the litigants, so as to put an end to the proceedings; but there may be a re-trial on breach of terms.—*Thomas* v. *Exeter, etc., Co.*, (1887) 18 Q. B. D. 822.

Withernam [fr. *wieder*, Sax., other, and *naam*, a taking], reprisals. See CAPIAS IN WITHERNAM.

Withersake, an apostate, or perfidious renegade.

Withholding of Food. By the Unreasonable Withholding of Food Supplies Act, 1914 (4 & 5 Geo. 5, c. 51), power was given to the Board of Trade, during the Great War, to take possession of food-stuffs unreasonably withheld.

Without Impeachment of Waste. See ABSQUE IMPETITIONE VASTI; WASTE.

Without Prejudice, a phrase used in offers, in order to guard against any waiver of right; also for the purposes of negotiating a compromise. See PREJUDICE, WITHOUT.

Without Recourse to Me [*sans recours*], a phrase used by an indorser of a bill or note, which protects him from liability.—*Byles on Bills*. See SANS RECOURS.

Without Reserve. See AUCTION.

Witness, one who gives evidence in a cause.

A witness must attend in court according to the requirement of his subpœna. If he has not been paid his lawful expenses, he may refuse to be sworn; but if he be once sworn, he must give his evidence. See OATH and AFFIRMATION.

In civil cases, as a rule, husband and wife are competent and compellable witnesses against each other (Evidence Amendment Act, 1853 (16 & 17 Vict. c. 83), s. 1), but husbands and wives are not compellable to disclose communications between each other (s. 3, *ibid.*). As to criminal cases, see Criminal Evidence Act, 1898, as amended, and that title.

A witness is not obliged to answer any question which tends to criminate him.

On the application of either party, all the witnesses on both sides are ordered to leave the court until called; and each is only called when his evidence is actually required. If a witness who has been ordered out of court remains, it is a contempt, if wilful, and may be treated as such; but his evidence is not rejected. Each witness remains in court after he has given his evidence, and is expected not to communicate with those outside. But every party to the cause is entitled to be present throughout, though he be about to give evidence. The application is made either before the opening of the case, or before the first witness is called.

A witness cannot leave the precincts of the court without leave after the evidence of the side is over, nor even when the judge has begun to sum up, for any witness may at the discretion of the judge be recalled at any time before the verdict is given.

See especially title EVIDENCE; EXPERTS; and see also SUBPŒNA; VOIR DIRE; CRIMINAL EVIDENCE ACT, 1898; PERJURY; CONDUCT-MONEY; CHARACTER; WILLS and ATTESTATION.

Wittena-gemote. See WITENA-GEMOT.

Wold [Sax.], a down or open country.

Wolfeshead, or **Wolferhefod** [Sax.], the condition of such as were outlawed in the time of the Saxons, who if they could not be taken alive to be brought to justice might be slain and their heads brought to the King; for they were no more accounted of than a wolf's head.—*Bract.* l. 3.

Woman. By the Interpretation Act, 1889, s. 1, reproducing 13 & 14 Vict. c. 21, s. 3, words in any Act of Parliament passed after 1850 importing the masculine gender include females unless the contrary intention appears. Women became qualified to be registered as apothecaries by the Apothecaries Amendment Act, 1874 (37 & 38 Vict. c. 34), s. 5; as surgeons by the College of Surgeons Act, 1875 (38 & 39 Vict. c. 43), s. 2; and as medical practitioners by the Medical Amendment Act, 1876 (39 & 40 Vict. c. 41), s. 1, and see *infra*.

The Sex Disqualification (Removal) Act, 1919, s. 1, provides that a person shall not be disqualified by sex or marriage from the exer-

cise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation, or for admission to any incorporated society (whether incorporated by Royal Charter or otherwise), and a person shall not be exempted by sex or marriage from the liability to serve as a juror. A peeress in her own right is not entitled to a writ of summons to the House of Lords (*Rhondda's (Viscountess) Petition*, 1922, 2 A. C. 339).

The Parliamentary Franchise was extended to women by the Representation of the People Act, 1918, which also contains provisions regulating the registration of women as local government electors, and the Representation of the People (Equal Franchise) Act, 1928 (18 & 19 Geo. 5, c. 12). See ELECTORAL FRANCHISE.

The Parliament (Qualification of Women) Act, 1918, provides that a woman shall not be disqualified by sex or marriage for being elected to or sitting or voting as a member of the Commons House of Parliament.

Under the British North America Act, 1867 (30 & 31 Vict. c. 3), s. 24, 'persons' includes women (*Edwards* v. *A.-G. for Canada*, 1930, A. C. 124).

As to employment of women in factories, see Factory and Workshop Acts, 1901 to 1929, especially the employment of women (Young Persons and Children Act, 1920 (10 & 11 Geo. 5, c. 65)), for the purpose of which 'woman' means, by s. 156 of the Act of 1901, a woman of eighteen years of age or upwards, and by s. 61 of which a woman may not be employed at any time during four weeks after childbirth. The Coal Mines Act, 1911, and the Metalliferous Mines Act, 1872, prohibit employment below ground in coal and metalliferous mines; and the Agricultural Gangs Act, 1867 (30 & 31 Vict. c. 130), regulates it in agricultural gangs. See LAUNDRY.

At Common Law words imputing unchastity to a woman required special damage to be actionable; but this injustice was put an end to by the Slander of Women Act, 1891 (54 & 55 Vict. c. 51).

As to the national status of married women, in accordance with the Hague Convention of the 12th April, 1930, on the conflict of nationality laws, see the British Nationality and Status of Aliens Act, 1933 (23 & 24 Geo. 5, c. 49), substituting a new s. 10 in the Act of 1914 (4 & 5 Geo. 5, c. 17), and see also ss. 11 and 12 of the 1914 Act.

See MARRIED WOMEN'S PROPERTY ACT.

Wong [Sax.], a field.—*Spelman.*

Wontner, a mole-catcher: *Williams on Rights of Common*, p. 102.

Wood-corn, a certain quantity of grain paid by the tenants of some manors to the lord for the liberty to pick up dried or broken wood.

Wood-geld, or Pudzeld, is to be free from payment of money for taking of wood in any forest.—*Co. Litt.* 233 *a.*

Woodmote. See FOREST COURTS.

Wood-Plea-Court, a court held twice in the year in the forest of Clun, in Shropshire, for determining all matters of wood and agistments.

Woods and Forests. A Government Department which managed the Crown Lands and collected all the Land Revenue of the Crown which goes to the public account. The Department was presided over by two Commissioners, to whom the Minister of Agriculture and Fisheries was added as a third Commissioner, *ex officio*, by the Crown Lands Act, 1906; by Order in Council (S. R. & O. 1924 (No. 1370)) the name of the Commissioners was altered to Commissioners of Crown Lands. See CROWN LANDS; AGRICULTURE AND FISHERIES, MINISTRY OF.

Woodwards, officers of the forest, whose duty consists in looking after the wood and vert and venison and preventing offences relating to the same.—*Manw.* 189.

Woolmer Forest. As to disafforesting it, see 18 & 19 Vict. c. 46. See also as to leasing, 18 & 19 Vict. c. 16; and as to timber, 52 Geo. 3, c. 71, and 18 & 19 Vict. c. 46.

Woolsack, the seat of the Lord Chancellor in the House of Lords. When, in the reign of Elizabeth, an Act of Parliament was passed to prevent the exportation of wool, to keep in mind this source of our national wealth, woolsacks were placed in the House of Lords, whereon the judges sat.

Words. See DEFAMATION.

Workhouses, municipal institutions for the support and maintenance of poor persons. See Poor Law Act, 1930 (20 Geo. 5, c. 17), ss. 21 to 34; POOR LAWS. As to the position of the inmates of workhouses under the National Insurance Acts (Health and Unemployment), see NATIONAL INSURANCE, and in respect of old age and contributory pensions, see PENSIONS.

Workmen, those earning their livelihood by manual labour.

Workmen's Dwellings.—See HOUSING OF THE WORKING CLASSES.

As to facilities for small dwellings not

exceeding a rateable value of 100*l.* a year, see Settled Land Act, 1925, ss. 57, 107 and 117. See LABOURERS' DWELLINGS.

Workmen (Unemployed).—The Local Government Act, 1929 (19 Geo. 5, c. 17), s. 12, repealed the Unemployed Workmen Act, 1905, which established distress committees, whose functions were to ascertain conditions of labour in London and, by order of the Local Government Board (now Ministry of Health), other boroughs and districts, and assist applicants honestly desirous of obtaining work by more suitable treatment than under the poor law and (subject to the superintendence of a central body) by emigration or removal to another area; the funds being provided by a rate limited to one penny in the pound.

By the Unemployment Assistance Act, 1934, i.e., Part II. of the Unemployment Act, 1934 (24 & 25 Geo. 5, c. 29), the Unemployment (Temporary) Provisions Act, 1935, and No. 2, 1935 (25 & 26 Geo. 5, c. 6, and 25 & 26 Geo. 5, c. 22), an Unemployment Assistance Board has been set up under the Ministry of Health. The functions of the Board are the assistance of persons (*a*) within the Contributory Pensions Acts (see PENSION), and (*b*) persons unemployed after attaining the age of 16 years, who might have reasonably expected to have been employed so as to qualify under those Acts if the industrial circumstances of the district had permitted, if such persons are in need of work; the promotion of their welfare; and, in particular, fitting them to obtain or return to regular employment; and the grant of unemployment allowances (ss. 35 and 36 of 1934 (c. 29)); employment lost or estimated to have been lost owing to stoppage of work due to a trade dispute will disqualify for an allowance (*ibid.*). Provision is made for training courses for persons above 18 years of age (ss. 37 and 43); the circumstances in which allowances may be granted are indicated (s. 38); and see the Act of 1935 (c. 6) and Unemployment Insurance Act, 1935, s. 54; officers of the Board are to determine applications (s. 39); appeals are provided for by s. 36. Sects. 44 to 47 and the temporary Act of 1935 (c. 22) relate to finance. An Unemployment Assistance Fund has been created to defray the general expenses, consisting partly of contributions by county and county borough councils and partly of moneys provided by Parliament.

As to Unemployment Insurance, see NATIONAL INSURANCE ACTS.

Workmen's Compensation Act. The Workmen's Compensation Act, 1897, introduced the principle of compulsory insurance of workmen by employers in a restricted number of trades. The gist of a right to compensation under the Acts is 'accident arising out of and in the course of the employment' causing personal injury to a workman (Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84), s. 1 (1)). The compensation is not damages for negligence or any other tort at common law or by statute (see CAMPBELL (LORD) ACTS (Fatal Accidents Acts, 1846–1908) and Employers Liability Act, 1880, sub tit. MASTER AND SERVANT), and an employer is not liable both for damages and compensation; but the workman or his representatives may elect between the remedies, and in an unsuccessful action for damages the Court may assess or refer the question of compensation to the proper tribunal, subject to an equitable order for costs (Workmen's Compensation Act, 1925, s. 25). Compensation is not payable for an injury which does not disable the workman for at least three days from earning full wages in his employment (s. 1 (1) (*a*), *ibid.*), and serious and wilful misconduct may disqualify unless the injury results in death or serious and permanent disablement (s. 1 (1) (*b*), as explained by s. 1 (2)); contracting out is not allowed except under a scheme made under the Act (s. 1 (3)). Notice, verbal or written, is necessary (s. 14) within six months from the accident, or in case of death, from time of death.

The Workmen's Compensation Act, 1897, together with the Act of 1900, which brought agricultural labourers into the benefits of the earlier Act, were repealed by the Workmen's Compensation Act, 1906 (6 Edw. 7, c. 58), which very largely increased the scope and character of this particular legislation, but, like the earlier Acts, was very fruitful in litigation. The Act was amended and extended by the Workmen's Compensation Act, 1923, which repealed the Workmen's Compensation (War Addition) Acts, 1917 and 1919, and provided (*inter alia*) for a permanent increase of compensation, and was finally repealed by the Workmen's Compensation Act, 1925 (15 & 16 Geo. 5, c. 84).

The Act of 1925 by s. 3 (1) defines 'workman' as

'any person who has entered into or works under a contract of service or apprenticeship with an employer, whether by way of manual labour, clerical work or otherwise, and whether the contract

is express or implied, is oral or in writing, and also includes a person engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under any contract of bailment (other than a hire purchase agreement) in consideration of the payment of a fixed sum or a share in the earnings or otherwise.'

And s. 35 includes masters, seamen and apprentices to the sea service and apprentices in the sea-fishing service.

Except by s. 3 (2), persons (*a*) not employed in manual labour whose remuneration exceeds 350*l.* a year; (*b*) employees in casual work which is not part of the employer's trade or business, and not engaged or paid by a club for games or recreation; (*c*) members of a police force; (*d*) outworkers; (*e*) a member of the employer's family living in his house; (*f*) in the naval, military, or air services, and certain fishermen are excluded (see s. 35 (2)).

In s. 5 (1) 'employer' is defined as including

'any body of persons corporate or unincorporate and the legal personal representative of a deceased employer, and where the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, the latter shall, for the purposes of this Act, be deemed to continue to be the employer of the workman whilst he is working for that other person.'

Also (2) the owners of vehicles or vessels plying for hire, let or under bailment to persons so engaged.

(3) the managers of a games club.

As to accidents and industrial diseases within the ambit of the Act, see ACCIDENT TO WORKMAN, and the Act of 1925, ss. 43 (1); Sched. III., s. 471, and subsequent orders by the Home Secretary under s. 43 (3); also the Workmen's Compensation (Silicosis and Asbestosis) Act, 1930 (20 & 21 Geo. 5, c. 29), and *Wragg* v. *Samuel Fox & Co.*, 1937, A. C. 442.

The Act is, apart from seamen, limited to employment within the ambit of the United Kingdom (*Tomalin* v. *Pearson*, 1909, 2 K. B. 61), the Channel Islands or the Isle of Man (s. 16 of 1925). The question as to whether a contract of service exists is one of fact in each case (*Simmons* v. *Heath Laundry Co.*, 1910, 1 K. B. 543).

Compensation is payable in respect of personal injury by accident (see ACCIDENT) to the workman or his dependants (see DEPENDANT), and the amount is based upon his average weekly earnings (s. 9). The minimum compensation payable in case of death of a workman who leaves dependants on his earnings is from 200*l.* to 300*l.*, and the total amount of compensation payable, 600*l.* (s. 8).

The procedure is not by way of action, but is by reference to an arbitration, generally a county court judge, from whom an appeal lies direct to the Court of Appeal. See ss. 21 and 28 and Sched. I., *ibid.*, and County Court Rules.

See the Act of 1925 and the Workmen's Compensation Rules, 1926. Sect. 37 gives power to make Orders in Council giving effect to any convention with a Foreign State providing for reciprocity in matters relating to workmen's compensation, and in particular the Anglo-French Convention of 1909 (see Workmen's Compensation Rules, 1925, Rules 68 *et seq.*). Consult *Willis* or *Ruegg on Workmen's Compensation; Chartres' Judicial Interpretations; Workmen's Compensation Reports.*

Workshop, for the purpose of the Factory and Workshop Act, 1901 (1 Edw. 7, c. 22), means hat works, rope works, bakehouses, lace warehouses, shipbuilding works, quarries, pit banks, dry-cleaning, carpet-beating, and bottle-washing works, and any premises named in Part II. of the 6th Schedule, not being a 'factory' where manual labour is used for gain, or for making, repairing, or adapting for sale any article, in premises to which the employer has a right of access, including laundries, as provided by the Factory and Workshop Act, 1907 (7 Edw. 7, c. 39), s. 1; all consolidated and repealed by the Factories Act, 1937, and cf. FACTORY.

Worscott 'is an old English word and signifieth *liberum esse de oneribus armorum.*' —*Co. Litt.* 71 *a.*

Worship, place of, defined in *Stradling* v. *Higgins*, 1932, 1 Ch. 143, for the purposes of the Places of Worship (Enfranchisement) Act, 1920 (10 & 11 Geo. 5, c. 56), which enables trustees of a leasehold interest in places of public worship to enlarge the interest into the freehold in not more than two acres, subject to the provisions of the Act.

The Places of Worship Sites Act, 1873 (36 & 37 Vict. c. 50), as extended by the Amendment Act, 1882 (45 & 46 Vict. c. 21), enabled sites not exceeding one acre to be conveyed for purposes of worship. See also PUBLIC WORSHIP.

Worship, a title of respect applied to a magistrate.

Wort, new beer unfermented or in the act of fermentation; the sweet infusion of

malt or grain. As to its exportation, see 29 & 30 Vict. c. 64.

Wort or **Worth** [fr. *weorth*, Sax.], a curtilage or country farm.

Worthing of Land, a certain quantity of land so called in the manor of Kingsland in Hereford; the tenants are called worthies.—*Jac. Law Dict.*

Wound, any lesion of the body, whether cut, bruise, contusion, fracture, dislocation, or burn. In surgery it is confined to a solution of continuity in any part of the body, suddenly caused by anything that cuts or tears, with a division of the skin.

Wounding. Unlawfully and maliciously wounding or causing grievous bodily harm with intent to do grievous bodily harm to any person by any means is, by s. 18 of the Offences against the Person Act, 1861, a felony, punishable up to penal servitude for life; and by s. 19 of the same Act unlawfully and maliciously wounding or inflicting any grievous bodily harm is a misdemeanour punishable by five years' penal servitude.

Wreccum maris significat illa bona quæ naufragio ad terram pelluntur.—(A wreck of the sea signifies those goods which are driven to shore from a shipwreck.)

Wreck, such goods, including the ship or cargo or any part (Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 518 to 522, and *Hals. L. E.*, sub tit. '*Shipping*'; Part XII., '*Wreck*,'), as, after a shipwreck, are afloat or cast upon the land by the sea. According to an old definition (*Jacob's Law Dict.*, tit. '*Wreck*') they were not wrecks so long as they remained at sea in the jurisdiction of the Admiralty. By s. 510 of the Merchant Shipping Act, 1894, 'wreck' includes in that Act 'jetsam, flotsam, and derelict found in or on the shores of the sea or any tidal water.'

The term is used in several senses, e.g., a ship which is so damaged as to be unable to continue her voyage is a 'wreck' for the purposes of s. 158 of the M. S. Act, 1894; and *Barras* v. *Aberdeen Steam Trawlers*, 1933, A. C. 402, under the Merchant Shipping (International Labour Conventions) Act, 1925 (15 & 16 Geo. 5, c. 42); *The Olympic*, 1913, P. 92. The old distinction appears to be that if property could be identified by its owner it was not wreck, i.e., property which the Crown could claim as part of its prerogative.—*Hals. L. E., loc. cit.*

Sects. 511–528 of the M. S. Act, 1894, deal generally with the custody of wreck by district 'receivers' of wreck (as by the sheriffs of the counties under the ancient law), and the suppression of plunder by them, the claims of the owners within one year (s. 521) (formerly a year and a day), and the title of the Crown to unclaimed wreck except in cases where any other person has a right to wreck by royal grant (s. 522).

This revenue of wrecks was frequently granted to lords of manors as a royal franchise. It is a branch of the coroner's office to inquire concerning shipwrecks and certify whether there has been a wreck or not, and who is in possession of the goods.

The offence of stealing any part of vessels wrecked, stranded, or cast on shore, or any goods, etc., belonging to such vessels, is a felony (Larceny Act, 1916, s. 15). Persons in possession of shipwrecked goods who cannot satisfy a justice that they came by them lawfully may be imprisoned, or forfeit 20*l.* beyond the value (Larceny Act, 1861, s. 65). A similar punishment is attached to the offence of offering or exposing shipwrecked goods for sale which have been, or shall reasonably be suspected to have been, taken from the wreck, if the person offering or exposing them do not satisfy a justice that he came by them lawfully (*ibid.*, s. 66). The offence of unlawfully and maliciously destroying any part of a wreck, or any goods, etc., belonging to it, is a felony (Malicious Damage Act, 1861, s. 49).

As to impeding a person saving his own or another's life from a wreck, see Offences against the Person Act, 1861, s. 17. As to assaulting a magistrate, officer, etc., engaged in preserving a wreck or goods cast on shore, see s. 37 of that Act.

The Removal of Wrecks Act, 1877 (40 & 41 Vict. c. 16), gave power to harbour and conservancy authorities to remove wrecks obstructing navigation; an amending Act of 1889 (52 Vict. c. 5) extended the protection from obstruction to lifeboats engaged in lifeboat service; and these enactments are now replaced by ss. 530–534 of the Merchant Shipping Act, 1894.

Under s. 477 of the Merchant Shipping Act, 1894, the Lord Chancellor has power to appoint not more than three wreck commissioners to hold formal investigations into shipping casualties under ss. 464 *et seq.* (Part VI.) of the Act. Preliminary inquiries may be held by coastguard or custom officers or persons appointed by the Board of Trade. A stipendiary magistrate, when a member of the local marine board, is empowered to preside at investigations and inquiries.

As to property in wreck generally, see 1 *Bl. Com.* 291; *Williams on Rights of Common*, p. 289; *Co. Litt.* 261 *a*, and Mr. Hargrave's note.

Wreck-free, exemption from the forfeiture of shipwrecked goods and vessels, which the Cinque Ports enjoy by a charter of Edward I.—*Jac. Law Dict.*

Writ [*breve*, Lat.], a judicial process, by which any one is summoned as an offender; a legal instrument to enforce obedience to the orders and sentences of the courts. For the particular writs, see their distinctive names, as assistance, capias, etc.

The Real Property Limitation Act, 1833, abolished all writs in real and mixed actions (except in dower *unde nihil habet*, *quare impedit* or ejectment), expressly naming sixty abolished writs (e.g., the writ of right *de rationabili parte*, of *quo jure*, of assize of *novel disseisin*, of entry *sur disseisin* in the *quibus*, of waste, of partition, and of *per quæ servitia*. See also *Co. Litt.*; *Hargr. and Butler's Notes* to s. 101, and *Index to Notes, ibid.*, 18th ed.

The most used modern writ is the Writ of Summons, by which (corresponding to the 'Plaint' in a County Court) an action in the High Court of Justice is commenced. See SUMMONS, and for other writs in actions see EXECUTION, ELEGIT, FIERI FACIAS, POSSESSION, and VENDITIONI EXPONAS. For writs not in actions, see CERTIORARI, MANDAMUS, PROHIBITION, and QUO WARRANTO.

Writ of Trial. See 3 & 4 Wm. 4, c. 42, s. 17, repealed by 30 & 31 Vict. c. 142, s. 6.

Writer of the Tallies, an officer of the Exchequer, who acted as clerk to the auditor of the receipt, who wrote upon the tallies the teeller's bills. See TALLY.

Writers to the Signet, designated by the letters W.S., or, in the case of three of the older established firms in Edinburgh, the letters C.S. (which stand for the words 'Clerks to the Signet'), are the senior Society of Solicitors or Law Agents in Scotland. Formerly many privileges were extended to this Society, but most of these have disappeared. See SIGNET and Administration of Justice (Scotland) Act, 1933 (23 & 24 Geo. 5, c. 41), s. 8; see also *Bell's Scots Law Dict., voce 'Clerk to the Signet.'*

Writing, in any Act of Parliament, shall, unless the contrary intention appears, be construed as including printing, lithography, photography, and other modes of representing or reproducing words in a visible form.—Interpretation Act, 1889, s. 20.

Writings, Obligatory, bonds. See BOND.

Writs for the Election of Members of Parliament. The Speaker of the House of Commons is empowered to issue warrants, during any recess of the House, for making out new writs for the election of persons in the room of members accepting certain offices.

Wrong, the privation of right, an injury, a designed or known detriment. See TORT, and *Addison* or *Clerk and Lindsell on Torts.*

The maxim that 'No man can take advantage of his own wrong' means that a man cannot enforce against another a right arising from his own breach of contract or breach of duty (*Re London Celluloid Co.*, (1888) 39 Ch. D. p. 206, per Bowen, L.J.).

An estate gained by wrong is always a fee simple. A squatter may, of course, be ejected before the Statute of Limitations has run in his favour, but as long as he remains he has seisin of the freehold to him and his heirs, 'because wrong is unlimited and ravens all that can be gotten and is not governed by terms of the estates, because it is not contained within rules': *Hob.* p. 323; *Co. Litt.* 181 *a*; *Williams on Seisin*, p. 7. But a squatter is bound by restrictive covenants affecting the land (*Re Nisbet*, 1906, 1 Ch. 386).

Wrongdoer. See CONTRIBUTION.

Wrongful Dismissal. A wrongful dismissal is an unjustifiable dismissal of a servant by the master from an engagement for services for a fixed time or, if upon notice, before expiration of the period of notice. The servant may elect to treat the contract as repudiated (*General Bill Posting Co.* v. *Atkinson*, 1909, A. C. 118; and see *Measures, Ltd.* v. *Measures*, 1910, 2 Ch. 248), in which case he can recover wages actually earned on a *quantum meruit* (see *Cutter* v. *Powell*, (1795) 6 Term Rep. 320, and *Notes, Sm. L. C.*), or if he treats the contract as continuing, he may sue for damages for loss of service and such wages as he has lost the opportunity of earning, taking into account the probability of finding another employment of the same kind and degree (see *Brace* v. *Calder*, 1895, 2 Q. B. 253), but he cannot sue for a *quantum meruit* as well as on the contract. The custom that a domestic servant may be dismissed at any time by a month's notice or payment of a month's wages has been judicially proved (*Mould* v. *Halliday*, 1898, 1 Q. B. 125).

Punitive damages are not to be included and the plaintiff must take diligent steps to

find other suitable employment (*Beckham* v. *Drake*, (1849) 2 H. L. C. 579).

Wrongous Imprisonment, false imprisonment.—*Scots term.*

Wydraught, a water-passage, gutter, or watering-place; often mentioned in old leases of houses, in the covenant to repair.—*Jac. Law Dict.*

Wynton, Statute of (13 Edw. 1, st. 2, A.D. 1285). Chapter 6, which prohibits the holding of fairs and markets in churchyards, is still in force. The remaining chapters were repealed as to England by the Criminal Law Act, 1827, and as to Ireland by the Statute Law Revision (Ireland) Act, 1872.

X.

Xenodoceum, or **Xenodocheum,** an inn, a hospital.—*Cowel.*

Xenodochy [fr. ξενοδοχία, Gk.], reception of strangers; hospitality.—*Encyc. Londin.*

Y.

Yacht, a vessel used primarily for pleasure purposes. Sect. 260 of the Merchant Shipping Act, 1894, includes pleasure yachts in Part II. of the Act, except certain provisions set out in s. 262. British yachts must be registered under the Act (see BRITISH SHIP), unless they do not exceed 15 tons net register and are employed solely in navigation in home waters or a British possession in which the managing owner resides (see s. 3, *ibid.*). Pleasure yachts are also exempt from the Load Line and Loading Provisions (Part II., ss. 40–67) of the Merchant Shipping (Safety and Load Line Conventions) Act, 1932 (22 Geo. 5, c. 9). The Sea Regulations, 1910 (S. R. & O. 1910, p. 457), apply to sea-going yachts.

Yard [fr. *geard*, Sax.], an enclosed space of ground, generally attached to a dwelling-house, etc. Also a measure of three feet, or thirty-six inches, in length; see Weights and Measures Act, 1878, s. 10.

Yardland (*virgata terræ*, Lat.], a quantity of land differing in extent in different parts of the country, generally about twenty acres; see *Co. Litt.* 5 *a*, 69 *a*.

Year [fr. *gear*, Sax.], 365 days, twelve calendar months, fifty-two weeks and one day, or in Leap Year (*q.v.*) 366 days, i.e., fifty-two weeks and two days.

The first day of the year was legally altered for England from the 25th of March to 1st of January in and after 1752 by the Calendar (New Style) Act, 1750 (24 Geo. 2, c. 23) (*Chitty's Statutes*, tit. '*Time*'), but as appears from the preamble to that statute, the 1st of January had been the first day of the year in Scotland, in other nations, and by 'common usage throughout the whole kingdom.' See CALENDAR. Generally, when a statute speaks of a year it must be considered as twelve calendar and not lunar months.—*Bishop of Peterborough* v. *Catesby*, (1608) Cro. Jac. 166.

For the termination of the statutory year for certain financial and other administrative purposes, e.g., income tax, land tax, etc., see *Chron. Tab. of Statutes*, tit. '*Year*.' The unemployment insurance year ends on the Sunday preceding the 27th Monday of the calendar year (Unemp. Ins. Act, 1935 (25 Geo. 5, c. 8), s. 113).

Year and Day [*annus et dies*, Lat.], a time that determines a right or works a prescription, etc., in many cases; see *Jac. Law Dict.*; *Co. Litt.* 254 *b*. A person wounded must die within a year and a day in order to make the offender guilty of murder: 3 *Inst.* 53; 6 *Rep.* 107; and see WRECK.

Year-books, or **Books of Years and Terms,** reports, in a regular series, from the time of King Edward II. to Henry VIII., which were taken by the prothonotaries or chief scribes of the courts, at the expense of the Crown, and published annually; hence their denomination. The Year-books are valuable as documents of progressive law, although they have not been classified or digested in the manner of later reports. See REPORTS.

Year, Day, and Waste [*annus, dies et vastum*, Lat.], a part of the royal prerogative, whereby the Crown had for a year and a day the profits of lands and tenements of those attainted of petit treason or felony, whosoever was lord of the manor whereto the lands or tenements belonged; and the right to cause waste to be made on the tenements by destroying the houses, ploughing up the meadows and pastures, rooting up the woods, etc. (unless the lord of the fee agreed for the redemption of such waste), afterwards restoring them to the lord of the fee. *Staund. Prærog.* 44. This prerogative was abolished by 54 Geo. 3, c. 145.

Year to Year, Tenancy from. This estate arises either expressly, as when land is let from year to year, or by a general parol demise, without any determinate interest, but reserving the payment of an annual rent; or impliedly, as when property is occupied generally under a yearly rent, payable

yearly, half-yearly, or quarterly; or when such tenant holds over, after the expiration of his term, without having entered into any new contract, and pays rent (before which he is a tenant on sufferance), and in such cases the tenant holds over on such terms of the old tenancy lease as are applicable to a tenancy from year to year and to the particular tenancy.

The qualities which distinguish a tenancy from year to year from proper terms for years, and from estates at will, are (1) that it exists by construction of law alone instead of an estate at will in every instance where a possession is taken with the consent of the legal owner and where an annual rent has been paid, but without there having been any conveyance or agreement conferring a legal interest; and (2) that, whether it arises from express agreement, or by implication of law, it may, unless surrendered or determined by a regular notice to quit, subsist for an indefinite period, if the estate of the lessor will allow of it, or for the whole term of his estate where it is of a limited duration, unaffected by the death either of the lessor or lessee, or by a conveyance of their estate by either of them; so that the assigns, or real or personal representatives, of the former, according to the quantity of his estate, and the assignees, or personal representatives, of the latter, still continue the tenancy upon the original terms, and subject to the same conditions which the law, or the express agreement of the parties, has attached to it.

But the tenancy is liable at any time to be determined by a notice to quit from either party, which, where there is no agreement, or where the agreement is silent on that point, must be at least *half a year's* (*not merely six months'*), or where the Agricultural Holdings Act applies, *one year's notice* to give up possession at the expiration of the year, computing from the time when the tenancy commenced. An oral notice is sufficient unless the agreement requires it to be in writing (per Lord Ellenborough, C.J., in *Doe* v. *Crick*, (1805) 5 Esp. N. P. C. 197); but for the sake of evidence it is always advisable to give a written notice. Consult *Foa* or *Woodfall on Landlord and Tenant*.

Years, Estate for. See TERMS FOR YEARS.

Yelverton's Act. An Act of the Irish Parliament (21 & 22 Geo. 3, c. 48), extending the principle of 'Poynings' Act' (which see) to private estate Acts and shipping Acts.

Yeme [fr. *hiems*, Lat.], winter.

Yeoman, or **Yoman,** a man of a small estate in land; a farmer, a gentleman farmer; also, a 40*s.* freeholder not advanced to the rank of a gentleman; the highest order among the plebeians.—2 *Inst.* 668.

Yeomanry, the collected body of yeomen.

Yeomanry Cavalry, a denomination given to those troops of horse which were levied among the gentlemen and yeomen of the country, upon the same principle as the Volunteer companies. See the National Defence Act, 1888 (51 & 52 Vict. c. 31); and the Militia and Yeomanry Act, 1901 (1 Edw. 7), s. 14. As to the former powers of the lords lieutenant of counties in reference to this force, see title LORD LIEUTENANT. The units composing the force were transferred to the Territorial Force by the Territorial Army and Militia Act, 1921 (11 & 12 Geo. 5, c. 37). See TERRITORIAL ARMY.

Yeomen of the Guard, properly called yeomen of the guard of the royal household; a picked body of men, attached to the Lord Chamberlain's office, Buckingham Palace. As to their establishment, see 2 *Hall. Const. Hist.*, c. 9.

Yeven, or **Yeoven,** given; dated.

Yielding and **Paying,** the first words of the *reddendum* clause in a lease. See REDDENDUM; *Platt on Covenants*.

Yokelet [fr. *jocelet*, Sax.], a little farm, requiring but a yoke of oxen to till it.

York, Duke of. See MILITARY ASYLUM OF CHELSEA.

York, Province of. Its special customs were abolished by 19 & 20 Vict. c. 94.

York, Statute of (12 Edw. 2, st. 1, A.D. 1318), repealed by the Statute Law Revision and Civil Procedure Act, 1881.

York-Antwerp Rules. Optional rules of practice on the subject of general average for the assistance of shipowners, merchants, underwriters and average-adjusters for insertion in bills of lading, charter-parties and policies of insurance. The rules were adopted as a result of a conference of the Association for Reform and Codification of the Law of Nations at Antwerp in 1877. The *Average Adjusters' Rules* adopted by the English Association of English Average Adjusters have been drawn for the same purpose.

Yorkshire Registry Act, 1884 (47 & 48 Vict. c. 54), consolidating and amending the Acts relating to the registration of deeds, wills, and other assurances (see the wide meaning of the term in s. 3 of the Act of 1884) in the North (8 Geo. 2, c. 6), East (6 Anne, c. 2), and West (2 & 3 Anne, c. 4, and 6 Anne, c. 20) Ridings of the County of York, for the

purpose of giving them priority according to the date of registration irrespectively of notice *aliunde* (s. 14) (see NOTICE); and *Battison* v. *Hobson*, 1896, 2 Ch. 403; *Gresham Assurance Society* v. *Crowther*, 1915, 1 Ch. 214.

By the Law of Property Act, 1925, s. 11:—

(1) It shall not be necessary to register a memorial of any instrument made after the commencement of this Act in any local deeds registry unless the instrument operates to transfer or create a legal estate or to create a charge thereon by way of legal mortgage; nor shall registration of a memorial of any instrument not required to be registered affect any priority.

Among registrable documents otherwise than by memorial are caveats which still require to be registered in the Yorkshire Registers (see Yorkshire Registries Amendment Act, 1885 (48 & 49 Vict. c. 26), s. 3). Tacking is not allowed under the Yorkshire Registries Acts, s. 94; Law of Property Act, 1925 (much to the same effect) (see TACKING and FURTHER ADVANCES), may not perhaps apply to the Yorkshire Registries, as s. 16 of the Yorkshire Registry Act, 1884, has not been repealed or amended. The registration after 1925 of a memorial, if registrable (see s. 11, *supra*), constitutes actual notice (Law of Property Act, 1925, s. 197). Under s. 198 (*ibid.*) registration in the Yorkshire Register under the Land Charges Act, 1925 (see s. 10 (6) of that Act), also constitutes actual notice. Priorities appear to be regulated by the Yorkshire Registry Act, 1884. See L. P. Act, 1925, ss. 97 and 197, and *Wolst. and Ch. Conv. Acts*; notes to s. 197 (1). Under the Yorkshire Act, registration does not give priority in case of fraud.

Assurances of and charges on land partly in any of the three Ridings and partly elsewhere should, as to the lands in the Riding, be registered there. See also EASEMENT.

Young Person. In the Children and Young Persons Act, 1933 (23 Geo. 5, c. 12), this expression (s. 107) 'means a person who has attained the age of fourteen years and is under seventeen years.'

A young person within the Merchant Shipping (International Labour Conventions) Act, 1925 (15 & 16 Geo. 5, c. 42), is a person who is under the age of eighteen years (s. 5). See CHILDREN.

Yule [fr. *jule*, Dan.; *gehul*, *geola*, *geol*, Sax.], the times of Christmas and Lammas.

Z.

Zanzibar. A British Protectorate administered under the Colonial Office.

Zemindar [fr. two words signifying earth, land, and holder or keeper], land-keeper. An officer who, under the Mohammedan government, was charged with the financial superintendence of the lands of a district, the protection of the cultivators, and the realization of the government's share of its produce, either in money or kind.—*Indian.*

Zemindary, the office and jurisdiction of a zemindar.—*Ibid.*

Zenana, that part of a house which is set apart for women.—*Ibid.*

Zetetick [fr. ζητέω, Gk.], proceeding by inquiry.

Zigari, or **Zingari,** gypsies (*q.v.*), held to be rogues and vagabonds in the Middle Ages; from Zigi, now Circassia.

Zillah, side-part, district, division. A local division of a country having reference to personal jurisdiction.—*Indian.*

Zillah Court, local or divisional court.—*Ibid.*

Zoll-verein, a union of German States for uniformity of customs. It began in 1819 by the union of Schwarzburg-Sondershausen, until the unification of the then German Empire which included Prussia, Saxony, Bavaria, Wurtemberg, Baden, Hesse-Cassel, Brunswick, and Mecklenburg-Strelitz, and all intermediate principalities. This union was superseded by the formation of a Federal Council which took the place of the Federal Council of the Zoll-verein.

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